

Federal Parks & Recreation

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Miracle on the Potomac: Hill passes interim spending bill

Freed of a controversy over water quality in Flint, Mich., Congress approved September 28 an interim, omnibus appropriations bill (HR 5325) that will keep the government in money through December 9.

The breakthrough came the day before when Republican and Democratic House leaders agreed to put up Flint, Mich., water quality assistance in a separate bill - a Water Resources Development Act. (See separate article page 11.) Democrats had been insisting on inclusion of the money in the appropriations bill.

The Senate approved HR 5325, called a continuing resolution (CR), by a 72-to-26 vote on September 28 followed by a House vote of 342-to-85.

For appropriators the hard part begins now. They must assemble full-year appropriations bills in a three-week session in late November and early December. That will probably be done in one omnibus appropriations bill, said Sen. Barbara Mikulski (D-Md.), ranking minority member of the Senate Appropriations Committee.

Said Rep. Betty McCollum (D-Minn.), ranking minority member of the House subcommittee on Interior appropriations, after the House vote on HR 5325, "When Congress returns in November, I hope Republican leadership will work with me and my Democratic colleagues to pass a full-year budget that puts the American people, not powerful special interests, first."

Completion of the interim appropriations bill could be called the Miracle on the Potomac because the House and Senate had been expected to go right

down to today's deadline (September 30) to approve temporary funding for the first part of fiscal year 2017.

The two political parties were threatening to shut down the government over less than earth-shaking issues. In this instance \$220 million to help Flint, Mich., clean up its water.

But on September 27 Speaker of the House Paul Ryan (R-Wis.) and House Minority Leader Nancy Pelosi (D-Calif.) struck a deal to insert \$170 million for Flint water quality in the water resources bill. The House and Senate have each approved versions of the water resources bill and leaders from both parties committed to completing the measure - along with the Flint assistance - in the lame-duck session.

Of the CR, the 160-page HR 5325 contains two significant park and rec provisions: It would extend the Federal Lands Recreation Enhancement Act (FLREA) one year through Sept. 30, 2018, and it would keep the Eisenhower Memorial Commission going through December 9.

Senators first voted 55-to-45 September 27 not to take up HR 5325 because Democrats objected to the absence in the CR of money for Flint, Mich. But Senate Majority Leader Mitch McConnell (R-Ky.) said he was not giving up. "We will continue working on this important matter," he said.

But Senate Minority Leader Harry Reid (D-Nev.) was still pushing for the Flint assistance in the appropriations bill. "We don't need to have this manufactured crisis," he said. "We want to make sure that Flint has some degree of certainty that after two-and-a-half years they would get some help. We need to work together to keep our government properly funded and the people of Flint protected."

McConnell and Reid were then rescued by the Ryan-Pelosi Flint deal.

There are lots of obstacles ahead in the Senate and the House when they begin to write full-year fiscal 2017 appropriations bills in a lame-duck session this fall.

For park and recreation purposes the most important dispute is over a Democratic demand that Congress appropriate equal amounts of money for domestic and military spending.

The Republican majority would prefer to appropriate an extra \$18 billion for Defense spending, adding it to a National Defense Authorization Act. The Senate rejected that proposal in June, but it may reappear.

A spending agreement between the White House and Congress (PL 114-74 of Nov. 2, 2015) gave appropriators extra money to work with for all domestic and military programs in fiscal years 2016 and 2017. For fiscal 2017 the total is \$1.070 billion.

In another obstacle some House Republicans from the House Freedom Caucus want to cut \$30 billion off the top of the \$1.070 billion.

Finally, in still another dispute, members of the House Freedom Caucus would extend funding now at existing levels until early next year, or through March 2017. That would give Republican Presidential hopeful Donald Trump an opportunity to write his own ticket, assuming he is elected.

Like other domestic appropriations bills, an Interior and Related Agencies spending bill (HR 5538, S 3068) isn't going anywhere on its own. The House approved its version July 14 and the Senate Appropriations Committee approved its version June 16.

For fiscal 2017 the House Appropriations Committee used the overall budget agreement of November 2015 to establish a spending cap to an Interior bill that is \$64 million less than a fiscal 2016 ceiling of \$30.416 billion.

The committee set a cap of \$32.095 billion for fiscal 2017. Still, that is marginally above the spending cap of \$32.034 billion set by the Senate Appropriations Committee for its bill.

The House approved its fiscal 2017 Interior bill (HR 5538) July 14 and the

Senate Appropriations Committee approved its bill (S 3068) June 16. Both the House and the Senate committee packed their bills with amendments/riders that attack dozens of Obama administration conservation initiatives.

FLREA: In their fiscal 2017 appropriations bills the House and the Senate committee both would extend FLREA through Sept. 30, 2018, as would the CR. The underlying law is scheduled to expire on Sept. 30, 2017. Congress usually extends the law that authorizes entrance and user fees on federal lands a year in advance to give land managers and the public time to gear up for the following recreation season. Section 133 in the CR.

Eisenhower Memorial Commission

Extension: In their fiscal 2017 appropriations bills both the House and Senate committee would extend a Congressional ban on the spending of construction money on a Dwight D. Eisenhower Memorial on the Washington, D.C., Mall. Republican leaders on the House Natural Resources Committee and some Eisenhower family members object to the design of the proposed memorial.

In addition, the House approved no money for a memorial commission, although, it said, the measure does extend "the authority to build on the present site and requires all construction funding to be appropriated before construction begins." The Senate committee did approve \$1 million for the commission.

The provision in the CR would keep the memorial commission in business and leave it to the appropriations bill to sort out construction money. Section 134 in the CR.

If by some miracle Congress actually passed an Interior appropriations bill, here are some of the recommended House and Senate committee appropriations:

For the LAND AND WATER CONSERVATION FUND the House bill recommends an appropriation of \$145.8 million, or \$88.4 million short of a

fiscal 2016 appropriation of \$234.2 million. The House also would reduce the state side of LWCF by \$30 million, cutting it from \$110 million to \$80 million.

The Senate committee bill recommends \$40 million more for federal land acquisition than the House, approving \$184.4 million. The senators would also allocate \$10 million for state grants, a total of \$110 million.

CENTENNIAL CHALLENGE GRANTS: The House approved \$30 million, or \$5 million less than the \$35 million the administration requested. The Senate committee approved \$20 million.

PARK SERVICE OPERATIONS: The House approved \$2.435 billion, or \$39 million more than a fiscal 2016 appropriation of \$2.396 billion. The Senate committee would appropriate \$2.406 billion.

STATE WILDLIFE CONSERVATION GRANTS: The House approved \$62.6 million, or \$2 million more than the fiscal 2016 appropriation of \$60.6 million. The Senate committee would appropriate \$62.6 million, the same as the House.

FOREST SERVICE RECREATION: The House approved \$263.9 million, just over the fiscal 2016 appropriation of \$261.7 million. The Senate committee would appropriate \$264.6 million.

BLM RECREATION MANAGEMENT: The House would appropriate \$69.5 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million. The Senate committee would appropriate \$68.7 million.

RIDERS: Environmentalists object to numerous amendments/riders in the House and Senate committee bills.

They have singled out for special condemnation a House amendment that would forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Critics of the amendment say the ban would apply to 160 million acres.

Other House amendments would bar the designation of any new ocean national monuments; block limits on motorboat use in Havasu Wildlife Refuge; block an Obama administration ocean policy; prevent designation of a national heritage area in southeastern Colorado; and bar the designation of any new ocean national monuments.

Finally, both the House and the Senate committee would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. EPA and the Corps of Engineers said that the rule would go beyond the existing regulation that only requires a permit for navigable waters. The rule would also require permits for seasonal streams, wetlands near navigable waters and other waters.

House committee majority sees NPS as a hostile workplace

Based on recent Interior Department Inspector General reports, leaders of a House committee last week blasted Park Service management for a "hostile workplace environment."

The House Committee on Government and Oversight September 22 heard testimony from a disgruntled employee from Yosemite National Park and a disgruntled employee from Grand Canyon National Park. They charged their supervisors with minimizing sexual harassment charges and harassing in-agency critics.

Concluded the House committee majority, led by chairman Jason Chaffetz (R-Utah), "NPS employees and supervisors who have engaged in misconduct or mismanagement have not been held accountable by leadership at the agency. Misconduct often goes unaddressed and perpetuates an environment where bad behavior is condoned or covered up."

The House hearing caps a year of harsh charges of (1) sexual harassment in the Park Service followed by (2) lack of action by agency supervisors. The most egregious examples identified by the Interior Department Inspector General

occurred in Grand Canyon National Park and Cape Canaveral National Seashore.

According to a January report of the Interior Department Inspector General (IG), numerous employees reported instances of sexual harassment in the Grand Canyon River District over 15 years. And the response of National Park Service supervisors was muted, at best, said the IG.

At Cape Canaveral the IG in a June 13 report said that a law enforcement supervisor over the last five years "has shown a pattern of sexual harassment involving (a) law enforcement employee and two other female employees at CANA."

NPS Director Jonathan B. Jarvis in July reemphasized to all agency employees that he expects zero tolerance of sexual harassment in the agency.

In a memo to all 22,000 NPS employees Jarvis wrote, "I want to clearly state that this means that when incidents of harassment are reported, I expect NPS managers to follow up on those allegations. Specifically, in situations involving alleged harassment, including sexual harassment, I expect NPS managers to initiate an investigation of the allegations and to act promptly to ensure that harassment, if confirmed, does not continue. I also expect appropriate disciplinary action to be taken if any allegations are verified."

At the House hearing NPS Deputy Director Mike Reynolds reinforced Jarvis's memo. "In response to (the Grand Canyon and Cape Canaveral) situations, the leadership team at the National Park Service has committed to making substantial and long-term culture changes at the agency to prevent sexual harassment and to ensure that every employee has a safe and respectful work environment," he said.

Reynolds is expected to become acting director of the agency in January at the end of the Obama administration when Jarvis retires.

However, some organizations such as the Public Employees for

Environmental Responsibility (PEER) are beating the drums for Jarvis to step down now, even though he only has three months left in office.

At the House committee hearing the Yosemite complaint was advanced by Kelly Martin, chief of fire and aviation management in the park. She said that she and "dozens of employees" have complained of a hostile workplace.

"Some employees chose not to come forward for fear of retaliation; however it is my understanding from support and park friends groups that many did come forward and that they provided written and oral statements to investigators," said Martin. The Interior Department IG is now investigating those complaints.

Chaffetz questioned the accountability of Yosemite Superintendent Don Neubacher, because he allegedly did not follow through on hostile workplace complaints. Chaffetz suggested a conflict of interest because Neubacher's wife, Patricia, is the deputy director of the Pacific West Region.

Chairman Chaffetz said, "[Of the 21 people the investigators interviewed, every single one of them, with one exception, described Yosemite as a hostile work environment as a result of the behavior and conduct of the parks superintendent. Why isn't there immediate relief?"]

At the House committee hearing the Grand Canyon complaint was made by Brian D. Healy, fisheries program manager.

He said, "The toxic work environment has led to decreased employee morale, productivity, confidence in leadership, and feelings of anxiety, particularly among those that were victims of harassment, or that had the courage to report alleged misconduct, despite fears of retaliation."

The House committee summed up, "Urgent reforms are needed at the agency in order to hold those guilty of misconduct accountable for their actions."

House panel moves Utah lands bill despite DoI concerns

The House Natural Resources Committee September 22 approved a massive Utah Public Lands Initiative (HR 5780) after two days of debate. The vote was 21-to-13, pretty much along party lines.

The committee left the bill pretty much in the form it was in when it was introduced by Reps. Rob Bishop (R-Utah) and Jason Chaffetz (R-Utah). That is, the measure would allocate for various land uses roughly 18 million acres of public lands in seven counties, with conservation favored in some areas and development in others.

Said Bishop just before the vote, "HR 5780 is equitable. It is a balanced proposal that puts the needs of Utahns before special interest groups. In areas like Bears Ears (it provides) the protections it deserves and allows those who live in that area and want to maintain their traditional uses (to do so) without unilateral national monument designation under the Antiquities Act."

Bishop also said the bill leans toward protection over commerce. "This bill includes by a four-to-one ratio conservation and wilderness designation to economic development," he said. "Let me repeat that - four times more land is designated for conservation than for economic development and recreation in this bill."

But Rep. Niki Tsongas (R-Mass.), ranking Democrat on the subcommittee on Federal Lands, said in a subcommittee mark-up September 14 the bill is a nonstarter. "All told, despite the many years of effort, this is not a legislative proposal that has a realistic chance of being passed by the Senate or signed into law by President Obama," she said.

The Bishop-Chaffetz bill is designed in part to head off the designation of a 1.9 million-acre Bears Ears national monument, which five Indian tribes and environmentalists have recommended. Instead, HR 5780 would

protect 1.4 million acres in the area in the form of two national conservation areas totaling 858,000 acres and in a wilderness area.

In a second strategy to prevent designation of a Bears Ears monument, Bishop and Chaffetz have introduced a separate bill (HR 5781) that would forbid the designation of any national monument in the seven counties covered by HR 5780. That bill was not on the House committee's agenda.

Meanwhile, in a related development the Senate Energy Committee held a hearing September 22 on two bills that would limit a President's authority to designate national monuments, including Bears Ears. One measure, S 3317 from Sens. Mike Lee (R-Utah) and Orrin Hatch (R-Utah), would forbid the designation of a national monument anywhere in Utah.

The other, S 437 from energy committee chairman Lisa Murkowski (R-Alaska), would require the approval of both Congress and a state governor before a President could designate a national monument anywhere in the country.

The Obama administration is for all intents and purposes opposed to the Utah lands bill, save for a willingness to negotiate on the Bears Ears monument.

At a hearing of the House subcommittee on Federal Lands September 14 BLM Director Neil Kornze praised Bishop and Chaffetz for tackling land use issues on 18 million acres in seven Utah counties.

Kornze then laid out a laundry list of objections. "In particular," he said, "the Department opposes the nonstandard management language for many of the proposed conservation and special management designations, which are repeated throughout the bill and would result in significantly less protection than in other similarly-designated areas."

HR 5780 would designate 41 wilderness areas, 11 national conservation areas, 13 special

management areas, an 867-acre Jurassic National Monument, and several segments of the Colorado and Dolores Rivers as wild and scenic.

HR 5780 would also designate 1,000 miles of RS 2477 rights-of-way (ROWs), thus transferring ownership to the state or counties that claim them in Uintah, Duchesne, Carbon, Emery, Grand, and San Juan Counties. The counties have filed claims in federal court to the ROWs.

On Bears Ears Kornze would not concede that the Obama administration intends to designate the entire 1.9 million-acre region as a national monument under the Antiquities Act of 1906.

But he said the administration was open to negotiation. "The Department would like the opportunity to work with the sponsors on the care and protection of the world-class cultural and natural resources of the area and on additional amendments regarding definitions, time frames, management plan development, mapping requirements, and boundary adjustments for manageability," Kornze said.

More detail on the Bishop-Chaffetz legislation is available at: UtahPLI.com.

While some of the impetus for a Bears Ears national monument is coming from environmental groups, five Indian tribes located near the area are leading the campaign. The Ute Mountain Ute, Zuni, Hopi, Navajo, and Ute Tribe of the Uintah and Ouray An have put together an unprecedented coalition of Tribal governments in support of the monument.

Some 12.7 million acres of federal land in Utah are presently 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, HB 148, signed into law on March 23, 2012, by Gov. Herbert. It demands the transfer of most federal land in the state, about 31 million acres, except for some conservation lands.

Trump, Clinton hold different outdoor policy priorities

As the Presidential election heats up, the two leading candidates continue to lay out starkly different approaches to park and recreation issues.

Republican candidate Donald Trump and Democratic candidate Hillary Clinton disagree particularly on uses of federal lands.

Trump has made clear in speeches, in position papers and in the Republican Party platform that his first priority for the public lands is energy development. "Producing more American energy is a central part of my plan to Making America Wealthy Again - especially for the poorest Americans," he said at a campaign appearance September 22 in Pittsburgh. "America is sitting on a treasure trove of untapped energy - some \$50 trillion dollars in shale energy, oil reserves and natural gas on federal lands, in addition to hundreds of years of coal energy reserves."

On the disposal of federal lands the GOP platform says, "Congress shall immediately pass universal legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states.

"We call upon all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole."

Clinton would contest any attempt to dispose of public lands. "In recent years, special interest groups have been supporting efforts to dispose of or sell off America's public lands, which would privatize national forests, national monuments, and even national parks," her website says. "Clinton strongly opposes these proposals to sell off America's natural heritage."

Clinton has another priority - expansion of recreation opportunities throughout the country. Her headline proposal is for an American Parks Trust Fund to "existing parks, and enhancing America's great outdoors - from our forests and coasts to neighborhood parks."

Clinton's website says the fund would double the size of the Land and Water Conservation Fund (LWCF). "This trust fund will replace, expand the scope of, and provide funding at roughly double the authorized level of the (LWCF) to address infrastructure needs, reduce the maintenance backlog in national parks, forests, and public lands and more."

The inaugural debate of the campaign was held September 26 in Hempstead, N.Y., at Hofstra University. Additional debates are set for October 9 and 19. A vice-presidential debate will be held October 4.

At the September 26 debate neither candidate mentioned national parks, outdoor recreation, conservation or federal lands. In fact, the candidates said little substantively about domestic policy, period.

More information on Trump's positions is at: <https://www.donaldjtrump.com/> and more information on Clinton's positions is at: www.hillaryclinton.com.

Public Citizen objects once again to NPS partners policy

A liberal advocacy group says it has submitted 215,000 petitions asking the National Park Service

to substantially revise a proposed partnership/philanthropy policy.

The group Public Citizen September 27 also recommended specific changes to the proposed March 30 Director's Order #21. It would among other things authorize superintendents to solicit contributions, allow alcohol companies to partner with NPS and authorize branding by private companies within parks.

Said Public Citizen in a letter to NPS, "Under the revision of DO21, national parks are at great risk of becoming platforms for brand and product placement, ultimately turning our public lands into venues for advertisements. The proposed revision of Director's Order #21: Philanthropic Partnerships would give corporations undue influence over park priorities and could have lasting damage on the integrity of the National Park Service."

Said David Monahan, campaign manager for Campaign for a Commercial-Free Childhood, a Public Citizen ally, "Our national parks are America's treasures, held in trust for future generations, and are not 'brought to you by' corporations. To teach children that an appreciation for our history, culture and natural resources is more important than materialism, the park experience must remain free of corporate logos and recognitions."

Public Citizen began a campaign against the Director's Order this spring.

As we reported this summer NPS retirees marching under the banner of Protect America's National Parks support increased philanthropic donations to NPS, but they also faulted Director's Order #21.

Of the proposal to allow the NPS director and deputy directors to participate in fund-raising campaigns, the coalition said in comments to the agency, "Presumably, such soliciting would focus primarily on major donations; nonetheless, it is not an appropriate role for the three highest ranking NPS officials, and can create the

appearance of a conflict of interest."

The coalition did say that NPS employees, while not soliciting money, should be able to work with partners in setting the scene for donations.

The Director's Order #21 has stirred up a hornet's nest in other quarters. Public Employees for Environmental Responsibility (PEER) in particular has objected to possible agency solicitations. "It is both unprecedented and unseemly to use tax dollars to solicit donations and cultivate potential donors," said PEER Executive Director Jeff Ruch. "This plan would put fundraising on a par with conservation in our national parks."

A central plank of the March 20 philanthropy proposal would authorize Park Service leaders to accept significant single donations from private entities. For instance the Park Service director could accept more than \$1 million on his or her own signature but more than \$5 million if he or she had the proper certification and training.

The ceilings would decrease proportionately through various levels of the service down to superintendents, who could accept \$100,000 or less. However, with training, proper qualifications and delegations from above superintendents could accept up to \$5 million.

Also controversial, the proposal would outright allow partnerships with companies that produce and sell alcohol. Said Public Citizen this week, "Frankly, like many of our members, we are shocked that the United States of America proposes partnering with alcohol sellers and giving them a marketing presence in our national parks. We urge you to maintain the current ban on alcohol partnerships and marketing arrangements."

The Park Service is caught between a rock and a hard place. It knows it cannot rely on Congressional appropriations in its Centennial year, so it is turning to philanthropy and businesses to supplement its revenues. At the same time the agency doesn't

want to compromise the integrity of the system with either controversial donors or widespread business emblems in parks.

The National Parks Conservation Association (NPCA) was somewhat deferential to the Park Service in its Director's Order #21.

Said NPCA President Theresa Pierno, "The National Park Service has always depended on donations to supplement funding from Congress, but we don't want this order to create a new landscape that allows Congress to abdicate its duty to provide parks with the funding they need for rangers, repairs and other responsibilities. Because of congressional underfunding, the superintendents who manage our parks are already struggling to meet critical demands to protect parks and serve visitors."

Of the NPS donations proposal specifically she said, "This revised policy needs to make sure the system for promoting and accepting donations does not become a requirement for park staff that competes with the fundamental needs of our parks. We also do not want to see the role of NPS staff as fundraisers compete with nonprofit partners and create confusion among donors."

NPS has made information about the director's order available at: <https://parkplanning.nps.gov/projectHome.cfm?projectID=60882>.

Bikes-in-wilderness bill touches off sportsmen debate

No hearings have been scheduled yet, but conservationists and some sportsmen are raising alarms about legislation that would authorize the riding off-road bicycles in wilderness areas on federal lands.

The bill (S 3205), introduced by wilderness critics Sens. Mike Lee (R-Utah) and Orrin Hatch (R-Utah), would have federal land managers determine if wilderness trails should be opened to human-powered vehicles.

The lead supporters of the bill

- the Sustainable Trails Coalition - are outdoor recreationists. They don't appear to be fronting for businesses, such as the mountain bike industry.

Opposing the legislation is an association that represents hunters and fishermen, Backcountry Hunters & Anglers. "Wilderness areas encompass some of our rarest, most precious lands and waters, and their existence prevents the fragmentation of invaluable fish and wildlife habitat," said association president Land Tawney. "While mountain bikes are enjoyed in appropriate places by many (association) members, they have no place in our wilderness."

Conservationists such as the American Hiking Society last week made the rounds of Senate offices to line up opposition to the bill.

"When a hiker or hunter sets foot into a wilderness area there is an expectation of a very definitive type of experience: one that takes him or her back to a more primitive time in the American wilderness. Mechanized transportation such as fast-paced mountain bikes is incompatible with such an experience," said Peter Olsen, American Hiking Society vice president.

But the Sustainable Trails Coalition disagrees with the hiking society. It says the bill will simply remove a total ban on mountain bikes and "allow local land managers to do what's in the best interest of each trail."

"Sen. Lee's bill will modify outdated blanket bans on human-powered travel and relieve a worsening situation," said coalition board member Ted Stroll, a retired attorney. "The Forest Service in particular continues to impose bans on mountain biking. These bans drive cyclists away even as the Forest Service admits it cannot maintain trails and needs volunteers to do the maintenance it no longer performs."

There is a catch. Advocates say local land managers would make the determination if a trail should be opened. However, the bill also says that if that determination had not been

made in two years, an area would be automatically opened to nonmotorized transportation.

Another possible point of contention is a bill provision authorizing the use of chainsaws in wilderness.

The provision says "MAINTENANCE - Notwithstanding any other provision of law, any officer or employee of the Federal Government may use any small-scale motorized equipment or method of mechanical transport (such as a chainsaw and wheelbarrow) to construct, improve, or maintain a trail or to maintain the surroundings, in accordance with the purposes of this Act and the preservation of the wilderness character of a wilderness area."

The Sustainable Trails Coalition says in a Fact Sheet, "The chainsaw provision isn't about cutting down live trees; it's about responsible and necessary trail maintenance to remove dead trees lying across trails."

On introducing his bill July 13 Lee said, "Our National Wilderness Preservation System was created so that the American people could enjoy the solitude and recreational opportunities of this continent's priceless natural areas. This bill would enrich Americans enjoyment of the outdoors by making it easier for them to mountain bike in wilderness areas."

The coalition also defended its choice of champions in Lee and Hatch, noted critics of wilderness expansion. It said the senators "deserve congratulations for doing the right thing for Wilderness and Wilderness visitors. The senators introduced the bill courageously, knowing that not everyone would agree with all aspects of it . . . The bill isn't partisan, which will become even more apparent when Democrats cosponsor it and eventually vote for it."

Sen. Jeff Flake (R-Ariz.) has cosponsored the Utahns' bill, but no Democratic senators have signed on yet, despite the coalition's prediction.

Senate committee hears DoI oppose monument curbs bills

Of no surprise to anyone the Obama administration last week "strongly" opposed three Senate bills to limit a President's authority to designate national monuments under the Antiquities Act.

At a September 22 hearing of the Senate Energy Committee, Bureau of Land Management Director Neil Kornze said, "The authority has contributed significantly to the strength of the National Park System and the protection of special qualities of other Federal - resources that constitute some of the most important elements of our nation's heritage. These three bills, which would limit the President's authority in various ways, would undermine this vital authority."

The most sweeping of the three bills from committee chairman Lisa Murkowski (R-Alaska), S 437, would require the approval of both Congress and a state governor before a President could designate a national monument anywhere in the country.

A second bill, S 3317 from Sens. Mike Lee (R-Utah) and Orrin Hatch (R-Utah), would forbid the designation of a national monument anywhere in Utah.

A third bill, S 1416), from Sen. Jeff Flake (R-Ariz.), would not allow a President to reserve water rights associated with a monument. Instead the federal government would have to acquire the water under state law.

Said Murkowski of the Obama administration's monuments policy, "What needs to be recognized is that monument designations have an impact on local communities. What needs to be recognized is that 'public comments' cannot only come from supportive organizations. We need to rethink, and reform how monument designations can be made. And that is why I have introduced my Improved National Monument Designation Process Act, which requires both local consultation and congressional approval."

No bill to limit a President's monuments authority stands much of a chance on the Senate floor on its own. Such a bill may stand a better chance in an omnibus lands measure after the election, but any such package with a ban on monuments is sure to be vetoed.

The big action right now on the monument front is in the House where the House Natural Resources Committee September 22 approved an omnibus Utah lands bill (HR 5780) designed in large part to head off the designation of a Bears Ears National Monument by President Obama. Reps. Rob Bishop (R-Utah) and Jason Chaffetz (R-Utah) introduced the bill.

Instead of a national monument Bishop and Chaffetz would protect 1.4 million acres in the Bears Ears area in the form of two national conservation areas totaling 858,000 acres and in a wilderness area.

Five Indian tribes located near the Bears Ears area - Ute Mountain Ute, Zuni, Hopi, Navajo, and Ute Tribe of the Uintah - are leading the campaign for a 1.9 million-acre national monument, along with environmental groups.

President Obama has now designated 26 national monuments. Most recently on September 15 he designated a 4,913 square-mile Coral Canyons and Seamounts monument 150 miles off the New England coast. The Departments of Commerce and Interior will jointly manage the monument.

Now that Obama has designated the Atlantic monument, the pressure is building on him to do the same for the Pacific Ocean off California. And the pressure is building in opposition to such a California Seamounts and Ridges National Marine Conservation Area.

Reps. Sam Farr (D-Calif.) and Ted Lieu (D-Calif.) introduced legislation (HR 5797) July 14 to designate the monument. However, the Republican Congress will almost certainly not address the bill, leaving the measure as a stalking horse for a national monument to be designated by the President under the Antiquities Act of 1906.

House also approves WRDA with major Everglades project

The House September 28 approved its version of a huge water resources bill (HR 5303) that includes a major Everglades restoration project called the Central Everglades Planning Project (CEPP).

Despite opposition from some conservative Republicans the House overwhelmingly approved the measure by a 391-to-25 vote.

HR 5303 now goes to a House-Senate conference committee with a counterpart bill the Senate approved September 15, S 2848. With Congress about to recess/adjourn for the November 8 elections the measure will be on the Congressional agenda in a three-week lame-duck session in late November and December.

Lending urgency to the measure is the addition on the House floor of \$170 million to address water quality in Flint, Mich. That had posed a major complication for the outdoors because the issue had been holding up a temporary fiscal year 2017 appropriations bill (*see separate article page one*).

Heritage Action, an arm of the conservative Heritage Foundation, is against the Senate's underlying \$9 billion bill, if not necessarily the Everglades project, because of the cost. "As drafted, Senators should oppose the Senate's Water Resource Development Act because it expands the federal government and continues to spend taxpayer money with little to no accountability," said Heritage Action's vice president for communications and government relations Dan Holler.

But conservative Sen. Marco Rubio (R-Fla.) was all in because of the CEPP project. "Authorizing the Central Everglades Planning Project is more important than ever, because Florida's ecosystems are being ravaged by toxic algae that is also threatening the livelihoods of thousands of workers and their families," he said. "This project will help move more water south, which is the single most important step we can take toward resolving the serious water

issues afflicting Florida and protecting our environment.”

The Central Everglades Planning Project is included in both the House- and Senate-passed bills. The provision would authorize the expenditure of almost \$2 billion on CEPP - \$976,375,000 from federal coffers and the same amount from the State of Florida.

Currently, the Corps of Engineers, the State of Florida, the Fish and Wildlife Service, the Park Service, Indian tribes and local governments are working on a \$7.8 billion - and counting - Comprehensive Everglades Restoration Plan (CERP) - the acronym is confusingly close to the CEPP acronym - to restore the Everglades over the next 30 years.

Various projects in CERP have been approved by past versions of WRDAs. The law requires the feds and the state to each put up half of the money needed for each project. Florida appears to be doing its part because Florida Gov. Rick Scott (R) signed into law April 7 state legislation that would guarantee at least \$200 million per year for Everglades restoration. Although Congress has approved several CERP projects, the Corps didn't clear the CEPP project in time for past WRDA bills.

Sen. Bill Nelson (D-Fla.) has introduced the CEPP project as a stand-alone bill (S 2481) in this Congress.

GOP senators say EPA ignores court orders on wetlands

Senate Environment and Public Works Committee Republicans last week published a report that asserts the Obama administration is defying federal court decisions that put a hold on a new wetlands permitting rule.

Committee Chairman James Inhofe (R-Okla.) said, “Case studies in this report show that the Obama administration is already asserting federal control over land and water based on the concepts they are trying to codify in the WOTUS rule, even though the courts have put that rule on hold.”

However, a review of those case studies indicates that EPA and the Corps of Engineers are not defying the court injunctions to implement the rule. Rather the studies simply object to the administration's original justification for the rule itself.

The Senate report offers numerous examples of past EPA and Corps interpretations of the June 29, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. But in each instance it says the rule, *if implemented*, would violate judicial edicts. The report does not say the agencies are now implementing the rule in violation of the court injunctions.

Two federal courts have already blocked implementation of the rule. 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.

Congressional appropriators are getting into the act. The House July 14 approved a fiscal year 2017 Interior and Related Agencies spending bill (HR 5538) that would block implementation of the rule. The Senate Appropriations Committee approved a similar provision June 16.

Separately, in January Congress approved a resolution (SJ Res. 22) ordering EPA to withdraw the rule, but 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.

Sen. Benjamin Cardin (D-Md.) said at the time 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."

Inhofe said he sent a copy of the committee report to all 11 committee Democrats in order to gain support for legislation to overturn the legislation. That could put the Democrats in a difficult political position in an election year because of the alleged unpopularity of the rule.

The Supreme Court was evenly divided in a June 19, 2006, decision on wetlands law, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, which muddied the regulatory waters. On the one hand the court did uphold the authority of the Corps and EPA to regulate water bodies. But crucially it also limited the definition of a water body to navigable waters without clearly defining navigable waters.

The Bush administration relied on the court decision to limit permitting to navigable bodies. The Obama proposal would expand that to require permits for seasonal streams, wetlands near navigable waters and other waters.

The Senate committee report is available at: <http://www.epw.senate.gov/public/cache/files/7b469fe4-62c3-4ea9-9ce2-bedbf5179372/wotus-committee-report-finall.pdf>.

Notes

Smoking ban in parks urged. The National Recreation and Park Association (NRPA) last week recommended that all park and rec agencies around the country ban tobacco consumption at their facilities. The association said park and rec agencies contribute to good health, while tobacco use does not. "As park and recreation agencies seek to improve public health, protect the environment, and uphold public trust, prohibiting the use or consumption of tobacco at our ball fields, recreation centers, parks, splash pads and walking trails will go a long way towards encouraging healthier lifestyles among the families and communities we serve," said NRPA in a statement September 21. The association said that more than

1,266 park and rec agencies already forbid tobacco use. However, NRPA estimates 5,000-to-6,000 agencies still allow it. Said NRPA President Barbara Tulipane, "Eliminating the use of tobacco products at parks and recreation centers will make a positive difference in the fight against tobacco-related illnesses and diseases – especially cancer." Tobacco kills more than 480,000 people a year in this country.

NPS board to meet. Park Service Director Jonathan B. Jarvis will only have two months left in office when the National Park System Advisory Board meets next November 17-18. Groups such as the Public Employees for Environmental Responsibility (PEER) have been beating the drums for the last year for the firing of Jarvis. But given the administration's backing of Jarvis and the short time before a new director takes over it is unlikely the advisory board will make a recommendation. More likely, the advisory board will take up policy matters, such as how to improve the National Park System after the excitement dies down over the agency's centennial this year. And the board has "partnerships" on the agenda; the agency has been criticized by groups such as PEER for working too closely with business partners (see related article page 7). The signal that Jarvis would not be canned came at a July 10, 2016, meeting of the NPS leadership council. The council's minutes say, "Jon Jarvis will NOT be resigning. The Department has asked him to stay and given him their full support. He will be retiring in January 2017." That did not stop PEER's Executive Director Jeff Ruch from saying in July, "By virtually every measure, Jon Jarvis has been the worst Director of the National Park Service in memory. If he has failed to inspire any positive change in more than six years why would one expect him to be able to do so in less than six months?"

NPS partners honored. The Park Service handed out Partnership Awards September 23 to individuals and groups in 14 states and to four national organizations. The awards honor the many contributions to the National Park System in its centennial year by partners. The national groups included

the National Park Foundation, the National Park System Advisory Board Partnership Committee and the American Society of Landscape Architects.

Another think tank would up fees.

The respected think tank Resources for the Future has weighed in on the often-recommended idea of increasing entrance fees to units of the National Park System. In an article in the fall issue of the organization's magazine, *Resources*, Margaret A. Walls recommends that instead of charging the same fee all the time, the parks consider seasonal fees. "Rather than just suggest that people visit during the winter and go to alternative, less popular sites, the Park Service should incentivize such behavior through a differentiated fee structure based on season and location," she said. That could mean fees as low as zero during off seasons and much higher fees in high seasons at popular parks. A separate, conservative Property and Environment Research Center (PERC) August 25 recommended that land managers should set recreation fees rather than Congress, and retain the money for maintenance. That broke with conservative House Natural Resources Committee Chairman Rob Bishop (R-Utah), who has drafted a federal recreation fee bill that would require Congressional approval of fee increases.

Federal-state land swap bill in.

Sens. Martin Heinrich (D-N.M.) and Jeff Flake (R-Ariz.) introduced legislation (S 3316) earlier this month that would authorize land swaps of state trust lands with high conservation values with the federal government. In return the states would receive lands with high economic development potential. The Bureau of Land Management (BLM) expressed concerns about the bill at a September 22 House Natural Resources Committee hearing. BLM Director Neil Kornze said the deadlines for action in the bill could interfere with BLM's other priority work. And he said the bill could work at cross-purposes with other laws affecting the disposal of land in individual states. Still the bill received strong endorsements from such varied interests as the Western States Land Commissioners Association

and The Wilderness Society.

Chiricahua boosted as park.

Rep. Martha McSally (R-Ariz.) introduced legislation (HR 6190) September 27 to redesignate Chiricahua National Monument in Arizona and New Mexico as a national park. McSally said the designation of a Chiricahua National Park is supported by cities and counties across southern Arizona and New Mexico. "Having had the opportunity to hike Chiricahua and even fly over it in an A-10 many times during training, I know first-hand what a national treasure it is," said McSally, a former Air Force pilot. "Re-designating this area as a national park would boost tourism, grow our economy, and add more jobs in Southern Arizona." Said Sierra Vista Mayor Rick Mueller, "The City Council feels so strongly about this effort, we passed a resolution unanimously in support, which doesn't happen very often." The monument covers 12,000 acres southeast of Willcox, Ariz. It includes the remains of a volcanic eruption that occurred 27 million year ago, leaving stone monuments called hoodoos.

Senators addressing fire.

Two Senate committees are attempting to produce legislation this fall that addresses the twin wildfire fighting and wildfire financial crises in the West, if not in tandem. The Senate Agriculture Committee September 13 approved legislation that would authorize the transfer of some emergency fire-fighting costs out of a regular appropriations bill and into disaster funding. The transfer would kick in once agencies exceeded the 10-year average for fire-fighting costs. The catch is the Obama administration would prefer the disaster-spending provision to kick in at 70 percent of the average and the administration opposes exceptions in the bill to limits on environmental reviews. Separately, the Senate Energy Committee, using a bipartisan draft bill, is in discussions in a conference committee with the House about a hazardous fuels reduction program, according to ranking committee Democrat Sen. Maria Cantwell (D-Wash.) That program would provide "dedicated" money to the Forest Service and other agencies for fire-prevention activities, said Cantwell September

15 at a press briefing with fire science experts. The energy bill conference may also address other fire issues, such as the transfer to disaster spending. "S 2012 as passed by the Senate does nothing on fire but the House does include it, so it is within the scope of the energy bill conference," said a committee staff member. Finally, the House has passed its own bill twice this Congress (HR 2647) that would transfer wildfire spending above the 10-year average to disaster spending and limit environmental reviews for wildfire-related projects. The House-passed bill is now receiving serious consideration on two fronts in the Senate. One, it is the basis for the Senate Agriculture Committee bill and, two, it is in negotiations with the Senate Energy Committee over the omnibus energy bill.

Calif. Desert energy plan done.

The Bureau of Land Management (BLM) issued a record of decision earlier this month for the California Desert that allows renewable energy companies to apply for projects on 388,000 acres of public lands. The Phase I plan applies only to public lands in the desert. Still to come is a Phase II plan that would include renewable energy recommendations from the State of California and seven counties in the area, in association with federal agencies. Before the state and counties do their thing BLM laid out its renewable energy plan for 10.8 million acres of the 22 million-acre California Desert. That theoretically gives the state and counties a base to work from. The Solar Energy Industries Association (SEIA) blasted the decision for putting millions of acres of public lands off limits to renewable energy development. But the Center for Biological Diversity said the proposal failed to protect enough lands and would allow destructive recreation vehicle use. The preferred alternative also would set aside 4.2 million acres as California Desert National Conservation Lands, Areas of Critical Environmental Concern, wildlife allocations, and National Scenic and Historic Trail management corridors. Those areas are closed to renewable energy development. The proposed plan and final EIS are available at www.drecp.org and www.blm.gov/ca/drecp.

Conference Calendar

OCTOBER

4-6. **Scientific Conference on the Greater Yellowstone Ecosystem** in Moran, Wyo. The conference is hosted by the National Park Service. For more information go to: <https://ww4.aievolution.com/ytcl601/>.

4-7. **Sportfishing Summit** in New Orleans. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

5-8. **National Recreation and Park Association Congress and Exposition** in St Louis, Mo. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2178. <http://www.nrpa.org>.

15-19. **The Wildlife Society Annual Conference** in Raleigh, N.C. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

24-26. **National Forest Recreation Association Annual Conference And Trade Show**. In Reno, Nev. Contact the website <http://nfra.org/> or the NFRA Office at: 559-564-2365.

28-30. **National Land Conservation Conference** in Minneapolis, Minn. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725, <http://www.lta.org>.

NOVEMBER

15-18. **The National Trust for Historic Preservation Conference** in Houston, Texas. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

16-19. **National League of Cities City Summit** in Pittsburgh, Pa. Contact: National League of Cities, Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004. (202) 626-3105. <http://www.nlc.org>.