

Federal Parks & Recreation

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Obama budget lays groundwork for full funding of LWCF

In its fiscal year 2014 budget request to Congress April 10 the Obama administration made a strong pitch for full, guaranteed funding for the Land and Water Conservation Fund (LWCF) at \$900 million per year, beginning in fiscal 2015.

For fiscal 2014 the administration requested \$356 million for federal land acquisition and \$60 million for state grants for the fund from regular appropriations and a new fund combined.

In a surprise move the administration also recommended that Congress put up \$15 million for the long-moribund Urban Parks and Recreation Recovery (UPAR) program. And it recommended that UPAR be cut in on LWCF money in the long term.

In testimony to the House subcommittee on Interior appropriations April 11 former Secretary of Interior Ken Salazar said the proposal would operate on two tracks in fiscal 2014 - the majority of LWCF and UPAR money would come from appropriations and would be supplemented by an initial year of guaranteed money.

"The Department of the Interior will submit a legislative proposal to permanently authorize annual funding, without further appropriation or fiscal year limitation, for LWCF programs in the Departments of the Interior and Agriculture," said Salazar at a hearing of the House subcommittee on Interior Appropriations.

"During a transition to permanent funding in 2014, the budget proposes \$600 million in total LWCF programs funding, comprised of \$200 million permanent and \$400 million current

funding," he said. "Starting in 2015, the fully authorized level of \$900 million in permanent funds will be authorized each year."

For instance the state side of LWCF in fiscal 2014 would receive \$40 million in regular appropriations supplemented by \$20 million from a first-year down payment from a new guaranteed LWCF law. Similarly, UPAR would receive \$10 million from regular appropriations and \$5 million from the new LWCF law.

Western Republicans are not on board. The day after Salazar testified before the House subcommittee, panel chairman Mike Simpson (R-Idaho) questioned the advisability of adding new lands to the federal estate at a time when the Park Service maintenance budget stood at \$11 billion.

At an April 12 hearing on the Park Service budget Simpson told NPS Director Jon Jarvis, "It seems everyone wants to add new units to the National Park System. Over last couple of years we've added seven new parks. When we have a growing backlog of maintenance at the parks that currently exist - I'm not suggesting additions aren't appropriate - what pressure is that putting on you as we add new units?"

Jarvis responded, "We are now looking at each of these proposed additions but I do believe that history doesn't stop just because we have a budgetary problem. We in the National Park Service have a responsibility to tell the complete story of America and there's a constant desire to add to the system. We do resist a number of them. Probably over 50 percent of the studies that come through we actually recommend they not be added to the National Park System because in part we do have a very large maintenance backlog."

The Obama administration and Salazar described the LWCF proposal as part of a broader signature recreation initiative called America's Great Outdoors (AGO).

Said Salazar in testimony before Simpson's subcommittee, "The 2014 budget includes \$5.3 billion in current

authority for AGO activities, an increase of \$179.8 million above 2012. Funding is focused on land acquisition programs supported through the Land and Water Conservation Fund as well as land management operations, and other grant and technical assistance programs to promote conservation and improve recreational access. This includes \$120.2 million for river restoration activities by the Bureau of Reclamation, a new addition to our AGO portfolio in 2014."

The administration also proposed significant money for other conservation programs in fiscal 2014, such as \$61 million for state wildlife conservation grants and \$59 million for the Historic Preservation Fund.

Assistant Secretary of Interior for Policy Rhea Suh laid out the whys and wherefores of full LWCF funding at an April 10 press conference. "The budget also proposes a landmark opportunity to fulfill President Kennedy's vision for the Land and Water Conservation Fund by proposing to fully fund the LWCF at \$900 million per year through mandatory appropriations beginning in 2015," she said.

Presidents, Congressional Democrats and Congressional Republicans have been attempting for time immemorial to secure guaranteed funding for LWCF, which presently is subject to the whims of Congressional appropriators. Those past proposals have all foundered on the need for new offset revenues.

Suh said this time around may be different because the administration is proposing a series of fees and levies on public lands energy producers to put money into a royalty fund to finance the offset.

It's a long shot, but House and Senate approval last month of fiscal year 2014 Congressional budgets may open the way for a massive spending/policy deal at the end of the year that could include the LWCF legislation, particularly if it is offset by energy revenues.

Such a deal could incorporate the

total park and rec package - guaranteed LWCF, a big increase in gasoline taxes to pay for new trails, an extension and revision of a federal land management agency entrance fee law, and more. Or it could include nothing.

Both the House and Senate budgets (H Con Res 25 and S Con Res 8) direct their respective houses to complete what is called a reconciliation bill before fiscal year 2014 begins October 1. Under the game plan the reconciliation bill would include all line committee legislation to carry out policies recommended in the budget, such as comprehensive tax reform.

Like Simpson, House Natural Resources Committee Chairman Doc Hastings (R-Wash.) was not amused by the LWCF budget proposal. "(T)his budget exposes the Obama Administration's inability to prioritize spending at a time of record debts and deficits," he said. "For example, requiring hundreds of millions of dollars in mandatory spending to buy more federal land, when we can't even afford to maintain the land we already own, is bad policy and a gross misuse of taxpayer dollars."

The oil and gas industry promised to fight any new oil and gas royalties and fees. Said Independent Petroleum Association of America Chairman Virginia Lazenby, "The President's budget also outlines a series of royalty and fee increases, as well as policy changes that will make it harder for independent producers to operate on federal lands. The administration claims to support oil and natural gas development on federal lands, but the proposed list of increased fees, royalties and regulations will only make it more burdensome for small producers to operate on federal lands and waters."

Conservationists lauded the proposed conservation hikes. "In a budget full of hard decisions, the increased request for conservation funding shows the continued commitment of this administration to support programs that benefit local economies and the environment," said Alan Rowsome, director of conservation funding at The Wilderness Society. "Conservation makes

up only 1.25% of the federal budget, but the benefits of it are measured in the trillions of dollars."

FY 2003 state money out: In one of his last tasks as secretary of Interior, Ken Salazar April 11 announced the distribution of more than \$42 million in fiscal 2013 state grants from LWCF. The money will be used by 338 communities "to establish or expand parks, build or refurbish recreational facilities and undertake other projects to enhance outdoor recreation," said NPS in a statement.

Salazar used the occasion to plug the fiscal 2014 budget request for full, guaranteed funding of LWCF down the road. "The President's proposed budget includes a landmark opportunity to fulfill President Kennedy's vision for this conservation program," he said. "Mandatory, full funding of the LWCF would provide for certainty and longer-term conservation planning that will, in turn, strengthen our communities and economies."

Jarvis says NPS is reviewing partnership money suggestions

Park Service Director Jon Jarvis told House appropriators April 12 that his agency is giving serious consideration to 17 recommendations offered by agency partners to raise new revenues for NPS.

"All of these ideas we have to look at very, very closely," he said. "We are going to consider them." But he said such revenues should not replace appropriations from taxpayers.

"I do believe there is an inherent federal taxpayer responsibility to these places to basically operate them," he told House subcommittee on Interior Appropriations Chairman Mike Simpson (R-Idaho). "But some of our supporters in the past said it was that bright line of excellence, that next thing where we can take on education, climate change and invasive species."

The recommendations were prepared by National Park Service partners and

presented at a March 19 gathering of the elite of the park and rec establishment. The meeting was hosted by the Bipartisan Policy Center.

Responding to queries from Simpson about the March 19 meeting of park supporters, Jarvis said he has assigned a team led by agency comptroller Bruce Schaeffer to evaluate the recommendations.

At the Bipartisan Policy Center meeting two sources of revenue appeared to draw the most interest - diversion of a portion of oil and gas royalties to a new NPS fund of about \$350 million per year and a penny per gallon gasoline tax of about \$1.5 billion per year. (The gas tax would be used for all federal land management agency roads, not just park roads.)

Both those proposals would require legislation, presumably in an end-of-the-year budget reconciliation bill. In fact, said ranking subcommittee Democrat Jim Moran (Va.), all agencies may need help in a reconciliation bill to avoid continued reductions from sequestrations.

"I hope we can reach a negotiated agreement, some reconciliation between those who refuse to provide new revenues to the government and those who refuse to look at areas of spending," he said. "There are going to have to be some areas of compromise because programs like those in the Interior Department and the Park Service are going to suffer."

The underlying budget sequestration law (PL 112-25 of Aug. 2, 2011) that slashed \$85 billion from a fiscal 2013 spending bill (PL 113-6 of March 26) is due to strike again in fiscal 2014. It demands a reduction in discretionary domestic spending of \$38 billion.

The National Park Service Advisory Board is also looking at the possible new revenues. It has named a subcommittee to review the white papers presented last month. The panel is scheduled to meet April 26 under the lead of Gretchen Long, former chair

of the National Parks Conservation Association.

The advisory board on April 10 also submitted its recommendations to Jarvis on the run-up to the 2016 Centennial of the National Park System. Board chairman and former Alaska Gov. Tony Knowles (D) announced the recommendations in four areas: stewardship, education, relevancy and NPS workforce. The recommendations are available at <http://www.nps.gov/resources/advisoryboardreport.htm>.

FLREA renewal: Chairman Simpson and Jarvis did appear to agree on one source of non-appropriated revenues - entrance and user fees as established by the Federal Land Recreation Enhancement Act of 2004 (FLREA). It expires on October 1, 2014. Simpson said an extension "is critical to providing revenues to our national parks."

Jarvis said FLREA provides \$150 million to \$160 million per year to the Park Service, mostly for nonoperational projects. And he told Simpson it may be time to increase some fees.

"When I first came in as director in 2009 I froze the fees," he said. "I felt we had pushed the American public as far as we could and we were starting to get some push back on fee increases and the layering of fees."

But he suggested the time may now be ripe for increases. "The public does know its tax dollars support these incredible places but they are willing to pay," said Jarvis. "The Park Service has been collecting fees for over 100 years. As long as you show them there is a net benefit from this, they won't object."

Jewell takes over at DoI; Senate confirms her 87-to-11

On becoming the 51st secretary of Interior former recreation industry executive Sally Jewell April 15 emphasized the role the department plays in the nation's economy.

"Our public lands are huge

economic engines for the nation," she told department employees. "From energy development to tourism and outdoor recreation, our lands and waters power our economy and create jobs. I look forward to working with you all to ensure that we are managing our public lands wisely and sustainably so that their multiple uses are available for the generations to come."

While some western Republican senators objected to the nomination, four backed her confirmation April 10 in an overwhelming 87-to-11 Senate vote.

Conservationists, environmentalists and the outdoor recreation industry were upbeat. In a typical comment Tom Kiernan, president of the National Parks Conservation Association (NPCA), said he expected good things from Jewell.

"Her business expertise and passion for the outdoors, recreation and conservation foretells her success as secretary of the Interior," he said. Jewell is a former NPCA board member.

Ranking Senate Energy Committee Republican Lisa Murkowski (Alaska) provided key support to the nomination. Murkowski said that despite Jewell's relatively light record on public lands policy the nominee appears to be committed to fairness.

"And I do concede that Ms. Jewell will be on a learning curve as she assumes the position of Secretary," said Murkowski. "But in her answers to questions at the hearing and in her written submissions, she has pointed out her experience and her skill at bringing diverse groups of people together to solve difficult problems on which they have been divided historically, and I do take her at her word there."

One of the three western Republicans to vote against the nomination, Sen. John Barrasso (Wyo.), has been particularly critical of Jewell's past work as a member of the NPCA board. (The other two Republican no votes came from Sens. Mike Enzi (R-Wyo.) and Mike Lee (R-Utah)).

Said Barrasso, "While I wish Ms. Jewell well in her new job, I voted against her nomination because I remain concerned with her commitment to multiple-use of public lands in light of her prior record. Although I had hoped the nominee would clarify discrepancies in past positions during the committee consideration process, the nominee refused to address them in a substantive way."

Jewell will have her hands full at Interior. From the right the department is being lashed for not encouraging fossil fuel energy development. From the left the department is being hit by demands for greater use of the Antiquities Act of 1906 to designate national monuments from public lands. *(See related article page 10.)*

And, says Jewell's predecessor Ken Salazar, department agencies are hobbled by a fiscal year 2013 budget sequestration. As Salazar said in his April 10 swan song of a fiscal 2014 budget briefing, "I have seen first hand the impacts to our mission. Those impacts will continue to unfold over the months ahead and they will cause harm to the economic recovery. . . The President's budget takes us out of the ditch."

The path to Jewell's confirmation was eased when Murkowski obtained a commitment from Salazar to review a Fish and Wildlife Service (FWS) recommendation in an EIS against construction of a road in Alaska across the Izembek National Wildlife Refuge.

Said Murkowski on the Senate floor, "The Department of the Interior has agreed to have the new Secretary as well as the Assistant Secretary of Indian Affairs review the public health and safety impacts of the decision to build this road."

What disturbed Murkowski is an FWS EIS that recommends against a road in Alaska across the refuge. The road would link a village to an all-weather airport in medical emergencies.

In a confirmation hearing March 7 Barrasso attacked Jewell for her past

association with NPCA. "NPCA has sued the federal government in support of policies that put people in Wyoming out of work to block coal production, to block oil and gas production and to block uranium production," he said. "Since you've been a member of the board, that organization has sued the federal government a minimum of 59 times."

With that record he said, "It's unsettling to many that you have a fundamental conflict of interest when it comes to leading the Department of Interior."

Four western Republican "Yes" votes counted Murkowski, Sen. John McCain (Ariz.), Sen. Jeff Flake (Ariz.) and Sen. Orrin Hatch (Utah).

Judge rules for county on dozen RS 2477 ROWs in Utah

Both sides agree that a federal court decision granting Kane County, Utah, control over 12 roads across Bureau of Land Management (BLM) sets an important precedent, for now. And both sides agree what happens next is crucial in determining if the precedent will stand.

That's because attorneys for both the county and environmentalist intervenors anticipate the U.S. Justice Department will appeal to the Tenth U.S. Circuit Court of Appeals because of the enormous stakes.

Until then, and for the rest of this month, the parties are scheduled to negotiate with the district court in the preparation of an order carrying out the court decision.

For now attorneys for the county are declaring victory in a contest that could eventually involve 12,000 or more segments of roads in Utah alone. And the decision could set a precedent for other western states.

Said Shawn T. Welch, a partner in the Holland & Hart LLP law firm that represented Kane County, "The long and short of this is that Kane County and

the State of Utah won 12 of the 15 roads in the case, or 89 of the 95 miles of road."

Welch said he would hope BLM would accept the decision as a precedent for future RS 2477 claims, although BLM doesn't adjudicate the validity of the rights-of-way; only a federal court has that authority. But BLM could support claims before a court, not oppose them.

Summed up Welch, "This case involved a range of roads, large to small, and established a precedential framework for addressing many of the roads already in court. Unfortunately, a couple of people advising the BLM have decided the agency has to fight every inch of road. So it is unlikely the BLM will use this precedent as a guide, not even for the easy roads." The people advising BLM include environmental groups.

U.S. District Court Judge Clark Waddoups in Utah in a March 20 decision held that the appellants did not have to follow a tough standard of proof required by the State of Utah in road disputes, i.e. use of a public thoroughfare for 10 years. Instead the judge said that a claimant only needed to provide the "preponderance of the evidence."

Utah Attorney General John Swallow said the judge's decision confirmed the "position that we, not the federal government, hold title to almost all of the roads considered in this suit. I am hopeful that this decision gives direction to other pending litigation and that the remaining cases can be settled expeditiously, with the least expense possible to taxpayers."

Waddoups said divining ownership of a lengthy thoroughfare across both private and federal land would be too complicated using the tough state standard.

"The potential burden on private landowners, the litigation complications, and the potential for piecemeal roads are factors that weigh against using two different standards for R.S. 2477 claims," he held.

"Additionally, while the clear and convincing evidence standard does impose a greater burden, the court concludes that the burden is not so high as to defeat congressional intent."

In the litigation Kane County and the State of Utah argue, as they have for decades, that the Federal Land Policy and Management Act of 1976 effectively gave states and counties the right to manage old ways that had been maintained locally prior to 1976. They are called RS 2477 rights-of-way (ROWS).

Of the 12 routes that Waddoups said belonged to Kane County four are within the Grand Staircase Escalante National Monument and eight are on lands managed by the Kanab Field Office of BLM.

The State of Utah and other Utah counties are using the same strategy as Kane County. They have filed numerous lawsuits claiming thousands of RS 2477 rights-of-way. The Tenth Circuit Court of Appeals has ruled that the federal government may not adjudicate RS 2477 claims; only federal courts hold that power to grant Title of Color claims.

The state began its RS 2477 campaign when it filed two lawsuits on Nov. 14, 2011, requesting 804 ROWs. Subsequently, in "notices of intent" the state on Dec. 14, 2011, advised the Interior Department it would file formal lawsuits to claim 18,784 RS 2477 ROWs across department-managed lands.

The state has reduced its RS 2477 claims to a total of 12,000 road segments, according to Welch, or 13,000, according to the Southern Utah Wilderness Alliance (SUWA). SUWA is an intervenor in many, if not most, of the state and county claims in Utah.

SUWA is alarmed by the Waddoups decision and the other claims. "Taken together, this tsunami of litigation threatens several national parks and monuments as well as iconic Utah wilderness landscapes," said Steve Bloch, SUWA's litigation director.

The RS 2477 dispute symbolizes the deeper grievances of some western states, particularly Utah, over the

huge federal land holdings within their borders.

In a separate strategy Utah Gov. Gary Herbert (R) started an even bigger fight on March 23, 2012, when he signed legislation that requires the government to turn all federal lands in Utah over to the state. That includes national parks, BLM lands, national forests, wilderness areas and the Grand Staircase Escalante National Monument managed by BLM.

Waddoups actually issued two decisions that are available at: https://ecf.utd.uscourts.gov/cgi-bin/show_public_doc?208cv0315-236 and https://ecf.utd.uscourts.gov/cgi-bin/show_public_doc?208cv0315-235.

Manhattan Project bill begins to move again in Congress

With quasi-support from the National Park Service House Natural Resources Committee Chairman Doc Hastings April 12 renewed his campaign to secure the addition to the National Park System of a Manhattan Project unit.

Coincidentally, Hastings's hearing came two days after he blasted the Obama administration for proposing the addition of new sites to the federal estate. Hastings did note that most of the land for the Manhattan Project is already owned by the federal government.

"One key point that I know the witnesses will cover, but that I believe is important to stress is that the vast majority of the historical facilities identified for inclusion in this park are already owned by the federal government," Hastings said at a hearing held by the House subcommittee on Public Lands and Environmental Regulation.

In addition his bill (HR 1208) would not authorize the use of condemnation to add any new land to the site.

Still, the Park Service testified that there would be costs - including up to \$4 million per year for NPS to manage the three sites.

Said NPS Assistant Director for Park Planning Victor W. Knox, "Because the Department of Energy would maintain and operate, as they do currently, the primary facilities associated with the Manhattan Project National Historical Park, the study estimated that the National Park Service's annual operation and maintenance costs for the three sites together would range from \$2.45 million to \$4 million. It also estimated that completing the General Management Plan for the park would cost an estimated \$750,000."

For the record Hastings said of the administration budget proposal for more land acquisitions, "(T)his budget exposes the Obama Administration's inability to prioritize spending at a time of record debts and deficits. For example, requiring hundreds of millions of dollars in mandatory spending to buy more federal land, when we can't even afford to maintain the land we already own, is bad policy and a gross misuse of taxpayer dollars."

For all that Hastings says the outlook for HR 1208 is good because the House voted 237-to-180 last year in favor of a predecessor bill. That vote was short of the two-thirds majority needed for passage.

Said Hastings last week, "We now know that a majority of the House - which includes both a majority of Republicans and Democrats - supports establishment of this Historical Park and its passage is now a question of when, not if."

The senate subcommittee on National Parks has scheduled a hearing for a counterpart bill (S 507) for April 23. Sen. Maria Cantwell (D-Wash.) is the lead Senate sponsor.

Strange bedfellows teamed up to block the Manhattan bill in the House last year. Liberal Democrats and conservative Republicans opposed the legislation. The no votes ranged from liberals such as Reps. Dennis Kucinich (D-Ohio) and John Conyers (D-Mich.) to conservatives such as Reps. Jeff Flake (R-Ariz.) - now Sen. Flake - and Jeb Hensarling (R-Texas).

Kucinich was the only member to speak against the bill on the House floor. He objected on moral grounds because HR 5987 would indirectly pay homage to nuclear weapons. "At a time when we should be organizing the world towards abolishing nuclear weapons before they abolish us, we are instead indulging in admiration at our cleverness as a species," he said. "The bomb is about graveyards; it's not about national parks."

The House bill, reflecting western Republican concerns about an expanding federal land base, would not allow land purchase. It would also forbid the use of condemnation to obtain land and would bar federal agencies from establishing a "buffer zone" around the park properties.

Knox said NPS supports the bill, except for those three conditions. "Among our concerns are the bill language regarding the written consent of owners; land acquisition limitations; and activities outside of the park," he said.

The counterpart Senate bill specifically authorizes land acquisition, does not mention condemnation and does not mention buffer zones.

The new NPS unit would focus on three locations where the atomic bomb was devised and built - Los Alamos, N.M.; Oak Ridge, Tenn.; and Hanford, Wash. Most of the land and buildings would come from existing Department of Energy facilities. But the Senate legislation does authorize the acquisition of private land from willing sellers.

FS starts against on ski resort water rights policy

Responding to a federal court order the Forest Service is beginning the process of writing a new policy governing the ownership of water rights used by ski resorts.

As an initial step the service this week held meetings where it solicited public comment, although it

has not published a specific new policy yet. The hearings were held in Denver, Salt Lake City and Lake Tahoe, Calif.

At issue is Forest Service policy X-99 that would have allowed the Forest Service to take without compensation valuable water rights ski resorts paid for. The ski resorts, as represented by the National Ski Areas Association (NSAA), said they needed to retain the water rights for snowmaking and other purposes.

U.S. District Court Judge William J. Martinez in U.S. District Court in Colorado on Dec. 19, 2012, threw out the policy on procedural grounds. He said the Forest Service failed to give notice and take comments before inserting the policy in ski resort permits.

NSAA welcomed the Forest Service hearings but remained concerned about the potential content of revised (or restored) policy. "The ski industry is certainly hoping that the Forest Service produces a new policy and does not simply republish the 2012 water rights clause," said Geraldine Link, director of public policy for NSAA.

Link provided us with an NSAA background paper that says industry is willing to make two concessions on water rights policy: (1) Resorts would show the Forest Service they have enough water to sustain new projects and (2) resorts upon sale of a ski area would at first offer water rights to a buyer and if the buyer declined the seller would offer the water rights to a local government and if the local government declined would offer the water rights to the Forest Service.

The plaintiff NSAA complained that the old policy - known as X-99 - would have allowed the Forest Service to take without compensation water rights they paid a high price for. However, judge Martinez did not rule on the substance of the policy, just on the procedure the service used to implement it.

The Forest Service crafted the disputed policy in 2011 and 2012 ostensibly to clarify the rights of the federal government vis-à-vis ski

permit operators under the Ski Area Permit Act of 1986. The implication was that the ski operators on federal land were gaining equity in the form of water rights without compensating the taxpayer, i.e. the federal government.

But NSAA, which represents 121 ski areas from New Hampshire to California, said the policy could prevent the resorts from selling water rights they paid good money for to outside interests, other than to a successor permit holder. NSAA also said the precedent set by the policy could affect other water rights holders.

A lot of money would be involved if resorts could not sell water rights. Vail Resorts alone says it holds water rights valued at \$18.3 million.

Most of the nation's largest ski facilities are located on national forest land. The resorts pay a complicated set of fees to the federal government for long-term permits, usually 40 years.

In his decision Martinez said the policy violated a National Forest Management Act (NFMA) requirement for notice and comment on substantive law (the service had argued that the policy was interpretive). "It is a 'general framework' for a Forest Service 'program' and Defendants' adoption of it - without the procedures guaranteed by 16 U.S.C. § 1612(a) - violates the NFMA," said the court referring to NFMA requirements.

Martinez also said the policy violated the notice and comment requirements of the Administrative Procedures Act (APA) because it constitutes new administrative legislation. "Because these clauses impose new rights and obligations, the rule is legislative requiring notice-and-comment compliance under the APA," the judge said.

Finally, Martinez said the Forest Service failed to conduct a regulatory flexibility analysis under the Regulatory Flexibility Act (RFA). "Because the Forest Service admits that it did not assess whether the 2012 Directive would

have a significant economic impact on these entities, the Court finds that the Forest Service has not complied with the RFA," he said.

House GOP takes a new tack in monuments legislation

House Republicans have come up with a new tactic to limit Presidential authority to designate national monuments under the Antiquities Act of 1906 - subject designation to environmental review.

To that end the House subcommittee on Public Lands and Environmental Regulation held a hearing April 16 on a new bill (HR 1459) introduced by Rep. Rob Bishop (R-Utah) and seven of his colleagues.

Predictably, subcommittee Democrats opposed additional curbs on the law. They argued that in its present form the Antiquities Act gives the President authority to move swiftly and unencumbered to protect federal lands.

But Bishop countered that the bill would in an emergency still authorize a President to designate a monument of up to 5,000 acres. And western Republicans have long argued that the size of monuments should be limited.

Bishop, who chairs the subcommittee, summed up: "Private property inholdings should be excluded. (Monuments) should be limited to sites that clearly contained historical landmarks or scientific interests. Monument designations should not be used as a backdoor maneuver to lock up lands for general purposes to deny public access to recreation and job creation."

But ranking subcommittee Democrat Raúl Grijalva (Ariz.) said the Antiquities Act is fine the way it is. He brought a number of local officials to the hearing who supported national monuments in their jurisdictions, although they did not testify at the hearing. Nor did the Obama administration testify.

"I'm sorry the majority feels the law needs to be tampered with and watered down," said Grijalva. "It worked for George W. Bush in declaring the Marina National Monument in Hawaii and now under President Obama it has become the worst law since Prohibition."

On its own the legislation, if passed by the House, would almost certainly die in the Senate. Said Grijalva, "We know the bills will be dead on arrival in the Senate and stand no chance in this Congress." But there is a slim chance one of more measures could be a candidate for an omnibus lands bill late this year as trade-bait for the protection of conservation lands, perhaps through conventional wilderness bills.

The Bishop bill is less draconian than numerous other monument bills Republicans have introduced in this Congress. (*See below.*)

Western Republicans have attacked the Antiquities Act ever since 1966 when President Bill Clinton used it to designate a 1.9 million-acre Grand Staircase-Escalante National Monument in southern Utah. The Bureau of Land Management (BLM) manages the monument.

The Republicans were further enraged in February 2010 when they obtained a BLM memo that said the Interior Department "is considering" the designation of 14 national monuments and the acquisition of billions of dollars of land, all managed by BLM.

The 14 possible BLM monuments are located in Arizona (1), California (4), Colorado (1), Montana (1), Nevada (1), New Mexico (2), Oregon (1), Utah (2) and Washington (1). The Interior document says 1,618,140 acres would be involved, including 397,210 acres of state and private land. Acquisition of the land would cost more than \$2 billion.

The House narrowly approved on April 17, 2012, legislation that would require state approval of a national monument designation before the designation could become valid. The vote was 223-to-198. However, the Senate didn't act on the legislation.

The provision would place restraints on the Antiquities Act that has been used by 16 presidents to designate more than 130 national monuments, including Grand Canyon and Grand Teton National Parks.

Despite the Republicans' complaints, President Obama has used the authority relatively sparingly in the West. Obama's largest major action came on March 25 when he designated a 240,000-acre Rio Grand Del Norte National Monument in New Mexico, and that was supported by most of the New Mexico Congressional delegation.

Conservationists have been demanding Obama designate significant new national monuments, such as a 1.4 million-acre Canyonlands National Monument in Utah managed by BLM adjacent to Canyonlands National Park. But three of the four U.S. House members from Utah struck back February 15 by introducing a bill (HR 758) that would require Congressional approval of any national monument in Utah. Rep. Mike Stewart (R-Utah) is the lead sponsor of HR 758.

The idea of a Canyonlands National Monument was revived Nov. 13, 2012, by more than 100 recreation-related businesses and the Outdoor Industry Association. They asked Obama to designate the monument.

Here are the Republican monument bills that were before the House subcommittee:

STATE APPROVAL NATIONAL: HR 382 would require the approval of a state's governor and legislature before a monument could be designated (Rep. Virginia Foxx (R-N.C.))

CONGRESSIONAL APPROVAL NATIONAL: HR 250 would require Congressional approval of any monument designation before it could be executed (Rep. Jason Chaffetz (R-Utah)). S 104 from Sen. David Vitter (R-La.) would do the same.

CONGRESSIONAL APPROVAL BY STATE: HR 432 for Nevada, Rep. Mark Amodei (R); HR 1434 for Montana, Rep. Steve Daines (R); HR 1439 for Idaho, Rep. Raúl Labrador (R); HR 151 for New Mexico,

Rep. Steve Pearce (R); HR 757 for Utah, Rep. Stewart; and HR 1495 for Arizona, Rep. Paul Gosar (R). S 472 from Sen. Dean Heller (R) would also require Congressional approval for any monument in Nevada.

Right, left now involved with Point Reyes oyster farm war

The battle over an oyster farm in Point Reyes National Seashore just becomes curiouser and curiouser.

In the last issue of *FPR* we reported that some famous national environmentalists are backing the oyster farm, breaking with environmental groups that oppose the farm. Now comes word that a national conservative group is working on behalf of the Lunny family that holds (or used to hold) the contract to farm at Point Reyes.

Indeed the conservative group, Cause of Action, is listed in court documents as an attorney for the Lunnys.

So we have on one side the oyster farmer, liberal Sen. Dianne Feinstein (D-Calif.), such national environmental figures as chef Alice Waters, the conservative House Natural Resources Committee Chairman Doc Hastings (R-Wash.), and the Cause of Action group. On the other side are the Interior Department, the Park Service, the National Parks Conservation Association and the Coalition of National Park Service Retirees.

Hastings entered the fray April 5 when he asked former Secretary of Interior Ken Salazar to provide documentation leading up to his Nov. 29, 2012, decision terminating the permit. Hastings said he had doubts about the quality of the science Salazar cited.

"The owners of the farm and members of the public have raised serious concerns about the process used by the NPS to develop and peer review the September 2011 Draft Environmental Impact Statement, which found the oyster farm had a major impact on the National Seashore's soundscape," he wrote.

On the same day Hastings wrote a similar letter to Interior Department Deputy Inspector General Mary Kendall to ask for documents leading to her February 7 dismissal of a scientific integrity complaint against the NPS draft EIS.

"The scientific integrity complaint made six allegations that the Department and the NPS did not follow applicable policies, knowingly made false representations about and concealed acoustic data, and concealed information from the public and the peer reviewers to overstate the impacts of the oyster farm in developing the DEIS," said Hastings.

The Ninth U.S. Circuit Court of Appeals entered the conversation February 25 when it ordered the Park Service to allow the oyster farm to continue to operate until the court considers the lawsuit objecting to a planned closure.

In the order the Ninth U.S. Circuit Court of Appeals hinted strongly that the Drakes Bay Oyster Company has a good case in its objection to the Interior Department decision to close down its operation. "Appellants' emergency motion for an injunction pending appeal is granted, because there are serious legal questions and the balance of hardships tips sharply in appellants' favor," the court said in its brief two-page injunction.

The court said it would take up the case May 13-17, giving the company at least another month to operate.

Although the court did not say what the 'serious legal questions' in the Interior Department order are, the owner of the oyster farm, Steve Lunny, and Feinstein have questioned assumptions in a Park Service EIS about noise and pollution from the oyster farm. They said the quality of the science was not adequate.

However, U.S. District Court Judge Yvonne Gonzalez Rogers in U.S. District Court in Oakland had previously upheld the department decision.

The last permit held by the Drakes Bay Oyster Company officially expired Nov. 30, 2012. At that time Salazar directed NPS to work with the company to remove all property from the park within 90 days. That deadline arrived February 28, but the court order allows the company to keep working.

Salazar said his decision would effectively designate the 1,000 acres used by the oyster farm as wilderness. Said a department release, "In 1976, Congress identified Drakes Estero as potential wilderness - the only marine wilderness area on the west coast of the continental United States outside Alaska - and directed that it automatically become wilderness when the commercial operation ended."

Lunny's appeal to the Ninth Circuit listed Amber D. Abbasi of the Cause of Action group as an attorney for the plaintiff.

At its website, <http://causeofaction.org/>, Cause of Action does not identify its supporters. It does list Dan Epstein as executive director and Abbasi as chief counsel. The site describes the group this way: "Cause of Action is a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity."

NPS and New York take steps to improve Gateway NRA

New York City and the Park Service April 9 said jointly they are making progress on initiatives to upgrade the New York portion of the Gateway National Recreation Area. It is the eighth most visited unit of the National Park System.

The three projects are completion of a Jamaica Bay Greenway Trail, establishment of a Jamaica Bay Science and Resilience Institute, and the launching of a Career Technical Education Center.

In July 2012 the city and the Park Service struck a landmark agreement to cooperatively manage the large Jamaica Bay portion of the recreation area that is along the New York City shoreline. Other portions of Gateway lie along the New Jersey shore.

The feds and the city will coordinate management of the land and waters in Jamaica Bay. The 10,000 acres at the site off Brooklyn's shore include portions of the Gateway National Recreation Area as well as the NPS-managed Floyd Bennett Field, a subdivision of the recreation area.

The three projects announced April 9 are separate from restoration work ongoing in New York Harbor and Mid-Atlantic States as a result of Hurricane Sandy on Oct. 29, 2012.

New York City Mayor Michael Bloomberg and Secretary of Interior Ken Salazar congratulated each other at a ceremony in New York highlighting the three new projects. Said Salazar, "When I met with Mayor Bloomberg two years ago, we agreed that we would work together to make Gateway a model urban park that would be accessible and inviting to the people of New York, especially for young people. Over the past two years, we've not only entered into an historic agreement to achieve these goals but we have translated it into on-the-ground projects that are transforming the park and demonstrating the true power of the partnership that the Department and New York City have forged."

Said Bloomberg, "Our Cooperative Management Agreement will unify the many public parks surrounding Jamaica Bay into one grand public park and will bring tremendous benefits to the bay and the visitors who enjoy it." The three projects trumpeted last week:

Greenway in Queens: More than \$1.5 million from a Federal Transit Administration's Transit in the Parks program will be spent to construct a ferry dock as part of a greenway that will encircle Jamaica Bay in the borough of Queens. The project will provide a bicycle-pedestrian path for the

urbanized areas. The partners said 50 million people annually visit New York City and 7.7 million people visit the national recreation area.

Jamaica Bay Science and Resilience Institute: Established by a Jamaica Bay Conservancy, the institute is expected to begin conducting environmental review projects by this summer, including such things as analyzing climate change and Hurricane Sandy.

Career Technical Education Center: This partnership between the city's department of education and NPS will, according to a press release, "offer training in carpentry, landscape management, decorative finishes, and masonry to support the restoration of historic structures and landscapes."

The National Parks Conservation Association called Gateway "New York City's greatest unrealized asset."

Obama maintains agency money, boosts conservation programs

It may not matter much in the end but the Obama administration proposed substantial conservation spending increases in its fiscal year 2014 budget request to Congress April 10, despite Republican demands for retrenchment.

On the bottom line the administration made a pitch for full, guaranteed funding for the Land and Water Conservation Fund (LWCF) at \$900 million per year, beginning in fiscal 2015. For fiscal 2014 the administration requested \$356 million for federal land acquisition and \$60 million for state grants.

In a surprise move the administration also recommended that Congress put up \$15 million for the long-moribund Urban Parks and Recreation Recovery (UPAR) program. And it recommended that UPAR be cut in on LWCF money in the long term. (*See related article page one.*)

The administration also proposed significant money for other conservation

programs, such as \$61 million for state wildlife conservation grants and \$59 million for the Historic Preservation Fund.

Salazar, Out of the ditch:

Secretary of Interior Ken Salazar said at an April 10 press conference that a fiscal 2013 appropriations law (PL 113-6 of March 26) combined with an \$85 billion sequestration program put the department "in a ditch." But he said the fiscal 2014 budget would help agencies recover.

"I have seen first hand the impacts to our mission," he said. "Those impacts will continue to unfold over the months ahead and they will cause harm to the economic recovery. . . The President's budget takes us out of the ditch."

For federal land management agencies the fiscal 2014 budget roughly proposes flat spending. Park Service operations would receive a \$48 million increase compared to fiscal 2012 to \$2.285 billion. Fiscal 2012 was the last fiscal year when Congress provided detailed spending levels.

For management of the National Fish and Wildlife Refuge System the administration would increase spending compared to fiscal 2012 by \$13.5 million to \$499.2 million. For recreation management in the Bureau of Land Management the budget would provide a \$3 million hike over fiscal 2012 to \$70.5 million. But recreation management in the Forest Service would decrease by \$22 million, down to \$261 million.

National heritage areas were also hit. The administration would reduce partnership grants by \$8.4 million, from \$16.5 million in fiscal 2012 to \$8 million in fiscal 2014.

The federal budget process calls for submittal of the administration request on the first Monday in February. But because the fiscal 2013 appropriations law was late (it was only signed into law March 26) and because of a separate sequestration law that chopped \$85 billion from appropriations, the fiscal 2014 budget was held up.

For all the sound and fury the administration's budget may not matter in the end. That's because House Republicans will deem the request dead on arrival and will recommend billions of dollars less for an Interior Department and Related Agencies appropriations bill. Senate Democrats in turn will largely meet the administration request. If recent appropriations battles are any indication, Congress will end up extending previous year's spending levels, perhaps with an across-the-board reduction or increase.

FeeDemo: In a related matter the budget proposes an extension of the Federal Lands Recreation Enhancement Act, also called FeeDemo, which authorizes the collection of some \$200 million per year in entrance and user fees on the public lands.

The Interior budget says, "The Department of the Interior proposes to permanently authorize the Federal Lands Recreation Enhancement Act, which expires in December 2014. The Department currently collects over \$200 million in recreation fees annually under this authority and uses them to enhance the visitor experience at Interior facilities. In addition, the Department will propose a general provision in the 2014 budget request to amend appropriations language to extend the authority through 2015."

Transportation: In a separate area the administration proposed full funding for the second year of a two-year surface transportation law called MAP-21 (PL 112-141 of July 6). And it proposed a 25 percent increase in long-term funding for surface transportation, which Congress would have to approve.

Riders: It's early in the game but legislative riders to spending bills are sure to be controversial again in fiscal 2014. For fiscal 2013 House Republicans backed riders that continued a provision that bars the Obama administration from carrying out a proposed policy of identifying and designating wild lands (enacted); approved a provision (not enacted) that would have blocked implementation of

a National Oceans Policy proposed by the Obama administration; proposed a provision (not enacted) that would have blocked implementation of a proposed administration wetlands policy; and approved a provision (not enacted) that would have declared public lands open to hunting unless specifically closed.

Fiscal 2014 request: Here's the Obama request for fiscal 2014 compared to fiscal 2012 numbers (the last year with detailed numbers because Congress passed a stripped down continuing resolution for fiscal 2013). We have also included numbers approved by the House Appropriations Committee for fiscal 2013 on June 28, 2012, to illustrate the great gap between House Republicans and the administration:

* LWCF FEDERAL: Request, \$356 million (BLM \$48.9 million, Fish and Wildlife Service \$106.3 million, NPS \$90.6 million, and Forest Service \$92.2 million). Fiscal 2012, \$186.7 million (BLM \$22.4 million, Fish and Wildlife Service \$54.7 million, NPS \$57 million and FS \$52.6 million). House committee, \$46.7 million total.

* UPAR: Request, \$15 million. Fiscal 2012, nothing. House committee, nothing.

* LWCF STATE: Request, \$60 million. Fiscal 2012, \$45 million. House committee, nothing.

* FWS CONSERVATION GRANTS: Request, \$61.3 million. Fiscal 2012, \$61.4 million. House committee, \$22 million.

* HISTORIC PRESERVATION FUND: Request, \$58.9 million. Fiscal 2012, \$56 million. House committee, \$49.5 million.

* NPS OPERATIONS: Request, \$2.284 billion. Fiscal 2012, \$2.240 billion. House committee, \$2.243 billion.

* NPS REC AND PRES: Request, \$52 million. Fiscal 2012, \$60 million. House committee, \$49.4 million.

* HERITAGE AREAS: Request, \$8 million. Fiscal 2012, \$17.4 million.

House committee, \$9 million.

* NPS CONSTRUCTION: Request, \$160 million. Fiscal 2012, \$159.6 million. House committee, \$152.1 million.

* FS RECREATION: Request, \$261 million. Fiscal 2012, \$281.6 million. House committee, \$281.6 million.

* FS TRAILS: Request, \$82.5 million. Fiscal 2012, \$82 million. House committee, not broken out.

* FOREST LEGACY: Request, \$60 million. Fiscal 2012, \$54 million. House committee, not broken out.

* BLM RECREATION: Request, \$70.5 million. Fiscal 2012, \$67.5 million. House committee, \$67.6 million.

* FWS REFUGE MANAEMENT: Request, \$499.2 million. Fiscal 2012, \$486.5 million. House committee, \$455 million.

Notes

Oceans policy published. The Obama administration completed a fuzzy at best new oceans policy April 16, but it was clear enough for supporters and detractors to alternately castigate and praise. The policy, which carries through on a proposed policy of January 2012, essentially directs federal agencies to do good for the oceans, for instance protect 100,000 acres of wetlands. It does not order any particular agency to take any particular steps. It does establish a National Ocean Council - essentially made up of all federal agencies - to coordinate things. As nebulous as the National Ocean Policy Implementation Plan is (www.whitehous.gov/oceans), it fired up detractors. House Natural Resources Committee Chairman Doc Hastings (R-Wash.), who has been trying unsuccessfully to move legislation to block the plan for years, said, "What is certain is that this policy represents a significant step towards the mandatory zoning of our oceans and is a backdoor attempt to control the way inland, coastal and ocean activities are managed. If implemented, it will inflict red tape and economic damage both onshore and offshore across a wide-range

of activities including agriculture, fishing, construction, manufacturing, mining, oil and natural gas, and renewable energy." But Rep. Lois Capps (D-Calif.) was all in: "Our oceans and coastlines face tremendous challenges in the years ahead, ranging from the threat of oil spills to climate change to the depletion of our fisheries. Now, more than ever, we need a coordinated, national approach for the management of our ocean and coastal resources that will help us tackle the challenges that threaten the health of our oceans to ensure that future generations can enjoy the wonders of our oceans."

House approves battlefield bill.

The House approved April 9 by a 283-to-122 margin legislation (HR 1033) to extend the American Battlefield Protection Act for five more years, beginning in fiscal year 2014, at up to \$10 million per year. The money is to be used to protect sites of Revolutionary War and the War of 1812 battlefields. Although no House member spoke against the bill, cosponsor Rep. Rob Wittman (R-Va.) said the measure had been criticized for expanding the federal estate. But, he said on the House floor, "I want to make sure people understand that because this is really for the protection of battlefields outside of national park boundaries, giving those concerned within those areas the ability to help preserve those lands." The chairman of the House subcommittee on Public Lands and Environmental Regulation, Rep. Rob Bishop (R-Utah), voted against the bill. The fiscal 2012 appropriation for the program was \$9 million. The fiscal 2014 budget request submitted by the Obama administration April 10 recommends another \$9 million appropriation. Congress approved the inaugural battlefield protection law in 1996 and has extended it periodically since.

Fire tankers ready to roll?

Secretary of Agriculture Tom Vilsack said last month the Forest Service would "soon" issue contracts for the next generation of air tankers that have long been delayed. Congress is less than pleased with the delays. Exactly what "soon" means is not clear. The Forest Service did not respond to repeated

requests for updates on when the delays will end. The controversy over the next generation of air tankers was stirred up by the Forest Service announcement March 28 of its "intent" to award contracts for the use of eight old generation air tankers for the upcoming wildfire season. Some of those tankers are 50 years old and date back to the Korean War. The availability of tankers is a deadly serious business given the gravity of the wildfires around the country last year. Sen. Mark Udall (D-Colo.), chairman of the Senate subcommittee on National Parks, said recently "projections indicate that the 2013 wildfire season could be significantly worse."

Georgia, Oregon landmarks named.

The Park Service April 12 announced the designation of two new national natural landmarks - Wade Tract Preserve in Thomas County, Ga., and Zumwalt Prairie in Wallowa County, Ore. The Wade Tract consists of old-growth longleaf pine, with some trees more than 300 years old. The Zumwalt Prairie is a 100,000-acre preserve managed by the Nature Conservancy composed of bunchgrass prairie. There are now 596 national natural landmarks. Established in 1962, the National Natural Landmarks Program does not impose any new land use restrictions, the Park Service says.

Wyden keeps at omnibus.

True to his word, Senate Energy Committee Chairman Ron Wyden (D-Ore.) continues to hold hearings and mark-ups on dozens and dozens of lands bills that have been stuck in Congress for years. Eventually, Wyden said he would attempt to group the bills and move them through the Senate floor. In the next committee action on April 23 the subcommittee on National Parks is scheduled to hold a hearing on 14 bills, including measures to establish a Manhattan Project National Historical Park (S 507), to reopen most of Cape Hatteras National Seashore to off-road vehicle use (S 486) and to designate a Valles Caldera National Preserve in New Mexico (S 285). (The House subcommittee on Public Lands and Environmental Regulation held a hearing on the House version of a Manhattan Project bill (HR 1208) April 12.)

Gettysburg expansion bill back.

Rep. Scott Perry (R-Pa.) and four of his colleagues introduced legislation (HR 1513) April 11 to add two important tracts to Gettysburg National Military Park. The bill, which has been around for several Congresses, would add the Gettysburg Railroad Station and a 45-acre tract at the south end of the battlefield that hosted cavalry battles. The railroad station served as both a transportation depot and a hospital during the battle. The National Trust for Historic Gettysburg currently operates the station and until recently had used it as an information center. Supporters anticipate the Park Service will again use the station as a visitors center. The 45-acre tract along Plumb Run was the site of a cavalry encounter during the battle of Big Round Top. The land has been donated and would not require land acquisition.

TRCP honors three VIPs.

The Theodore Roosevelt Conservation Partnership (TRCP) April 18 honored media businessman Ted Turner, Sen. Jon Tester (D-Mont.) and Rep. Mike Simpson (R-Idaho) April 18 in Washington, D.C. Turner was presented the TRCP Lifetime Conservation Achievement Award for, in part, contributing more than \$357.7 million to conservation programs. Tester and Simpson were the co-winners of the TRCP James D. Range Conservation Award, named for TRCP co-founder Jim Range. Tester has introduced a number of bills favored by sportsmen. Simpson chairs the House subcommittee on Interior and Related Agencies where he oversees much of the nation's conservation spending.

Ripps to head NPS policy office.

Park Service Director Jon Jarvis April 8 named Alma Ripps as chief of the NPS Office of Policy. Ripps, who had been working as Jarvis's deputy chief of staff, will replace Bernard "Chick" Fagan; he retired in 2012. As policy chief Ripps will oversee service-wide policy guidance.

Conference CalendarAPRIL

19-23. **National Association of**

Recreation Resource Planners annual meeting at Park Place Hotel in Traverse City, Michigan Contact: National Association of Recreation Resource Planners, P.O. Box 221, Marienville, PA 16239. (814) 927-8212. <http://www.narrp.org>.

22-23. **National Hydropower Association** annual conference in Washington, D.C. Contact: National Hydropower Association, One Massachusetts Ave., N.W., Suite 850, Washington, DC 20001. (202) 682-1700. <http://www.hydro.org>.

30-May 3. **National Ski Areas Association National Convention and Trade Show** in Palm Springs, California. Contact: National Ski Areas Association, 133 South Van Gordon St., Suite 300, Lakewood, CO 90228. (303) 987-1111. <http://www.nsaa.org>.

MAY

5-8. **National Sporting Goods Association** conference. Contact: National Sporting Goods Association, 1601 Feehanville Drive, Suite 300, Mt. Prospect, IL 60056-6035. (847) 296-6742. <http://www.nsga.org>.

8-9. **America Boating Congress** legislative conference in Washington, D.C. Contact: National Marine Manufacturers Association, 444 N. Capitol Street, NW Suite 645, Washington, D.C. 20001. (202) 737-9750. <http://www.nmma.org>.

JUNE

6-8. **International Snowmobile Congress** in Green Bay, Wis. Contact: International Association of Snowmobile Administrators at <http://www.snowiasa.org/>

21-24. **U.S. Conference of Mayors** annual meeting in Las Vegas, Nev. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmaors.org>.

27-30. **Western Governors' Association** annual meeting in Park City, Utah. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>