

Federal Parks & Recreation

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In this issue. . .

Agency spending choices faulted.

NPS retirees, PEER, FS retirees fault NPS and Forest Service for spending priorities given across-the-board sequestration..... Page 1

Delaware among five new monuments.

First national park unit in State of Delaware. Two more for NPS and two in West for BLM..... Page 3

Reconciliation only game in town?

End-of-year legislation may be ticket for LWCF, gasoline tax hike, fed'l entrance fees... Page 5

Rivers report stirs wetlands talk.

EPA says more than half of U.S. rivers in poor condition. Greens argue for 404 permitting.... Page 7

Statue of Liberty security is set.

NPS will conduct on Ellis Island, even though Ellis is shut... Page 8

Will Senate WRDA help Everglades?

Bill doesn't single out projects. It may give indirect nod.... Page 9

Green v. green in oyster war.

Alice Waters leads rump group of enviros backing Reyes farm.. Page 10

FS cabin owners defend House bill.

Say CBO now on board and that high-end owners need help... Page 12

Competing rec interests in fight.

Hunters, fishermen lose round to OHVers on Colorado trails... Page 13

Notes..... Page 14

Boxscore of Legislation..... Page 16

Appropriations/sequester complaints come pouring in

The ink was barely dry on a final fiscal year 2013 appropriations bill (PL 113-6 of March 26) before the complaints began. The complaints were aimed primarily at agency spending priorities agencies in the wake of an \$85 billion sequestration that reduced spending.

The Coalition of National Park Retirees criticized NPS for spending time and money evaluating possible professional bike races in Colorado National Monument, the Public Employees for Environmental Responsibility criticized NPS for evaluating additional Jet Ski use in the parks, and the National Association of Forest Service Retirees criticized the Department of Agriculture for spending money on a new department-wide logo.

The critics are emerging just as an \$85 billion sequestration is knocking more than five percent out of the fiscal 2013 appropriations law. That sequestration has touched off spotty furloughs across the federal government.

Immediately after completing the fiscal 2013 appropriations bill, the House and Senate turned their attention to fiscal 2014 by approving separate, and sharply contrasting, Congressional budgets. (See related article page 5.)

The final fiscal 2013 spending bill contains a two percent increase in spending for the Interior Department and Related Agencies appropriations bill, said Interior approps subcommittee chair Sen. John Reed (D-R.I.) But that is before the five percent, across-the-board sequestration cuts in.

PL 113-06 comes in the form of a continuing resolution (CR) so Congress did not establish spending priorities

for individual programs. For the most part programs will receive about the same amount of money as in fiscal 2012, minus five percent.

For specific projects within larger programs that Congress usually earmarks in appropriations bills, such as land acquisition, construction and heritage areas, agencies will work those allocations out with Congress in the next few weeks.

"The CR contained a 30-day clock," said a Park Service spokesman. "Our operating plan is to submit a proposal to the department on April 8. It will then go through the department and (the Office of Management and Budget) and on to Congress around April 25." Meanwhile, these quarrels are already underway:

Colorado bike race: The Park Service retirees said NPS should not spend time and money considering a proposal to run a leg of a major professional bicycle race through Colorado National Monument. They said it's a done issue because NPS on Aug. 14, 2013, refused to authorize a stage of a 2013 USA Pro Cycling Challenge in the monument. NPS said at the time the law forbids activities that would (1) harm park resources and (2) interfere with the public's enjoyment of a park.

Despite that finding, complain the retirees, NPS intends to hold a series of meetings on the possibility of future races. "The costly financial implications of holding a series of community meetings with an outside contracted facilitator and attendant travel costs are hard to justify in the face of the budget sequester," retirees' president Maureen Finnerty wrote John Wessels, regional director of the NPS Intermountain Region. "This money should instead go to mission critical operations in the park."

Jet-ski study: The environmental group Public Employees for Environmental Responsibility (PEER) said NPS should not spend \$400,000 for a study of personal watercraft use in a time of austerity.

"The Park Service wants a gold-plated study to document the absurd conclusion that jet-skis will not damage sea grasses, harass marine life or pollute in order to avoid another humiliating judicial reversal," said PEER Executive Director Jeff Ruch. "It is downright irresponsible to open sensitive coastal areas to jet-skis without sufficient rangers to police against motorized abuse."

Forest Service logo: The National Association of Forest Service Retirees objected to an order from Secretary of Agriculture Tom Vilsack directing all department agencies to replace their individual logos with a department-wide logo.

Said George Leonard, a director of the retiree group, "Replacing the 100-year old 'pine tree shield' that has been the symbol of the Forest Service since Gifford Pinchot was chief will cost millions of dollars. The symbol is used on boundary signs, campgrounds, ranger stations, fire prevention posters, and hundreds of other uses. This direction will confuse the public. It would be a bad idea under any circumstances, but in light of the cutback in agency funding it strikes me as malfeasance by the department."

Although nothing is in paper yet Leonard said the Department of Agriculture was hit by so many complaints it has decided to let the Forest Service keep its pine tree shield.

THE SITUATION IN BRIEF: President Obama signed the fiscal 2013 full-year appropriations law March 26 at roughly fiscal 2012 levels. However, a budget sequestration law (PL 112-25 of Aug. 2, 2011) cut in February 28 and mandated that \$85 billion in budget reductions in fiscal 2013 come out of the appropriations law.

Separately, Congress is beginning to turn its attention to fiscal year 2014, which begins October 1. The House and Senate last month both approved radically different fiscal 2014 Congressional budgets that will guide

spending. However, the budgets also set broad ceilings; they don't decide how much money each appropriations bill receives. The Obama administration says it will submit a fiscal 2014 budget request to Congress on April 10.

SEQUESTRATION IMPACTS: Although Congressional Republicans have asserted that the Obama administration overestimates the impact of sequestration, federal agencies continue to itemize broad and deep damage.

OMB said that because of the sequestration the Park Service will have \$218 million less to spend in fiscal 2013 than in fiscal 2012. The Land and Water Conservation Fund alone will be reduced by \$26 million.

The Forest Service will be hit even harder than NPS with cuts of \$129 million for the National Forest System and \$34 million for Capital Improvements.

The Department of Agriculture described these impacts of the sequestration to the Forest Service in a letter to the Senate Appropriations Committee last month, "The agency would close up to 670 public developed recreation sites out of 19,000 sites, such as campgrounds, picnic areas, and trailheads. Closing this many recreation sites would reduce an estimated 1.6 million recreation visits across the country, thereby harming the economies of remote rural communities that depend on recreationists' economic activity, and eliminating convenient vacation opportunities for rural residents."

The Department of Interior told the committee in its own letter, "The public should be prepared for reduced hours and services provided by Interior's 398 national parks, 561 refuges, and over 258 public land units." The department said the agencies would have to close 128 wildlife refuges, cut back on seasonal employees and "Reduce hours of operation for visitor centers, shorten seasons, and possibly close camping, hiking, and other recreational areas when there is insufficient staff to ensure the

protection of visitors, employees, and resources."

According to Sen. Dianne Feinstein (D-Calif.), the Corps of Engineers must also reduce services substantially. "With sequestration, the Corps would likely have to close 57 recreation areas and partially close 186 recreation sites," she said on the Senate floor February 27. "There would also be no funding for 52 ongoing studies that were funded in FY 2012, 65 construction projects that were funded in FY 2012, and 43 dredging projects that were funded in FY 2012."

Obama designates five new monuments, including Delaware

The State of Delaware finally has its first unit of the National Park System, in the form of a First State National Monument.

President Obama established the monument March 25 using the controversial Antiquities Act of 1906. While he was at it Obama designated four other national monuments - two more in the National Park System and two on Bureau of Land Management (BLM) land.

The other park units are the Charles Young Buffalo Soldiers National Monument in Ohio and the Harriet Tubman Underground Railroad National Monument in Maryland. The BLM units are a 240,000-acre Rio Grand Del Norte National Monument in New Mexico and a 1,000-acre San Juan Islands National Monument in Washington State.

Conservationists who have been demanding Obama designate significant new national monuments praised him, while western Republicans deplored the designations at a time of austerity.

On the support side Jamie Williams, president of The Wilderness Society, said, "Protecting our lands and waters can't wait, and The Wilderness Society applauds President Obama for protecting the Rio Grande del Norte National Monument and other significant landmarks across the United States."

But House Natural Resources Committee Chairman Doc Hastings (R-Wash.) viewed the designations as an abuse of the law. "Over one hundred years ago the Antiquities Act was passed to allow a President to act when there was an emergency need to prevent destruction of a precious place - yet President Obama is acting on simple whim as no imminent threat of destruction or harm is posed at any of these five locations," he said.

Advocates of an ambitious, 1.4 million-acre Canyonlands monument in southern Utah urged Obama to now use the Antiquities Act to protect that area. Referring to the Rio Grand Del Norte National Monument, the Southern Utah Wilderness Alliance (SUWA) advised its members March 28 to push for action on Canyonlands, which is adjacent to Canyonlands National Park.

"This is a big deal for those of us in Utah calling for the protection of the Greater Canyonlands region, as this is the first time the President has used the Antiquities Act to protect a large threatened landscape like those we're working to protect in Utah's redrock canyon country," said SUWA in a bulletin to its members. "Please thank President Obama for using the Antiquities Act to protect public lands and then urge him to protect Greater Canyonlands!"

The recreation industry and recreation activists teamed up in November to ask Obama to designate a Canyonlands monument. Utah Republican Sens. Orrin Hatch and Mike Lee and Reps. Rob Bishop and Jason Chaffetz object and say Congress should do the job.

The Antiquities Act of June 8, 1906, is one of the more concise laws ever to come down the pike. The relevant sentence in the three paragraph law says, "That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and may reserve

as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with proper care and management of the objects to be protected."

The key phrases say that a monument must be on federally-controlled land and that a monument must be as small as possible.

Despite Hastings's objections, one Republican senator, Rob Portman (R-Ohio), endorsed the Charles Young Buffalo Soldiers National Monument in Ohio. "Colonel Young's tremendous academic achievements and selfless acts of valor in the military have long been treasured by Ohioans, and now this national monument will further honor his rich legacy and preserve it for future generations across the country to enjoy," he said.

Delaware First State National Monument: NPS unit. Will consist of several sites around the state to both commemorate early settlement as well as the state's role in the ratification of the U.S. Constitution (Delaware signed first). The new park is made up of three historic areas: the Dover Green, the New Castle Court House complex (including the courthouse, Green and Sheriff's House), and the Woodlawn property. All were donated to the federal government.

The Delaware Congressional delegation has introduced legislation for several Congresses to designate the sites as a national park. This year Sen. Tom Carper (D) introduced a Senate bill (S 347) and Rep. John Carney (D) introduced a House bill (HR 703).

Charles Young Buffalo Soldiers National Monument: NPS unit. Will consist of the home of Col. Charles Young (1864-1922), who was the third African American to graduate from West Point and the first to reach the rank of colonel. He also served as a superintendent of Sequoia and General Grant National Parks before the National Park System was established in 1916.

Harriet Tubman Underground Railroad National Monument: NPS unit.

The Maryland site will commemorate a leader of the Underground Railroad who helped numerous African-Americans escape from the South prior to the Civil War.

Río Grande del Norte: BLM unit in northern New Mexico near Taos. The site includes Ute Mountain and habitat for elk, bald eagle, peregrine falcon, and the great horned owl.

The current New Mexico Congressional delegation said former Sen. Jeff Bingaman (D-N.M.) was the driving force behind the monument. Bingaman sponsored the original legislation, which was reintroduced this year (S 241) by Sen. Tom Udall (D-N.M.) A House bill (HR 560) was introduced by Rep. Ben Ray Luján (D-N.M.)

San Juan Islands: BLM unit in northern Puget Sound in the State of Washington. BLM oversees 75 sites on the 450 islands, rocks and pinnacles in the archipelago. Also on the islands are communities, state parks, Indian lands and a San Juan Islands National Historic Park. The islands include rock ledges, forests and beaches, often in close proximity.

Rep. Rick Larsen (D-Wash.) and Sen. Maria Cantwell (D-Wash.) introduced legislation (HR 1034, S 497) earlier this year to designate the islands a national conservation area.

Said Larsen of the monument designation, "San Juan Islanders have been shouting from the rooftops for years: protect these lands. Well the President heard our message loud and clear."

Budget reconciliation may be only game in town in 2013

It's a long, 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.

Such a deal could include the total park and rec package - guaranteed full funding for the Land and Water Conservation Fund, 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.

On the down side the Senate budget does not explicitly direct the Senate Energy Committee and the Senate Environment and Public Works Committee to prepare legislation. However, said Alan Rowsome, who handles budget issues for The Wilderness Society, that doesn't necessarily mean conservation programs wouldn't make it into a deal.

That's because the Senate Finance Committee under chairman Max Baucus (D-Mont.) could always include those programs in his tax and revenue legislative recommendations. And Baucus is the lead sponsor of legislation (S 338) to lock in money for LWCF.

"Baucus and other high-ranking Democrats are excited to get LWCF back in the mix," said Rowsome. "With the expiration date for LWCF near (Sept. 30, 2015) the urgency is high. If Congress does a large, balanced budget deal it could be a way to get the LWCF deal done."

Similarly, the House budget does not instruct the House Natural Resources Committee and the House Transportation Committee with their big outdoor portfolios to prepare any legislation. But it does give a backdoor route by directing the House Ways and Means Committee to act.

Meanwhile, the Obama administration says it will submit to Congress April 10 a long-delayed fiscal 2014 budget request. The request is usually submitted the first Monday of February but was delayed by a six-month long dispute between the administration

and Congress over a fiscal 2013 appropriations law and accompanying \$85 billion sequestration.

A final reconciliation bill is a long, long shot because the Obama administration, Senate Democrats and House Republicans have been unable to agree on national taxing and spending policy for more than four years. Democrats won't give on entitlement spending and Republicans won't give on tax increases.

Nevertheless, Sen. Mark Udall (D-Colo.) March 19 raised the possibility of a reconciliation agreement as a road to secure money for LWCF at a March 19 conference on future funding for the National Park Service. Udall, chairman of the Senate subcommittee on National Parks, said, "The LWCF money needs to be fully allocated. I'm still hopeful in a big grand bargain dedicated funds ought to be respected and they ought to be made off limits and directed into the programs they were designed for." Udall cosponsored the Baucus LWCF bill.

Udall also agreed with former House Transportation Committee Chairman James Oberstar (D-Minn.) that a big budget agreement could provide a route to an increase in the gasoline tax. Oberstar envisioned one penny per gallon being set aside for national parks and federal lands roads. That would amount to \$1.5 billion per year.

When Oberstar asked Udall if the political will exists in Congress to do that, the senator said, "In the Senate there is. In the Senate we realize infrastructure is crucial. . . Again in a grand bargain I'd like to see us index the user fee for gasoline to make up for lost ground over the last 20 years. . . Young (Rep.) Bill Shuster (R-Pa.) heads the (House Transportation) Committee now and he gets it that this is a part of our economic future."

Although a grand budget agreement is a long, long shot, one feature of the budget reconciliation process argues in its favor - the legislation would not be subject to a filibuster in the Senate, so a simple majority could pass it.

Said Rowsome, "That's a huge game in town. Being able to do it with just 50 votes gives so many more options. You can bet Senate Democrats are looking at this."

The problem is the House and Senate have to agree on the details of a reconciliation bill and House Republicans are not fond of LWCF and gasoline taxes. Further the House and Senate are worlds apart on natural resource spending.

For instance the Senate approved a budget March 23 that recommends almost \$5 billion more for natural resources in fiscal 2014 than the House approved March 21. The Senate resolution, drafted by Senate Budget Committee Chair Patty Murray (D-Wash.), recommends \$42.9 billion in fiscal 2014 compared to \$38.1 billion in the House budget, written by House Budget Committee Chairman Paul Ryan (W-Wis.)

The House budget scarcely mentions parks, recreation, trails or any other outdoor program. Its single reference to a conservation program recommends a reallocation of revenues from federal land sales under the Federal Land Transaction Facilitation Act (FLTFA).

FLTFA authorizes the sale of excess Bureau of Land Management and Forest Service lands and uses the proceeds to acquire conservation lands. The House budget recommends 70 percent of the revenues be used for deficit reduction, instead of land acquisition, as was the case under the old law.

The Senate endorsed all sorts of park and recreation initiatives. These are recommendations and require no committee to do anything, although they might be included in a reconciliation bill. But here's what the Senate budget says it would do for outdoor programs:

LWCF: "Fully funds the Land and Water Conservation Fund and enables the reauthorization of conservation measures like the Federal Land Transaction Facilitation Act;"

National parks open: "Keeps the gates open at all of our national

parks so that our families can continue enjoying our national treasure;"

Recreation: "This budget understands the importance of access to public lands for all recreation users, from bikers to birders to hunters and anglers. An estimated 90 million Americans, or more than a quarter of the U.S. population, participated in wildlife-related recreation in 2011;"

Transportation-related recreation: "More than ever, state and local governments are planning road projects that make room for bicyclists and pedestrians, bridge projects that include transit as well as cars and trucks, and regional plans that require multiple jurisdictions to work together. While we continue investing in our roads and bridges, we need to make sure that federal programs remain compatible with each other to accommodate the innovation happening at the State and local level."

Poor state of most rivers enters wetlands dispute

EPA provided fresh ammunition last week for conservationists who demand that the federal government prepare wetlands permits for projects in all water bodies, not just navigable waterways.

EPA said March 26 that a comprehensive survey indicates that more than half of all streams and rivers in the country are "in poor condition for aquatic life."

Working with states and Indian tribes, EPA collected data on 2,000 sites across the country over the 2008-2009 period. It compiled the data in a National Rivers and Stream Assessment, <http://www.epa.gov/aquaticsurveys>.

An attorney for the Earthjustice environmental law firm, Jennifer Chavez, said the survey argues for tougher wetland permitting. "Right now, there are smart, common-sense policies that will clean up our waterways and keep us safe from harmful pollution just sitting at the White House waiting for final approval," she said. "We need the Obama

administration to finalize its guidance to restore Clean Water Act protections to all waters the United States, because as this survey shows, we simply can't afford to lose any more of our crucial waters to pollution and contamination."

EPA and the Corps of Engineers submitted to the White House more than a year ago a proposed new wetlands permitting policy that would subject isolated water bodies to Section 404 permits, as well as navigable waters. In February sportsmen asked the White House to approve the policy.

"Each day that the administration delays finalizing Clean Water Act guidance means real losses in wetlands and streams," said Steve Kline, director of the Center for Agricultural & Private Lands, Theodore Roosevelt Conservation Partnership.

In 2008 in the landmark *Rapanos* decision the Supreme Court intimated that under EPA and Corps interpretations of the Clean Water Act, Section 404 permits were only required for navigable waters. Since then EPA and the Corps prepared the proposed policy to clarify the law and protect wetlands.

The controversy has reached the Hill, where allies of conservationists in the last Congress prepared legislation to overcome the *Rapanos* decision and require the permits. But they have been pitted against at least as much opposition from Congressional allies of developers, farmers and private property rights advocates.

Now comes the EPA report that concludes there is significant pollution in more than half of the nation's rivers and streams. Said EPA Office of Water Acting Assistant Administrator Nancy Stoner, "We must continue to invest in protecting and restoring our nation's streams and rivers as they are vital sources of our drinking water, provide many recreational opportunities, and play a critical role in the economy."

The report's findings:

* Twenty-seven percent of the nation's rivers and streams have

excessive levels of nitrogen,

* Forty percent of the nation's rivers and streams have high levels of phosphorus,

* Twenty-four percent of rivers and streams were rated poor due to the loss of healthy vegetative cover,

* Nine percent of rivers and streams had high bacteria levels, making them potentially unsafe for swimming and other recreation, and

* More than 13,000 miles of rivers have fish with mercury levels that may be unsafe for human consumption.

DoI will conduct Statue of Liberty security at Ellis

When the Interior Department and New York City last month said the Statue of Liberty would reopen on the Fourth of July one nagging question remained: Where would security screening take place?

The feds wanted to perform security on ferries; New York City police wanted to do it before visitors boarded ferries.

Now we have an answer and neither side was right. The screening will be conducted on nearby Ellis Island after visitors board tour boats but before they enter the Statue of Liberty.

Said NPS Director Jonathan B. Jarvis, "As we move forward with developing the long term facilities for screening on both Liberty and Ellis islands, we will continue our dialogue and coordination with New York City and New Jersey officials to provide appropriate security measures at Battery Park and Liberty State Park."

Meanwhile, the concessioner Statue Cruises will begin taking reservations in mid-April for trips to the Statue of Liberty National Monument via Ellis Island.

The Statue of Liberty and Ellis Island are closed right now of course

because of damage from Hurricane Sandy. The Park Service said Sandy did not damage the Statue of Liberty itself when it reached New York Harbor on Oct. 29, 2012. But the 12-acre island's utilities, generator and power systems were wiped out.

On March 19 Secretary of Interior Ken Salazar announced that sufficient repairs to the Statue of Liberty would be made by July 4 to reopen the monument. Salazar did not provide a date for the reopening of Ellis Island. Like the Statue of Liberty Ellis Island is located in New York Harbor.

Of the possible reopening of Ellis Island, NPS Northeastern Regional Director Dennis R. Reidenbach said last month, "As far as the museum facilities we had to move over a million artifacts off the island because they were suffering deterioration from the water systems there. So at this point in time we don't have a date with Ellis Island when we will be able to open it up again. I just want to say that all of our attention at this point has been, like, all hands on deck to get the Statue open at the earliest possible date."

Although the Ellis Island museum will not reopen soon, the Park Service intends to construct a temporary security screening facility on Ellis Island for Statue of Liberty visitors. Statue Cruises will first transport passengers headed for the Statue of Liberty to Ellis Island for screening and thence to Miss Liberty.

The screening facility will be temporary. NPS said it is "designing a permanent solution for screening on Ellis Island."

The Park Service has been under tremendous pressure from New York and New Jersey politicians, the public and concessioners to reopen the Statue of Liberty. The Park Service had been mum about an opening date, as rumors circulated that the opening would be delayed until fall.

The Park Service said the delays in reopening the Statue of Liberty were

caused strictly by the amount of damage imposed by Sandy, and not by unrelated infrastructure projects, as has been alleged.

According to New York City newspapers the delay was also fed by a disagreement over security between the feds and the NYPD. The feds wanted to perform security on ferries; the feds wanted to do it before visitors boarded ferries. Apparently, that dispute has been resolved.

In an emergency appropriations bill for Hurricane Sandy (PL 113-2 of January 29) Congress set aside \$59 million to repair the Statue of Liberty and Ellis Island. But Reidenbach said the Park Service should come in under the \$59 million.

In the emergency bill Congress put up a total of \$348 million for Park Service repairs in the Mid-Atlantic States. The law contains another \$360 million for the Interior Department to allocate among all agencies.

Here's what the law does provide:

Capital improvements DoI and FS:

The Park Service will receive \$348 million. In its request for the money the Obama administration singled out for assistance Liberty Island, Ellis Island, Gateway NRA, and Fire Island units, but it also said national parks in Florida, North Carolina and Washington, D.C., should receive help.

The Fish and Wildlife Service will receive \$78 million primarily to repair damage in the E.B. Forsythe National Wildlife Refuge (New Jersey), the Long Island National Wildlife Refuge Complex (New York) and Prime Hook National Wildlife Refuge (Delaware).

The Forest Service will receive \$4.4 million to address damage to property, roads and trails at the Grey Towers National Historic Site and in the White Mountain and Monongahela National Forests.

Interior Department prevention:

The law appropriates \$360 million of flexible money to the Interior Department

"to restore and rebuild national parks, national wildlife refuges, and other Federal public assets; increase the resiliency and capacity of coastal habitat and infrastructure to withstand storms and reduce the amount of damage caused by such storms."

Historic Preservation: The law appropriates \$50 million for grants to states "to fund rehabilitation and restoration of historic properties." No local match will be needed.

Corps construction/maintenance: The law allocates \$4.281 billion to the Corps of Engineers for Construction (\$3.46 billion) and Operations and Maintenance (\$821 million).

Senate WRDA bill begins to move; Everglades unclear

The Senate Environment and Public Works Committee (EPW) approved a comprehensive water projects bill (S 601) March 20, that may provide a go-ahead to Everglades-related projects.

We say may, because Congress no longer singles out specific projects in such legislation, on the grounds that that would constitute earmarks. Instead, S 601 simply authorizes the Corps of Engineers to decide which projects it should prioritize under annual appropriations.

The bill does say that the Corps has formally recommended to Congress 18 projects that Congress in turn would authorize in S 601, without identifying them by name.

If the Corps so chooses, four Everglades projects could be in the mix. Leaders of the Florida Congressional delegation introduced separate, stand-alone legislation February 28 to authorize almost \$1.4 billion in new projects.

Perhaps the most achievable strategy for approval for the projects would be inclusion in S 601, called the Water Resources Development Act (WRDA).

Sen. Bill Nelson (D-Fla.) and

Reps. Alcee Hastings (D-Fla.) and Mario Diaz-Balart (R-Fla.) put the legislation on the table as a stand-alone bill (S 414, HR 913).

Leaders of both the Senate EPW committee and the House Transportation Committee have said they intend to try to move this year a broad WRDA bill.

Since 2000 when Congress approved an overarching multi-billion-dollar Comprehensive Everglades Restoration Project (CERP) in a previous WRDA, only two of the dozen or so projects anticipated by the law have been authorized.

Congress must act separately from CERP to (1) authorize the additional projects and (2) appropriate money for them. However, it is difficult to imagine Congress approving such additional spending in a time of severe retrenchment/sequestration.

Nevertheless, the Nelson, Hastings and Diaz-Balart bills would authorize four specific projects in the *Everglades for the Next Generation Act*.

"Congressional inaction has been a roadblock for far too long despite bi-partisan support for restoration," said Hastings. "An awkward state of limbo is not the future Congress had in mind for the Everglades when it passed CERP, and it is not the future that the American people deserve."

In the House on February 8 House Transportation Committee Chairman Bill Shuster (R-Pa.) listed a new WRDA bill as the first priority on the committee's agenda for this year.

Under CERP the Corps of Engineers, the State of Florida and Interior Department agencies are charged with carrying out major projects to restore the Everglades by in general replumbing south Florida.

The Everglades Foundation praised Diaz-Balart and Hastings. Said foundation CEO Eric Eikenberg: "I commend Congressman Diaz-Balart and Congressman Hastings for their dedicated, bi-partisan commitment

as Everglades Caucus co-chairmen, and for their recent introduction of the *Everglades for the Next Generation Act*. Authorization of shovel-ready CERP projects is a huge step in the right direction for Everglades restoration, eliminating the potential for further bureaucratic delays in the future."

He added, "The State of Florida has shown leadership over the years as a partner in the CERP process. This legislation, if enacted, will recognize Florida's investment in Everglades protection with the authorization of these critical next generation projects."

Indeed, under CERP the federal government pays half the freight and the State of Florida half.

The four projects in S 414 and HR 913 are:

Caloosahatchee River West Basin Storage Reservoir, \$201 million (\$105 million federal, \$105 million state),

Biscayne Bay coastal wetland, \$192 million (\$96 million each),

Broward County water preserve area, \$834 million (\$417 million each), and

C-111 Spreader Canal, \$165 million (\$82.5 million each).

More information is available on the projects at:

http://www.evergladesplan.org/pm/projects/landing_projects.aspx.

It's green versus green in Point Reyes oyster war

A rump group of environmentalists - including famed chef Alice Waters - is recommending a new environmental balance in the national parks that would accept economic enterprises. And less wilderness.

That recommendation controverts the position of traditional environmentalists such as the National Parks Conservation Association, which

advocate the elimination of economic enterprises.

Specifically, the breakaway environmentalists, led by Waters, are arguing that an oyster farm in Point Reyes National Seashore would provide a net benefit to the public, and should be allowed to stay.

Waters and several other noted chefs joined farming advocates in filing a legal brief in a major lawsuit that contests an Interior Department decision to shutter the Drake's Bay Oyster Company in Point Reyes. A federal appeals court has temporarily stayed that decision.

"Closing down the Oyster Farm would simply be a mark in the 'win column' for the National Park Service and other traditional conservationists, wilderness advocates stuck in an archaic and discredited preservationist paradigm, whose apparent aim is to convert Drakes Estero to titular wilderness status at any cost," says the brief.

But that assertion does not address any *legal* argument required to overturn a Nov. 29, 2012, decision of Secretary of Interior Ken Salazar that closed the oyster farm and cannery, which has operated within Point Reyes for more than 60 years.

The brief does posit a legal argument against the Salazar decision. It agrees with the plaintiffs in the lawsuit who argue that the Interior Department and the Park Service violated the National Environmental Policy Act by not providing public notice that an EIS was completed. Instead, Secretary of Interior Ken Salazar simply signed the decision.

Says the amicus curiae filing, "In fact, although the FEIS, dated November 2012, was made available just before Secretary Salazar's visit to the Oyster Farm on November 21, the FEIS has never been officially published. Rather, at this stage, NPS and Secretary Salazar assert that the 'notwithstanding any other law' phrase in Section 124 excused preparation of an EIS, and that the FEIS

was used merely to 'inform' Salazar's decision and Order."

Section 124 refers to a provision of the fiscal year 2009 appropriations law (PL 111-88 of Oct. 30, 2009) that authorized but did not require the secretary of Interior to extend Drake Bay Oyster Company's permit for 10 years, "notwithstanding any other provision of law." Section 124 did not mention an EIS, although NPS prepared one.

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 a couple more months 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 his ally, Sen. Dianne Feinstein (D-Calif.), 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."

The amicus curiae was filed by Alice Waters; the Hayes St. Grill, a restaurant in San Francisco; Marshall's Tomales Bay Oyster Company, a distributor who buys Drakes Bay oysters; and several agricultural interests.

Waters is a leader of the national movement to use locally-sourced, natural ingredients in cooking. She has been an outspoken backer of the environmental movement.

FS cabin owners say CBO is now okay with new fee bill

A representative of national forest cabin owners takes issue with two crucial arguments advanced in an article in *FPR* last week on legislation (HR 1159) to revise national forest cabin fees.

First, we noted a Congressional Budget Office (CBO) report that estimated a predecessor House bill in the last Congress would have collected \$2 million less per year than the existing system.

However, the sponsors subsequently revised that bill (and that is the measure introduced this year) and CBO said the revised bill would not impact spending.

Second, the Forest Service said in a Senate hearing a year ago that it was concerned that the fees for the most expensive cabins under the new formula

would cost the government money. The cabin owners fault that logic.

At issue is the version of a bill introduced March 14 by four House Republicans that would establish a new system of fees for the 14,000 owners of cabins within the National Forest System. HR 1159 is similar to a bill the House passed last year by voice vote.

Lead sponsor and House Natural Resources Committee Chairman Doc Hastings (R-Wash.) said the bill would prevent soaring increases in fees assessed against family-owned cabins in the forests. "For example, some families have received notice that their fees would increase by 1,000 percent," he said. "It's important that the public have access to public lands and these cabins shouldn't be priced-out of existence."

The new bill would establish ten tiers of fees beginning at \$500 per year and increasing by \$500 increments to a top fee of \$5,000.

Under the existing law - the Cabin User Fee Fairness Act of 2000 - the Forest Service in 2007 began reappraising cabins, based on five percent of the market value. Because some cabins had not been appraised for as much as 30 years the appraisals went through the roof.

CBO report: In the last issue, *FPR* correctly quoted a Nov. 17, 2011, CBO report that said the initial version of the bill in the last Congress would cost up to \$30 million.

CBO said, "Over that period, fees collected from cabin owners by the Forest Service would total about \$30 million less than would be collected under current law (such losses are shown as an increase in direct spending). In addition, the collection of newly established fees assessed on cabin owners who sell their cabins would increase receipts (thus reducing direct spending) by about \$5 million over that period."

Subsequently, the sponsors revised

the measure and CBO on Sept. 7, 2012, amended its report to indicate the bill would not cost taxpayers anything. "On net, CBO estimates that implementing the legislation would increase offsetting receipts (a credit against direct spending) by \$8 million over the 2012-2017 period and would have no significant impact on direct spending over the 2012-2022 period," said CBO the second time around.

High-end fees: In the last issue we said that Leslie A.C. Weldon, deputy chief of the Forest Service, expressed concerns to the Senate Energy Committee on March 22, 2012, about high-end cabins not paying high enough fees.

Weldon said, "Our analyses indicate that many of the proposed fees, particularly for the higher valued lots, would be less than those which would be paid under current law and which results in fees being below market value. As previously noted, fees below market value can lead to substantial profits when cabins are sold, as the sale prices will reflect the value of the locations more than the value of the cabins. To reduce the likelihood of these profits, the proposed fee schedule should be more closely tied to market value."

But Aubrey King, Washington representative of the National Forest Homeowners Association, took issue with that and said high fees were already forcing the owners of costly cabins to abandon them. "People who were paying \$3,000 to \$4,000 fees are seeing them shoot up to \$15,000 to \$20,000," he said. "It is really an inequitable situation. Frankly, they can't sell their cabins and are going to have to walk away from them."

Motorcyclists, sportsmen duel over FS trails in Colorado

Two sets of recreationists - hunters and fishermen on one side and motorcyclists on the other side - are squared off against each other in a dispute over motorcycle use on backcountry trails.

The motorcyclists won the most

recent bout over access to trails within the San Juan National Forest in Colorado when a federal judge upheld access to the trails.

The hunters and fishermen brought the lawsuit, arguing that the Forest Service erred by continuing to make the 14 trails available to off-highway vehicles (OHVs) in a June 16, 2010, order by the supervisor of the San Juan. They contend that 1983 and 1992 forest management plans closed the trails to motorcycle use.

Judge Marcia S. Krieger, chief judge of the U.S. District Court for Colorado, disagreed with the hunters and fishermen and agreed with the motorcyclists that the 1992 plan and subsequent San Juan forest documents assume the trails are to be kept open.

Held Krieger, "Having thus concluded that the 2010 Order did nothing more than continue the USFS' existing permissions for motorized use of the trails in question, none of the Petitioner's claims directed at that decision survive."

In addition, Krieger rejected the plaintiffs' assertion that the service should have performed an environmental analysis prior to the 2010 decision. "No NEPA claim lies, as the 2010 Order - that is, the mere continuation of existing policies - does not constitute a 'major federal action' giving rise to NEPA requirements," she said.

The Backcountry Hunters and Anglers, Colorado Chapter, brought the lawsuit because they said the OHV use was damaging backcountry trails. The plaintiffs said that when they brought the damage to the attention of the Forest Service, the service should have closed the trails. The plaintiffs said that a Presidential executive order required closings when such complaints were filed.

But judge Krieger deferred to the judgment of the Forest Service in deciding whether the damage constituted "considerable adverse effects" and merited closure.

Said the judge, "The Court need not recite in detail the particular contentions and responses by the parties on this point; it is sufficient to note that, in light of the considerable deference granted to the Respondents over matters concerning what constitutes 'considerable adverse effects,' the Court cannot say that the Respondents have acted arbitrarily and capriciously in evaluating the Petitioner's contentions of OHV-induced environmental effects."

An attorney for a group of motorcyclists and their allies in Colorado welcomed the decision. "The Court properly understood that the plaintiff here was aggressively trying to use a Forest Service decision eliminating cross-country motorized travel as a weapon to impose a narrow preservationist view on the much broader spectrum of users who enjoy these trails," said the counsel, Paul Turcke.

Notes

2012 NPS attendance good. Despite Hurricane Sandy more than 3 million people visited the national parks in 2012 than in 2011, NPS said April 3. NPS estimates 2 million more people would have visited if Mid-Atlantic park units had not been closed by Sandy in late October. NPS said that more than 282 million people visited the parks in 2012, the sixth most in parks history. NPS Director Jon Jarvis used the occasion to promote two new Park Service units. "The dedication of the Martin Luther King Jr. National Memorial and the opening of the César E. Chávez National Monument in 2012 help us to continue to explore how our nation of many faces and many voices has developed," he said. Blue Ridge Parkway with more than 15 million visitors was the most visited single unit of the National Park System. Great Smoky Mountains National Park with almost 10 million visitors was the most visited national park. The other most visited units in the National Park System were in order Golden Gate National Recreation Area, Great Smoky Mountains National Park, George Washington Memorial Parkway, Lake Mead National Recreation Area, Lincoln Memorial, Natchez Trace

Parkway, Gateway National Recreation Area, Gulf Islands National Seashore and Delaware Water Gap National Recreation Area. More information is available at <http://www.nps.gov/news/researchlinks.htm>.

P-R and D-J cut by \$39 million.

The Fish and Wildlife service said last month that it has reduced the annual Pittman-Robertson sport hunting and Dingell-Johnson sport fishing allocations by a combined \$39.2 million because of the fiscal year 2013 budget sequestration. That left \$882.4 million in distributions to state and territorial fish and wildlife agencies for conservation programs. The programs reimburse state agencies up to 75 percent of project costs, leaving states to match at least 25 percent. The revenues for the programs come from excise taxes on hunting and fishing equipment. To see all state allocations go to:

[http://www.fws.gov/home/feature/2013/pdf/Master apport table Final 2013.pdf](http://www.fws.gov/home/feature/2013/pdf/Master%20apport%20table%20Final%202013.pdf).

FS may reopen caves in Rockies.

To the dismay of the Center for Biological Diversity the Forest Service's Rocky Mountain Region has proposed a policy that would reopen caves in portions of three states. The region closed the caves three years ago because of concerns about the spread of white-nose syndrome among bats, a fast-spreading disease that has killed millions of the mammals (bats are not birds). The proposed policy, contained in an environmental assessment, would establish three different standards for opening forest caves to bats: One, if no disease had been found within 250 miles of a cave, the cave would "generally" be opened for humans, such as tourists and recreationists. Two, if the disease had been found within 250 miles of a cave, the cave would be closed to humans. Three, if the disease had been identified in an area but had not affected bats, caves could be opened. The Center for Biological Diversity's Millie Matteson, who has been leading a national campaign to draw attention to the white nose syndrome, criticized the Forest Service. "This decision is a terrible blow to efforts to forestall the spread of this wildlife epidemic to the West," she

said. "It's extremely short-sighted, giving priority to the recreational interests of a small group of people over the survival of western bats, . . ." The Park Service said February 11 that white-nose syndrome has spread to a tenth unit of the National Park System - Cumberland Gap National Historical Park in Kentucky, Tennessee and Virginia. In January the disease showed up in Mammoth Cave National Park in Kentucky. The 10 parks with the disease are all in the East. The Rocky Mountain Region's environmental assessment is available at: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5414178.pdf.

Big Rockies lands bill back. Rep. Carolyn Maloney (D-N.Y.) reintroduced a fortnight ago legislation (HR 1187) that would designate more than 20 million acres of wilderness across the northern Rocky Mountains. Maloney and other House and Senate members have introduced the Northern Rockies Environmental Protection Act repeatedly since 1992. The bill would designate wilderness in Idaho, Montana, Wyoming, Oregon and Washington states. It would also require studies of two major national park additions - Hells Canyon-Chief Joseph National Park & Preserve Study Area (1,439,444 acres) along the Oregon/Idaho border and the Flathead National Preserve Study Area (285,078 acres) next to Glacier National Park. It would also designate 1,810 miles of wild and scenic rivers. Mike Garrity, executive director of the Alliance for the Wild Rockies, acknowledged the long, hard slog for bill supporters over the last two decades. "Historically, important legislation takes a long time to pass," he said. "We thank Representatives Maloney, Grijalva, and Markey for fighting for the protection of the native ecosystems surrounding Yellowstone and Glacier National Parks." Reps. Edward Markey (D-Mass.) and Raúl Grijalva (D-N.M.) cosponsored the bill.

Court rejects Alaska roads plea. For the second time a federal court has ruled that the Tongass National Forest must be included in a 2001 Clinton administration national forest roadless rule. In this instance U.S. District Court Judge Richard J. Leon in the U.S. District Court for the District

of Columbia said the state failed to file its lawsuit in time. Leon said the state had six years from the January 2001 Clinton rule to appeal but failed to do so until 2011. In December 2003 the Bush administration exempted the 9.6 million acres of roadless forest in the Tongass from the Clinton rule, but on March 4, 2011, the U.S. District Court in Alaska vacated the Bush exemption. The State of Alaska then filed this lawsuit. And on March 21 Leon dismissed it. Leon's decision is at: https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv1122-58.

Civil War grants distributed.

The Park Service March 25 said it has distributed \$2.5 million to acquire land for four Civil War battlefields. The projects are in Marietta, Ga.; Bentonville, N.C.; Cool Springs, Va.; and Summit Point, W.V. The \$2.5 million is part of a \$9 million 2012 appropriation for the acquisition of lands to protect Civil War battlefields. The largest allocation March 25 was of \$2,011,551 to the State of Georgia for a Marietta Operations Battlefield. More info is available at: <http://www.nps.gov/history/hps/abpp/>.

Outdoor equipment sales climb.

The Outdoor Industry Association (OIA) said March 25 that the sale of outdoor recreation equipment continued to grow in February, extending a trend from the last fiscal year. OIA said the sale of outdoor hard goods jumped by 14.4 percent to \$278.9 million and the sale of apparel jumped 19.4 percent to \$304.3 million. Altogether outdoor gear increased by 10.2 percent to \$769.4 million. OIA said last month that sales of outdoor products increased 5.1 percent over the last fiscal year to \$11.4 billion. For OIA's purposes the fiscal year ended on January 31. OIA said the largest increases came from Internet sales (an increase of almost 26 percent) and specialty stores (up 13.1 percent.) For more information go to <http://www.outdoorindustry.org>.

FY 2014 approps work scheduled.

Now that fiscal year 2013 appropriations legislation is complete (*see page one article*), the White House and Congress can begin to focus on developing

fiscal 2014 appropriations bills. The actions start with the submittal of the administration budget request April 10. The House Appropriations Committee has already scheduled a hearing on the Park Service budget for April 11 and the Senate Energy Committee has scheduled a hearing on the Forest Service budget for April 16.

Boxscore of Legislation

Appropriations Fiscal 2013 (first half)

Congressional leaders agreed to base funding for all appropriations bills during the first half of fiscal 2013 on an August 2011 budget agreement. President Obama signed the six-month bill into law September 28 as PL 112-75.

Appropriations Fiscal 2013 (second half)

HR 933 (Rogers). President Obama signed into law March 26 as PL 113-6. Law approves appropriations through end of fiscal year at about fiscal 2012 levels, minus an \$85 billion sequestration.

Appropriations Fiscal 2014

Budget request due April 10.

Congressional budget Fiscal 2014

H Con Res 25 (Ryan), S Con Res 8 (Murray). House approved March 21. Senate approved March 23. Senate anticipates \$5 billion more for natural resources than House.

Land and Water Conservation Fund

S 338 (Baucus). Baucus introduced February 14. Would guarantee \$900 million per year to program in perpetuity.

National monuments

HR 250 (Chaffetz), HR 382 (Foxx), HR 432 (Amodei). Chaffetz introduced January 15. Foxx introduced January 23. Amodei introduced January 29. Chaffetz would require Congressional approval of national monuments designated under the Antiquities Act. Foxx would require state approval. Amodei would require Congressional approval of any monument in Nevada.

National heritage areas

HR 445 (Dent). Dent introduced February 1. Would establish national policy and national standards for heritage areas.

Montana wilderness/recreation areas

S 37 (Tester). Tester introduced January 23. Would designate 666,260 acres of wilderness, six recreation areas totaling 288,780 acres and special management areas totaling 80,720 acres.

Farm bill

S 10 (Reid). Reid introduced January 22. Would establish new farm policy through 2018, complete with conservation programs.

Hunting federal lands

S 170 (Murkowski). Murkowski introduced January 29. Would declare BLM and FS lands open to hunting and fishing unless specifically closed.

Everglades projects

HR 913 (Hastings), S 414 (Nelson). Both introduced February 28. Would authorize four major restoration projects at \$1.4 billion (see following).

WRDA (Everglades)

S 601 (Boxer). Senate committee approved March 20. Would authorize new projects (see previous), perhaps including Everglades restoration.

Hatteras ORVs

HR 819 (Jones). Jones introduced February 16. Would rescind a Park Service policy limiting off-road-vehicles on the seashore.

National park in Delaware

HR 703 (Carney), S 347 (Carper). President designated national monument February 25. Provides a first national park in the first state to join the union.

Manhattan Project

HR 1208 (Hastings), S 507 (Cantwell). Hastings introduced March 15. Cantwell introduced March 7. Would establish national park unit to acknowledge development of the Atom Bomb in Alamos, N.M.; Oak Ridge, Tenn.; and Hanford, Wash.

Forest Service cabin fees

HR 115 (Hastings). Hastings introduced March 15. Would establish a new system of fees for owners of cabins within the National Forest System.