

Federal Parks & Recreation

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GOP warns that renewal of LWCF faces major obstacles

Western House Republicans posted notice April 15 that an extension of the expiring Land and Water Conservation Fund (LWCF) will not be automatic in authorizing committees this year. At least on their side of the Hill.

At an inaugural hearing House subcommittee on Federal Lands Chairman Tom McClintock (R-Calif.) unloaded on federal land acquisition. But he had kind words for a state grant program financed by LWCF.

On the federal side he said, "Last week this subcommittee received testimony from government land management agencies regarding the 2016 budget request. All expressed a burning desire to vastly increase their holdings while admitting to large and growing backlogs in deferred maintenance. That is the issue before us today."

But of the state grant program McClintock said, "About one-quarter of LWCF funding goes to a state side grant program which seems to have been the most successful. It's the program most members cite when extolling the benefits of LWCF. . .Because it requires a match from states and is administered through state agencies there seems to have been far greater accountability in spending these funds and far greater success in development of state park and recreational areas."

Of note McClintock's subcommittee does not handle appropriations; the House subcommittee on Interior appropriations chaired by Rep. Ken Calvert (R-Calif.) decides annual LWCF allocations. But McClintock's subcommittee would be in charge of drafting legislation to extend LWCF beyond its September 30 expiration.

As for an extension of the law McClintock's boss House Natural Resources Committee Chairman Rob Bishop (R-Utah) did not respond to our requests for his position.

However, Bishop has consistently been one of the leading LWCF critics in Congress.

It is not axiomatic that the extension of LWCF would go through Bishop's authorizing committee. An appropriations bill, a budget reconciliation bill or some other measure could always extend the 50-year old law.

But program supporters would like a complete rewrite - including guaranteed money - in legislation from authorizing committees.

To that end nine House Republicans cosponsored legislation (HR 1814) April 15 that would make LWCF permanent. Leading the Republican cosponsors was Rep. Mike Fitzpatrick (R-Pa.)

Principal sponsor Rep. Raúl M. Grijalva (D-Ariz.) said at the House subcommittee hearing the LWCF money should not be used for federal land management agency or for transportation.

"This is not free money," he said, adding, "Diverting money from this fund away from its original purposes would set a dangerous precedent and I would hope that is not the direction this Congress goes.

Grijalva said the new House bill is similar to an amendment that received 59 votes on the Senate floor January 29, one vote short of the 60 needed to pass. Significantly, thirteen Republicans voted for LWCF.

That amendment (SA 92) from Sen. Richard Burr (R-N.C.) would have extended LWCF in its existing form, i.e. making annual distributions subject to appropriations, rather than guaranteeing the money.

There is push back against the renewal of LWCF from private property rights groups. The American Land

Rights Association (ALRA) has urged its members to contact the House committee in opposition to the bill. ALRA is most concerned about condemnation authority.

Said ALRA in a bulletin to its members just before the hearing, "Condemnation automatically comes with the power to govern. So unless Congress in the new Land and Water Conservation renewal authorization says the money cannot be used for condemnation (eminent domain) then the Park Service and other agencies can automatically use the money to condemn your property."

Thus far most action in support of LWCF has come in the Senate. In addition to the January 29 vote on the Burr amendment on March 27 the Senate recommended the extension of LWCF in a fiscal year 2016 Congressional budget resolution (S Con Res 11).

However, the budget is purely advisory and line committees would still have to do the heavy lifting in subsequent legislation to extend LWCF, which is due to expire September 30.

Although she is not a big fan of LWCF Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) has promised to consider renewing LWCF in her panel. In fact her committee has scheduled a hearing for next Wednesday (April 22).

However, Murkowski has suggested using a portion of LWCF money to attack federal land management agency backlogs, instead of for land acquisition.

On March 27 six Democratic senators led by Sen. Maria Cantwell (D-Wash.) introduced legislation (S 890) that would permanently reauthorize LWCF, with guaranteed funding. No Republican senators cosponsored the bill, even though Republican support is absolutely essential for such legislation in the Senate.

Five Republican senators led by Burr have already sponsored legislation (S 338) this year that would make LWCF permanent at \$900 million per year. Six Democrats cosponsored the Burr bill.

In a third Senate bite of the apple on February 5 sympathetic senators attempted to gain Senate passage of Burr's S 338 as a stand-alone bill.

Burr asked the Senate to pass his bill under a Unanimous Consent procedure, which by definition requires the acquiescence of all members. But Sen. Mike Lee (R-Utah) objected and said reauthorization of LWCF is too important an issue to take up without a thorough scrubbing in committee and on the floor. So Burr and company will have to wait another day.

In submitting its annual budget request to Congress February 2 the Obama administration recommended that Congress (1) appropriate \$400 million for LWCF in fiscal 2016 and (2) by separate authorizing legislation guarantee an additional \$500 million through an extended rewrite of the law.

Here are some of the LWCF-related fiscal 2016 Obama budget requests:

* LWCF FEDERAL APPROPRIATION: For federal land acquisition the administration recommended \$235.8 million compared to a final fiscal 2015 appropriation of \$165.7 million. The breakdown: NPS acquisition, \$64.3 million; BLM, \$38 million; FWS, \$58.5 million; FS, \$63 million; and DoI Valuation Services, \$12 million.

* LWCF FEDERAL (NEW GUARANTEED PROGRAM): This presupposes Congress approves new legislation to guarantee \$900 million per year for LWCF. These recommendations are in addition to the regular appropriations above. The breakdown: NPS acquisition, \$106.7 million; BLM, \$55.4 million; FWS, \$106.3 million; FS, \$64.7 million; and DoI Valuation Services, \$6 million.

* LWCF STATE APPROPRIATION: For state LWCF grants the administration recommended \$53.2 million, compared to a fiscal 2015 appropriation of \$48 million.

* LWCF STATE (NEW GUARANTEED PROGRAM): This allocation presupposes Congress approves new legislation to guarantee \$900 million per year for LWCF. For state grants the proposal

would add \$47 million, for a total of \$100 million

Murkowski, critics exchange fire over fed'l land disposal

Sen. Lisa Murkowski (R-Alaska) defended April 7 her Senate-passed legislation that encourages Congress to authorize disposal of federal lands.

Murkowski is obviously disgruntled by charges from conservationists that her amendment to a Senate budget could lead to the sell-off of prized federal tracts.

In a statement clarifying the intent of her amendment she first said land disposals should produce positive results. "This simple one-paragraph amendment enables, with proper safeguards, the types of exchanges, sales or transfers with states or local governments that are often used to craft balanced, comprehensive land policies that facilitate economic development, empower states and local governments, and improve conservation efforts," she said.

Then she defended her amendment as a needed tool for federal land managers. "Particularly at a time when the federal government is struggling to pay its bills and properly maintain its property, the budget should provide the federal government the flexibility to manage its land holdings in the most efficient and productive manner possible, from both an environmental and economic standpoint," Murkowski said.

The House and Senate both adopted positions last month endorsing the disposal of federal lands to state and local governments, to the dismay of sportsmen and environmentalists.

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

The Senate provision drafted by Murkowski simply makes room in the budget for "initiatives to sell or transfer to, or exchange with, a State or local government any Federal land that is not within the boundaries of a National Park, National Preserve, or National Monument."

The Senate approved the lead amendment from Murkowski March 27 in a close 51-to-49 vote that favors disposal of the federal estate through sale, transfer or exchange to state and local governments.

Murkowski said that the amendment is advisory. "So nothing in the language that we have included in this amendment actually sells, transfers or exchanges a specifically identified piece of property," she said. "Any legislation enabled by this spending-neutral reserve fund will have to go through the process and be voted either up or down in regular order."

The amendment excludes from disposal national parks, national preserves and national monuments.

The Alaska Wilderness League said the vote was so close that Murkowski at first didn't have enough support to pass her amendment, so Senate leaders extended the toll until they could find a deciding vote. Said league executive director Cindy Shogan, "This ill-conceived amendment could forfeit our natural heritage to special interests and result in a loss of recreational opportunity and access for all Americans."

The House and Senate are now expected to iron out the differences between the two resolutions to produce a final Congressional budget. If Congress does produce a final budget, it will be tempted to put together a reconciliation bill later this year to implement it.

With Republicans in control of both the House and Senate and with western states demanding the transfer of millions of acres of federal lands to them, the chances of Congress disposing of federal land go up.

Hunters and fishermen are leading

the chase in opposition to land disposals. More than 100 sportsmen's groups wrote Congressional leaders April 14 demanding an end even to talk of federal land disposal.

"We're calling on lawmakers to end this conversation now," said Whit Fosburgh, president of the Theodore Roosevelt Conservation Partnership. "Nothing galvanizes sportsmen like the loss of access for hunting and fishing, and continuing to indulge this controversial idea is keeping us from the real task of managing our public lands."

The sportsmen's letter was sent to "state and national decision makers."

The Senate did not vote on a separate, opposite amendment from Sen. Martin Heinrich (D-N.M) that would have barred the Senate from approving any sale of federal land to balance the budget. Heinrich withdrew the amendment.

But before withdrawing the amendment he said, "Selling off America's treasured lands to the highest bidder would result in a proliferation of locked gates and no-trespassing signs in places that have been open to the public land used for generations. This would devastate outdoor traditions like hunting, camping and fishing that are among the pillars of Western culture and a thriving outdoor recreation economy."

The House resolution would, like Murkowski's, have Congress dispose of federal lands. A House Budget Committee report accompanying H Con Res 27 says, "This budget keeps funding for land acquisition under congressional oversight and encourages reducing the Federal estate, giving States and localities more control over the land and resources within their borders."

In a related action Rep. Crescent Hardy (R-Nev.) introduced legislation (HR 1445) last month that would bar federal agencies from acquiring additional land unless they first disposed of an equal amount of land. That bar would only apply if the federal

budget were not balanced.

As we have often documented movements are afoot in several states to obtain federal lands. They include Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Wyoming.

Most notably, Utah passed a law in 2012 (H.B. 148) that lays claim to 31 million acres of federal land in that state.

However, in a series of analyses the Utah Office of Legislative Research and college professors in the state have questioned the legality of a state takeover as well as the economics of it. For instance, John Ruple, a research associate professor at the University of Utah and coauthor of a major analysis, said of a February report he cowrote:

"If Utah succeeds in taking over federal public lands the state would have no choice but to dramatically increase development. Furthermore, the public would have less, not more, input into land management, and all who utilize what are now public lands – industry and recreation interests alike – would likely see the cost of access increase substantially. In short, the public would suffer from this misguided effort."

Parks advocates call for NPS road set-aside in new law

The National Parks Conservation Association (NPCA) is taking sharp exception to an Obama administration proposal to make the Park Service compete with other Interior Department agencies for road money.

A six-year surface transportation bill called Grow America would have NPS compete for a share of \$296 million per year in department construction/maintenance money. Under an existing surface transportation law NPS receives a \$240 million per year set-aside. The administration submitted the bill to Congress March 30.

"GROW AMERICA fails our national

parks by eliminating historically guaranteed funding levels for park transportation projects and ignoring \$11.49 billion in backlogged transportation and maintenance needs that jeopardize public safety," said Laura Loomis, NPCA deputy vice president of government affairs.

However, that is only part of the story because the administration also requested a separate, \$150 million per year pot for a new, nationally-significant federal and tribal roads program. And the administration requested \$250 million per year for federal lands access, the same as in existing law.

The Park Service would be eligible to vie for portions of the money from the two programs.

Still, NPCA said the total maintenance backlog for paved and unpaved roads merits a larger direct investment by the nation. Said the association, "Not only does GROW AMERICA eliminate guaranteed funding for transportation systems within our national parks, this proposal insufficiently addresses over \$6 billion in transportation-specific maintenance projects that contribute to NPS's \$11.49 billion total backlog."

On March 23 NPS said its maintenance backlog had grown by \$190 million between the end of fiscal year 2013 and the end of fiscal 2014.

Congress is paying attention. On March 27 Sens. Maria Cantwell (D-Ore.) and Rob Portman (R-Ohio) March 27 persuaded the Senate to accept an amendment to a Senate budget (S Con Res 11) that encourages authorizing and appropriations committees to set aside money for the National Park Service Centennial in 2016. By definition much of that money would be used for the Park Service backlog.

A white paper supporting the Cantwell-Portman amendment said, "Over the last century, the park system has grown and aged, but funding has not kept pace to provide the level of service necessary for visitors to

have unforgettable experiences. The result is a mounting list of needs and 4reduced park visitor experiences, just as the parks and expecting a significant increase in visitors for the 2016 Centennial."

In addition to the federal lands roads money, the Obama administration has proposed a massive investment in other park needs in advance of the Centennial, including for maintenance.

The fiscal 2015 Obama administration budget recommends for the Park Service Centennial a \$326 million increase in regular appropriations and \$500 million in a new fund to address maintenance.

The maintenance program would require Congressional approval and might dovetail with the Cantwell-Portman amendment. Some of the \$500 million could be used by other Interior land management agencies, as well as the Forest Service.

So the money for the Centennial is expected to come on as many as three tracks. One is a regular appropriation to meet the administration recommendation of a \$326 million increase. Second is a matching grant fund, such as the administration's recommended \$500 million program and the Portman-Cantwell legislative initiative. And third is the park roads money coming from a surface transportation bill.

Congress is under the gun on the transportation bill front. The existing law, Moving Ahead for Progress in the 21st Century Act (MAP-21), is due to expire on May 31. The House Transportation Committee, the House Ways and Means Committee, the Senate Environment and Public Works Committee and the Senate Finance Committee are all now trying to put together a multi-year bill.

On April 15 Senate Environment and Public Works Committee Chairman James Inhofe (R-Okla.) and ranking Democrat Barbara Boxer (D-Calif.) held a rally on Capitol Hill to build support for a long-term bill.

Boxer said the committee was about ready to drop a bill. ""We are finalizing the last bits of the proposal because we can't keep holding this off; we need action," she said.

We understand that one game plan circulating on the Hill would (1) approve a three- or four-year patch to keep MAP-21 or its successor going with a combination of existing gasoline taxes and tax reforms. At the same time Congress would (2) establish a blue ribbon commission to recommend sources of money in the out-years.

The administration's recommended Grow America bill would also keep alive a program that feeds park and recreation activities. That is, the administration recommended that Congress allocate \$847 million to the Transportation Alternatives Program (TAP) in fiscal year 2016, up \$27 million from a fiscal 2015 allocation of \$820 million. The program pays for a group of outdoor initiatives.

The bill would have the TAP allocation, which would receive two percent of highway account money from the Highway Trust Fund, increase marginally each year after that.

Crucial House and Senate budget negotiations are due

For the first time since 2009 the House and Senate are on track to produce a unified Congressional budget, for fiscal year 2016. If they do produce a single budget, it would have major, substantive policy implications.

First and foremost for park and rec programs the two houses are in rough agreement that domestic spending should be frozen at fiscal 2015 levels. Second, an agreement could lead to the writing of a reconciliation bill to implement the budget. The reconciliation bill could authorize dozens of major policy changes, such as the disposal of federal lands.

For now the House and Senate must iron out differences between a House-passed budget resolution (H Con Res 27) of March 25 and a Senate-passed

resolution (S Con Res 11) of March 27. Technically, the budget law called for completion of a Congressional budget by April 15 but that deadline is almost never met, and was not this year.

House Budget Committee Chairman Tom Price, (D-Ga.) and Senate Budget Committee Chairman Mike Enzi (R-Wyo.) have already met and put out a nonstatement statement last week that said they "look forward to Congressional passage of a joint concurrent budget resolution for our nation."

As for the money, Price and Enzi are on the same page. For instance, for a natural resources line item, H Con Res 27 anticipates spending \$35.3 billion in fiscal 2016, about \$1 billion less than the \$36.5 billion in fiscal 2015. The Senate budget would put up \$36.3 billion for natural resources.

However, House Democrats prepared their own budget that would pony up \$38.9 billion in fiscal 2016 for natural resources. The House rejected it.

The Senate resolution among other things recommends that Congress transfer expenses for fighting the one percent of most expensive fires out of line appropriations bills and into disaster funding. And it recommends that the payments-in-lieu of taxes (PILT) program be granted guaranteed funding in perpetuity.

The fire and PILT amendments matter to park and rec programs because they would have Congress shift fire and PILT money out of regular money bills, making room for more spending on conservation and agency management.

The House budget contains neither the emergency fire provision nor the PILT provision, although it does mention a need to treat major fires.

During a long and torturous Senate session March 26 and 27 that ended at 4:23 in the morning senators accepted without a vote a Park Service policy amendment from Sens. Maria Cantwell (D-Ore.) and Rob Portman (R-Ohio). It encourages authorizing and appropriations committees to set aside

money for a Park Service Centennial program.

No Senate floor amendment was needed for the Land and Water Conservation Fund (LWCF) because, coming out of committee, S Con Res 11 already carried a recommendation that it be made permanent. (*See related article page one.*)

Again, the House budget did not include a comparable LWCF provision.

The amendments accepted by the Senate are largely symbolic, simply making room in the budget for subsequent actions by Congress on individual legislation. That is, unless Congress puts together a reconciliation bill to implement the budget recommendations later this year.

Congress rarely does assemble such monster reconciliation bills because they would fail because of their own weight after a veto. Nonetheless, a reconciliation bill could be of great importance in the Senate because passage would only require a majority vote, not a 60 percent margin, as is the case for individual bills.

Meanwhile, the House-approved budget includes few of the Senate policy amendments, but that would join the Senate in holding down domestic spending and encouraging disposal of federal lands. The Congressional budget does not go to the President.

The League of Conservation Voters which maintains a conservation-voting scoreboard urged all members of Congress to reject S Con Res 11 and H Con Res 27. "These budgets make drastic cuts to non-military investments that would harm our economy and jeopardize the ability of the Environmental Protection Agency, Interior Department, Energy Department and other agencies to fulfill their mission to protect our health, safeguard our natural resources, and grow clean energy," said the league.

The Theodore Roosevelt Conservation Partnership (TRCP) seconded the motion. TRCP Government Relations Director Steve Kline said, "Conservation

dollars represent less than one percent of the total federal budget and have no meaningful impact on the federal deficit, but defunding conservation would have profoundly negative long-term impacts. In some cases, sportsmen and land managers would lose three dollars in matching funds for every dollar cut."

The outdoor policy receiving the most attention on the Senate floor was the advisability of selling off federal lands. The Senate approved a lead amendment that was sponsored by Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) in a close 51-to-49 vote. It favors disposal of the federal estate through sale, transfer or exchange to state and local governments. (See *related article page 3.*)

Monuments: The Senate debated fiercely but did not vote on an amendment from Sen. Steve Daines (R-Mont.) that would have required a President to consult with state and local governments before designating national monuments, if Congress separately approved substantive legislation to do that. Daines withdrew the amendment.

But before he did Daines said, "My amendment simply holds this and future administrations accountable to what they said they would do, and it protects the voice of the people in decisions such as this. Protecting the voice of the people should not offend Members of this body."

Countered Senate Majority Leader Harry Reid (D-Nev.), "Some Members of Congress – frankly, it is a minority – believe we should repeal or gut (the Antiquities Act). They advocate weakening the Presidential authority that in the past has protected the Grand Canyon and even the Statue of Liberty."

The Daines amendment would not by itself have changed the law affecting monument designations, but it does say that Congress should pass legislation that would require state and local approval of monuments.

A half-dozen such bills have been introduced in the House and Senate this year led by Murkowski's S 437 that would

require Congressional approval of any national monument.

NPCA taking NPS Centennial campaign to Rim of Valley

The National Parks Conservation Association (NPCA) intends to hold events on both coasts tomorrow in support of the Park Service Centennial campaign known as Find Your Parks.

NPCA has scheduled rallies near Miami, Fla., and near Los Angeles, Calif., with the goal of involving new generations as park advocates.

In Los Angeles NPCA will also attempt to muster support for the addition of portions of the Rim of the Valley Corridor near Los Angeles to the Santa Monica Mountains National Recreation Area.

By coincidence on April 14 the Park Service completed a draft Rim of the Valley report that recommends the addition of 173,000 acres in the valley to the Santa Monica Mountains National Recreation Area.

Congress ordered the Park Service in 2008 to conduct a study of the mountains and valleys surrounding Los Angeles – San Fernando, La Crescenta, Santa Clarita, Simi and Conejo valleys of Los Angeles and Ventura Counties.

Three Democratic House members had complained to NPS recently about delays in completing the study, which was due in 2014. Reps. Adam B. Schiff (D-Calif.), Judy Chu (D-Calif.) and Ted Lieu (D-Calif.) wrote NPS Director Jonathan Jarvis urging swift completion of the study. Now NPS has completed a draft study and put it out for public comment. The study is at: <http://www.nps.gov/pwro/rimofthevalley/>.

The Park Service and its friends April 2 began the campaign to spruce up the National Park System for its Centennial in 2016, and beyond. Still to be determined is where the money will come from to pay for the Centennial.

First Ladies Michelle Obama and

Laura Bush enlisted in the campaign. In a ceremony in New York City Interior Department officials promoted the parks to all ages and races, not just older whites who make up the majority of visitors.

Whether the campaign will translate into extra money for the parks - either through contributions or Congressional appropriations - remains to be seen.

As part of the campaign Secretary of Interior Sally Jewell said last month that American Express has committed \$5 million to a nationwide effort to get kids outdoors. The campaign will take place in 50 cities around the country.

Congress may help out. The Senate March 27 accepted without a vote a Park Service policy amendment to a Congressional budget resolution (S Con Res 11) from Sens. Maria Cantwell (D-Ore.) and Rob Portman (R-Ohio). It encourages authorizing and appropriations committees to set aside money for the NPS Centennial.

Specifically, the Cantwell-Portman amendment directs the Senate to make room in the Congressional budget for a Centennial Challenge program that would match private contributions with federal contributions. The amendment is largely symbolic because line committees would have to write and move Centennial legislation.

Among the companies that have committed to support the National Park Foundation's fund-raising efforts are American Express, Budweiser, Subaru, REI, Humana, Disney, Coleman, Coca-Cola and Accenture. Notably absent among the supporters are those huge corporations that most young people identify with, including Apple, Google and Facebook.

Congress in December did approve modest boosts for the Centennial in a fiscal year 2015 appropriations law (PL 113-235 of Dec. 16, 2015) and in an omnibus public lands bill (PL 113-291 of December 19.) The appropriators approved \$25 million for NPS operations and \$10 million for matching endowment grants. That's new money.

The fiscal 2015 Obama administration budget recommends for the Park Service Centennial a \$326 million increase in regular appropriations and \$500 million in a new fund to address maintenance.

The maintenance program would require Congressional approval and might dovetail with the Cantwell-Portman amendment. Some of the \$500 million could be used by other Interior land management agencies, as well as the Forest Service.

Rim of the Valley: In the Rim of the Valley study NPS is evaluating 650,000 acres including 153,000 acres of the existing Santa Monica Mountains National Recreation Area (SMMNRA) and 180,000 acres of the Angeles National Forest.

Said NPS in the draft report, "The study team concludes that it would not be feasible to establish a new partnership unit that would have similar purposes to the existing park, and adjacent to or within close proximity to it. A boundary adjustment to SMMNRA would be more feasible."

Of an expansion of SMMNRA the study said, "Inclusion of lands of the Rim of the Valley Corridor in SMMNRA would contribute to protection of significant resources related to the purpose of the national recreation area and expand opportunities for public enjoyment at SMMNRA," the study said.

NPS did not call for the transfer of any national forest land to an expanded SMMNRA. The study says, "Management and ownership of the Angeles National Forest and San Gabriel Mountains National Monument lands would be maintained in all alternatives. USFS policies would continue to be applied to management of these lands. The NPS and USFS could work cooperatively through cooperative management agreements on initiatives to protect resources, provide visitor services, and conduct public outreach."

The Miami area event will take place in Homestead on the edge of Everglades National Park and in Biscayne

National Park. The Centennial year will begin on August 25.

Utahans try to head off monuments; Bishop problem?

The land war between the State of Utah and the federal government is heating up again, in several places.

Most prominently, Gov. Gary Herbert (R) last month signed a state resolution that raises a red flag in opposition to the designation of national monuments in Cedar Mesa and the San Rafael Swell.

The resolution takes exception to a campaign to protect cultural resources in a 700,000-acre Cedar Mesa area and in a 2,000 square-mile San Rafael Swell, both in southeast Utah. The resolution (SCR4) says the state supports protection of "the remarkably scenic, recreation, and sensitive areas of the San Rafael Swell land Cedar Mesa."

But SCR4 also says the Bureau of Land Management (BLM) should permit commodity development in the areas. It says that "continued grazing and environmentally sensitive energy and mineral development in the San Rafael Swell and Cedar Mesa can be done in such a way as to protect and preserve scenic and recreational values."

A Friends of Cedar Mesa group says up-front that the President should designate a monument for that area. The friends group would prefer a national conservation area with dedicated wilderness. "However," it says, "a National Monument may be needed to protect the area if Congress cannot act in a timely manner."

Adds the group, "The Cedar Mesa area is indeed a sacred place to many people, including several Native American tribes. The primary focus of management should be protecting the estimated 56,000 cultural/archaeological sites in the area, as well as the important historical resources, especially the Hole-in-the-Rock Trail."

An early version of SCR4 described

grazing and energy development as "the highest and best use" of the two areas, infuriating Native Americans and conservationists. But the final version of SCR4 doesn't include the highest and best use language.

As we have often documented movements are afoot in several states to obtain federal lands. They include Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Wyoming.

Most notably, Utah passed a law in 2012 (H.B. 148) that lays claim to 31 million acres of federal land in that state.

Arousing the ire of the western states has been the use (or threat of the use) of the Antiquities Act of 1906 to designate national monuments.

Westerners have introduced a half-dozen bills that would curb the President's authority. Most prominently, Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) led the way February 10 with a bill (S 437) that would require not only Congressional approval of any monument but also state approval and preparation of an environmental review document.

Separately, the Senate March 26 and 27 debated fiercely during consideration of a fiscal year 2016 budget resolution (S Con Res 11) an amendment endorsing the Murkowski bill. However, the Senate did not vote on the amendment because sponsor Sen. Steve Daines (R-Mont.) withdrew it.

Bishop initiative: Meanwhile, conservationists are becoming alarmed about negotiations led by Rep. Rob Bishop (R-Utah) to find a balance between protection and commodity use of public lands in eastern Utah. The Southern Utah Wilderness Alliance said earlier this month to their dismay that three counties are favoring energy development over conservation.

SUWA cited recent proposals from Uintah County, Carbon County and Daggett County. "In summary, Utah's counties are seeking to suffocate Desolation

Canyon – one of the nation’s largest remaining roadless areas – with oil and gas development and slice and dice currently-protected public lands around Dinosaur National Monument,” SUWA said in a recent bulletin to its members.

Daggett County may matter most because last October Bishop announced a tentative agreement to balance use and protection there. Those negotiations were widely viewed as a prototype for other Utah counties. But last month three county commissioners wrote Bishop expressing displeasure with the proposal.

“The DCPLCI (Daggett County Public Lands Initiative) discernment process undertaken at the behest of the Commission has created consternation among many of the stakeholders,” said the commissioners, led by chair Karen Perry.

“This anxiety has been displayed in varying forms and not without passion. Much of which is related to the apparent dismissal of Daggett County’s General Plan as it relates to public land designations, as well as the unapprised notions carried forward by well meaning yet uninformed negotiators: in particular, in its effects to the health of the lands, to the flora, as well as to the health of the fauna (domestic and wild) inhabiting those lands.”

If Utah counties, environmentalists, the energy industry, ranchers, sportsmen and others ever do reach a broad agreement on land management in eastern Utah, Bishop will be in a good position to move legislation as chairman of the House Natural Resources Committee.

Bishop launched the Utah Public Lands Initiative campaign in February 2013. Driving the Republican Congressmen in part is the possibility that the Obama administration will designate large national monuments in eastern Utah. Conservationists have often recommended designation of a 1.4 million-acre Canyonlands National Monument on BLM-managed land in southern Utah. They have asked President Obama

to designate the monument adjacent to Canyonlands National Park.

Court backs valid rights uranium mine by Grand Canyon

The owner of a grandfathered uranium mine near Grand Canyon National Park received a go-ahead from a federal court April 7 to begin new mining operations.

U.S. District Court Judge David Campbell in the District of Arizona held that a proposed plan of operations satisfied environmental and historic preservation laws. Although the proposed mine is located in the million acres of public land withdrawn from mining in January 2012, the mine owners enjoy valid existing rights.

The litigant environmentalists, in association with the Havasu Tribe, argued that the manager of the land, the Kaibab National Forest, had not consulted adequately with the tribe under the National Historic Preservation Act.

Judge Campbell disagreed. After listing a half-dozen occasions when the forest had consulted Indian tribes either individually or with a call for public comments, he said, “In summary, for some twenty years the Forest Service has been engaging in environmental analyses and consultation meetings with tribes and environmental organizations regarding the Canyon Mine.”

The tribe and environmentalists had argued that the service should have conducted a full-blown, formal consultation under Section 106 of the historic preservation law. But the forest conducted a lesser consultation directly with Indian tribes.

An appeal may be in the offing. Said Havasupai Chairman Rex Tilousi, “We believe that the National Historic Preservation Act requires the Forest Service to consult with us and the other affiliated tribes before they let the mining company damage Red Butte, one of our most sacred traditional cultural properties. The Havasupai Tribal

Council will meet () to talk about appealing this ruling."

As for an environmental review the appellants said the Forest Service should have conducted a full-blown EIS before authorizing Energy Fuels Resources (USA), Inc. to conduct new mining. But again judge Campbell agreed with the Forest Service that a simple review of previous environmental studies and other analyses sufficed.

Campbell said a 2012 EIS prepared for the withdrawal assumed mining could proceed. "Indeed, the Withdrawal's EIS specifically contemplated that four uranium mines, including the Canyon Mine, would continue in operation," he said.

Although Campbell ruled against the environmentalists in this case, on Sept. 29, 2014, he issued for their side a more sweeping decision upholding the withdrawal of one million acres of public lands adjacent to Grand Canyon from uranium mining. That landmark withdrawal by former Secretary of Interior Ken Salazar placed off limits to mining 360,002 acres of national forest and 633,547 acres of Bureau of Land Management-managed land.

Campbell concluded in the withdrawal decision, "Ultimately, the question in this case is whether DOI, when faced with uncertainty due to a lack of definitive information, and a low risk of significant environmental harm, can proceed cautiously by withdrawing land for a period of time under the FLPMA." FLPMA is the Federal Land Policy and Management Act of 1976.

And, he said, "The Court can find no legal principle that prevents DOI from acting in the face of uncertainty. Nor can the Court conclude that the Secretary abused his discretion or acted arbitrarily, capriciously, or in violation of law when he chose to err on the side of caution in protecting a national treasure - Grand Canyon National Park."

The National Mining Association immediately appealed the court's decision on the withdrawal to the Ninth

U.S. Circuit Court of Appeals. Industry asserted that the withdrawal was illegal because the department didn't establish conclusively that mining would damage water resources that feed into the park.

The withdrawal barred the filing of new mining claims on the lands managed by the Forest Service and the Bureau of Land Management, but it did not necessarily prevent the mining of existing claims.

And that is what Energy Fuels Resources (USA), Inc. is trying to do. In August 2011, before Salazar's withdrawal it asked the Forest Service for permission to resume mining,

EPA, Corps try again with revised wetlands permit rule

Despite major pushback from Congress, the Obama administration said April 6 it would proceed with the completion of a rule that would expand the kinds of waters requiring wetlands permits.

In an April 6 public notice EPA Administrator Gina McCarthy and Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy said they have sent to the White House a proposed final rule.

And McCarthy and Darcy said they have listened to public complaints and have revised a proposed April 21, 2014, rule to meet those complaints. "In the final rule, people will see that we made changes based on those comments, consistent with the law and the science," they said. "We've worked hard to reach a final version that works for everyone - while protecting clean water."

The draft rule would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. In addition to permits for navigable waters the administration would also require permits for seasonal streams, wetlands near navigable waters and other waters.

First and foremost McCarthy and

Darcy said a final rule would clarify exactly what kinds of water bodies would require a permit. "A key part of the Clean Water Rule is protecting water bodies, like streams and wetlands, which have strong impacts downstream - the technical term is 'significant nexus,'" they said. "We will respond to requests for a better description of what connections are important under the Clean Water Act and how agencies make that determination."

In the same vein McCarthy and Darcy said they would clarify what "tributaries" would be impacted. "We've heard feedback that our proposed definition of tributaries was confusing and ambiguous, and could be interpreted to pick up erosion in a farmer's field, when that's not our aim," they said. "So we looked at ways to refine that definition, be precise about the streams we're talking about, and make sure there are bright lines around exactly what we mean."

The House subcommittee on Energy and Water appropriations April 15 approved a fiscal year 2016 spending bill that would bar the administration from spending any money on completing the rule.

Separately on April 15 House Transportation Committee Chairman Bill Shuster (R-Pa.) persuaded his committee to approve similar legislation (HR 1732) that would require withdrawal of the rule. Earlier in January 109 House members introduced a bill (HR 459) that would prevent EPA from completing a proposed rule. They were led by Rep. Paul Gosar (R-Ariz.)

Likewise, the Senate approved March 25 an amendment to its Congressional budget (S Con Res 11) from Sen. John Barrasso (R-Wyo.) that recommends that Congress forbid EPA and the Corps from implementing the proposed rule.

Said amendment cosponsor Sen. Jim Inhofe (R-Okla.), "This amendment calls on EPA and the Corps of Engineers to keep their promises to members of Congress and farmers, and to heed the call from local governments to ensure

that water management systems are not waters of the U.S."

Last year the House on Sept. 9, 2014, approved a stand-alone bill (HR 5078) to stop the proposed rule. In addition several spending bills included the provision as a rider, but the rider was not enacted.

Sportsmen as represented by the Theodore Roosevelt Conservation Partnership (TRCP) support an expansion of the definition of waters requiring Section 404 permits. They lauded McCarthy and Darcy.

Said Steve Moyer, Trout Unlimited's vice president for government affairs, "The seasonally-flowing streams clearly protected by the proposed rule are often where trout and salmon go to spawn and where juvenile fish are reared. All anglers benefit from the water quality and fish habitat provided by these streams, and we applaud the agencies for moving forward to restore protections to these incredibly important waters."

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

The Bush administration relied on the court decision to limit permitting to navigable bodies.

The Obama proposal would expand that. EPA and the Corps of Engineers in their proposal said that the rule should go beyond the existing regulation that only requires a Section 404 Clean Water Act permit for navigable waters.

Notes

Report: Fed ecosystems at risk.
A new report says 117 of the 553 ecosystem types on federal land are not protected under the National Wilderness

Preservation System (NWPS). The authors of the report in the journal *Biological Conservation* acknowledge that persuading Congress to designate large swaths of new wilderness would be difficult. So they recommend that Congress focus just on designating wilderness that protects ecosystems. "As the designation of just new wilderness areas becomes more difficult, it is important to increase the ecological representation of those areas to achieve greater protection of biological diversity," say the authors. "Over the next 50 years of the Wilderness Act, federal land-management agencies and the U.S. Congress could increase the ecological diversity of wilderness areas by prioritizing under-represented ecological systems in new wilderness legislation." R. Travis Belote, one of the authors and an ecologist at The Wilderness Society, described why he thought preservation of varied ecosystems was important. "Protecting a large proportion of each of these ecosystem types can serve as a sort of Noah's ark for preserving ecosystems and their resident wild animals and plants," he said. "That's why increasing the ecological diversity represented in wilderness is an important priority for conservationists and policy makers." In addition to Belote the authors include The Wilderness Society scientists Matthew S. Dietz and Gregory H. Aplet and University of Idaho professor Jocelyn L. Aycrigg. The report is available at: <http://www.sciencedirect.com/science/article/pii/S0006320715000944>.

Grizzly 'take' in Teton opposed.

Environmentalists earlier this month challenged a decision by federal agencies to "take" four grizzly bears over the next seven years in Grand Teton National Park. The Park Service and the Fish and Wildlife Service (FWS) say the killing of the four bears may be necessary to protect fall elk hunters in the park. The Teton/Yellowstone grizzlies are transitioning to a meat diet (often elk) because of the loss of whitebark pine seeds and cutthroat trout. But the Sierra Club and Western Watersheds Project say NPS and FWS failed to consider cumulatively all authorized takes of grizzly bears in the Greater Yellowstone Ecosystem that could

cause the deaths of an unsustainable 65 female grizzly bears in a year. The suit, filed in U.S. District Court for the District of Columbia, is available here:

<http://earthjustice.org/sites/default/files/files/15-04-03%20Doc.%201%20Complaint.pdf>.

Least visited parks highlighted.

We in the press made much in February of new Park Service statistics that showed a significant jump in visitation in 2014 to the National Park System, including lists of most visited parks and other units. But the National Parks Conservation Association (NPCA) in a contrarian list has identified the 10 *least-visited* system units. At the bottom is the Aniakchak National Monument and Preserve in Alaska with 134 visitors. NPCA says Aniakchak is so remote visitors must fly, boat and/or backpack to reach the rugged environment on the Alaska Peninsula. On a separate note, the office of Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) complained on release of the NPS statistics in February that three national parks in northwestern Alaska received no visitors in 2014. The three unvisited parks in northwest Alaska are Cape Krusenstern National Monument, Kobuk Valley National Park and the Noatak National Preserve. Alaska media said that NPS is certain the parks had visitors; they just didn't get counted. For more on NPCA's list go to: <http://parkadvocate.org/the-10-least-visited-places-in-the-park-system/>.

OIA honors Ayotte, Polis.

The Outdoor Industry Association (OIA) April 15 presented Sen. Kelly Ayotte (R-N.H.) and Rep. Jared Polis (D-Colo.) with their annual Friend of the Outdoor Industry Award 2015. OIA cited Ayotte for cosponsoring legislation to reauthorize the Land and Water Conservation Fund and for championing trade legislation. OIA cited Polis for backing recreation in speeches and for asking the U.S. Trade Ambassador Michael Froman to protect recreation products in trade. Said Steve Barker, interim executive director the association, of Ayotte and Polis, "Their initiatives on trade issues and public lands and recreation policy have been critical to

the health of our industry." OIA made the awards at its annual Capitol Summit.

Boxscore of legislation

Appropriations Fiscal 2016

No bill yet. Administration submitted request February 2. Budget recommends substantial programmatic increases, full funding for LWCF, \$826 million for NPS Centennial, FLREA extension.

Fiscal year 2016 budget

H Con Res 27 (Price), S Con Res 11 (Enzi). House approved March 25. Senate approved March 27. Both would freeze spending. Senate recommends line committee action on fire, and PILT; House does not.

Full-year appropriations Fiscal 2015

HR 83 (Christensen). President signed into law Dec. 16, 2014, as PL 113-235. Roughly maintains fiscal 2014 spending. Includes PILT money. Does not include emergency fire-fighting account.

Omnibus public lands bill 2014

HR 3979 (McKeon). President signed into law Dec. 19, 2014, as PL 113-291. Includes 96 bills including measures to designate several new and expanded national parks, including a Manhattan Project National Park, a Delaware National Park; revises Forest Service cabin fees, protects the Rocky Mountain Front, designates more than 200,000 acres of wilderness, and much more.

Land and Water Conservation Fund

S 338 (Burr), S 890 (Cantwell), HR 1814 (Grijalva). Burr introduced February 2. Cantwell introduced March 27. Grijalva introduced April 15. All would extend program at \$900 million per year in perpetuity. S 890 and HR 1814 would

guarantee the money each year.

Urban park fund

HR 201 (Sires). Sires introduced January 7. Would authorize HUD grants and HUD loans to provide assistance to urban parks.

Emergency fire spending

HR 167 (Simpson), S 235 (Wyden), S 508 (McCain). Simpson introduced January

6. Wyden introduced January 22. McCain introduced February 12. All would shift emergency fire fighting costs out of line appropriations and into disaster spending. McCain would also increase timber harvests.

Monument restrictions

HR 330 (Young), HR 488 (Amodei), S 437 (Murkowski), HR 900 (Labrador), S 228 (Crapo). Young introduced January 13. Amodei introduced January 22. Murkowski introduced February 10. Labrador introduced February 11. Crapo introduced January 21. Young, Murkowski, Labrador and Crapo would require Congressional approval of any national monument. Amodei would require Congressional approval of any national monument in Nevada.

Wetlands regulations

HR 594 (Gosar). Gosar introduced January 28. Would forbid completion by EA of regulations expanding kinds of water bodies requiring wetlands protection permit. 141 cosponsors.

Surface transportation

HR 680 (Blumenauer). Blumenauer introduced February 3. Would increase the gasoline tax to help pay for surface transportation programs.

Fed lands open in government closure

S 146 (Flake). Flake introduced January 12. Would allow states to operate national parks, national refuges and national forests in the event of a government shutdown.

Public lands open to hunting

S 406, S 556 (both Murkowski), HR 528 (Benishek). Benishek introduced January 26. Senate hearing March 12. Would declare public lands open to hunting and fishing unless specifically closed.

California Desert

S 414 (Feinstein). Feinstein introduced February 9. Would protect 1.6 million acres of the California Desert, including two new national monuments.

FS travel rule

HR 1555 (Walden). Walden introduced March W23. Would halt all work under 2005 Forest Service travel management rule.