

Federal Parks & Recreation

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Administration agrees to write EIS on guns in parks

The Obama administration April 17 said it will comply with a court order to stay a Bush administration rule that authorized concealed weapons in national parks and national wildlife refuges.

At the same time the administration committed to writing an EIS to analyze the effects of the rule, effectively complying with a March 19 ruling of a federal judge. U.S. District Court Judge Colleen Kollar-Kotelly in the District of Columbia March 19 issued an injunction blocking implementation of the Bush rule until the government writes an environmental impact review.

The Obama administration had been under pressure from gun users to appeal the Kollar-Kotelly ruling to the U.S. Circuit Court of Appeals for the District of Columbia, but it decided to accept the injunction.

"We are pleased that loaded, concealed guns will continue to be prohibited in our national parks," said Brady Campaign President Paul Helmke. "Semi-automatic weapons have no place in the valleys of Yellowstone, on the cliffs of Yosemite, or under the torch of the Statue of Liberty." The Brady Campaign filed a lawsuit against the rule that was before Kollar-Kotelly.

Although the Obama administration intends to accept the stay of the Bush rule that would allow guns where state law permits weapons in state parks and refuges, it has not yet decided to kill the rule. The administration is in a ticklish political situation because most senators support the Bush rule, but most Obama supporters oppose it.

Obama's Justice Department committed to write the EIS in a two-paragraph

statement to the court. The salient sentence says, "In accordance with the Court's Order, Defendants, through the undersigned counsel, hereby advise the Court that they intend to prepare an environmental impact statement analyzing the environmental effects of the enjoined regulation and a range of alternatives, and to reconsider what regulation is appropriate in light of the agency's analysis." John C. Cruden, acting assistant attorney general, signed the document.

Justice said it would file a formal motion with the court within 30 days.

Congress is under pressure to write legislation to order the Interior Department to implement the Bush rule, but supporters of concealed weapons won't have it easy. For one thing House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) and Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) oppose the regulation.

At any rate Sen. Mike Crapo (R-Idaho) and four cosponsors (including three Democrats) have introduced legislation (S 816) to authorize the use. Ranking House Natural Resources Committee Republican Doc Hastings (Wash.) and 24 cosponsors have introduced a counterpart House bill (HR 1684.)

Hastings ratcheted up the pressure just before the Obama administration committed to writing the EIS. "Secretary Salazar should announce that the Department will move forward to defend this commonsense and publicly-vetted rule," he said. "If the Administration refuses to defend the Second Amendment, Congress must act."

The Bush administration put into effect January 9 regulations that would authorize the use of concealed weapons in national parks and national wildlife refuges where state parks and refuges authorize the use. The Bush administration Interior Department did not write an environmental analysis or an EIS because it said the rule would have no significant impact on the environment.

Kollar-Kotelly disagreed in a decision styled as *Brady Campaign to Prevent Gun Violence v. Salazar, Case 1:08-cv-02243 (CKK)*: "Defendants reached their determination that the Final Rule was strictly a legal amendment with no environmental impacts only after failing to adequately evaluate all reasonably foreseeable environmental impacts, and ignoring (without sufficient explanation) substantial information in the administrative record concerning environmental impacts."

House Natural Resources Committee Republicans tried unsuccessfully March 25 to force the House to vote on an amendment that would have allowed concealed weapons in parks and refuges. But majority Democrats avoided the ticklish amendment by not allowing any amendments to legislation that was before the House, an omnibus Senate-passed lands bill (HR 146.)

Said Bill Wade, chair of the executive council of the Coalition of National Park Service Retirees, "We think this is a good step. We hope the final outcome is to revert to the regulation that had been in effect for decades, but I don't know that DOI could just go back to that without going through a formal process to change the one implemented on January 9."

Budget not finished yet; appropriators gearing up

A House-Senate conference committee tasked with writing a final Congressional budget was expected to meet this week but at press time had not. Instead the principals reportedly were laying the groundwork behind the scenes.

If Congress does adopt a final budget, it will have little direct impact on spending for most park and rec programs in fiscal year 2010, other than to set an overall spending ceiling for domestic appropriations.

"The total amount of domestic spending is binding," said an appropriations committee staff member. "The 302(a) allocation sets a number that we

can't exceed. The legislative direction is nonbinding."

After Congress establishes a 302(a) domestic spending cap, the House and Senate Appropriations Committees will then establish 302(b) caps for individual subcommittees, such as Interior, Energy and Water, and Transportation.

The Congressional budget could have one other significant impact if the conferees accept a Senate provision that would establish a public lands "reserve fund." Sponsor Sen. Jeff Merkley (D-Ore.) said such a fund would allow public lands legislation in general to proceed to the Senate floor later this year with a simple majority vote, rather than the 60 votes now required for most legislation. The House budget contains no counterpart provision.

An aide to Merkley said the provision is not directed at any particular legislation. "We just want to make sure that any legislation that affects public lands is addressed in the Senate," he said. "That could be fire mitigation or a whole host of initiatives."

Although the amendment is not targeted at any one proposal, it could come in handy if the Obama administration forwards legislation to upgrade the National Park System for the agency's centennial in 2016.

The Bush administration under the lead of then Secretary of Interior Dirk Kempthorne proposed a \$2 billion Centennial Challenge program to do that, using \$1 billion of appropriated money and \$1 billion of partner grants. The Obama administration is expected to recommend a similar program with a different name to put its imprimatur on it.

Again, the House-passed budget contains no counterpart to the Merkley provision.

The Senate and the House approved versions of a budget resolution (S Con Res 13, H Con Res 85) the same day, April 2, before leaving on a two-week Easter vacation. A House-Senate confer-

ence committee will now attempt to reconcile differences between the two resolutions, at least that is the next step anticipated by a 1974 budget law.

According to the Congressional Budget Act Congress is supposed to complete its budget by April 15, but it almost never does. The schedule also calls for appropriations subcommittees to begin writing money bills after May 15.

This year the appropriations panels have been delayed because the Obama administration has not submitted its detailed budget recommendations yet. Those recommendations won't be sent up for another couple of weeks, we understand. Usually, a President submits his budget for the following year on the first Monday in February.

As soon as the budget details are proposed, the appropriations subcommittees will shift into overdrive. Although the subcommittees have held hearings on the outlines of a fiscal 2010 budget submitted February 26, they have not seen the details yet. "The delay in submitting a budget is a problem," said an appropriations staff member. "It will take some very serious work to look at the new proposals."

The House Appropriations Committee tentatively plans to hold hearings in May and begin marking up bills in June. The committee intends to move half the subcommittee bills through the House by July 4 and the other half through the House by August 1. The Senate schedule usually trails the House by about a week.

Budget resolutions do not go to the President. In addition, while Congressional budgets guide spending by appropriations and line committees, those panels are not bound by budget recommendations.

Both the House and Senate budget authority for natural resources appears to be significantly higher than in fiscal 2009, but because of emergency spending and other contingencies a direct comparison is difficult to pin down.

Here are the rough numbers: For fiscal 2009 the budget authority for natural resources was \$56 billion, but that included economic stimulus money and other emergency allocations. Before the add-ons the fiscal 2009 budget was \$33.8 billion. For fiscal 2010 the House and the Senate committee each approved \$37.4 billion.

It should be noted the natural resources budget line item also includes spending for such things as EPA clean-ups and hurricane recovery, so there is no guarantee additional appropriations will trickle down to park and recreation programs.

House Republicans have developed their own budget proposal that would provide \$2.2 billion less for natural resources in fiscal 2010 than the Democrats. The Republicans recommended a \$35.2 billion ceiling, compared to the Democrats' \$37.4 billion.

In addition the House Republicans recommended that the House Natural Resources Committee reduce spending by \$2 billion for the projects it authorizes over the next 10 year.

The Obama administration outlined major increases for park and recreation programs in its February 26 summary of a fiscal year 2010 budget. The administration asked for:

- * \$100 million more for Park Service operations,
- * a separate \$25 million payment to the Park Service Centennial Challenge program,
- * \$420 million for the Land and Water Conservation Fund,
- * a \$130 million down payment to initiate a climate change program,
- * \$50 million more to protect national forests, and
- * a new emergency fire-fighting fund of \$357 million - \$282 million for the Forest Service and \$75 million for the Interior Department.

Agencies approving stimulus projects at different rates

Federal agencies that oversee park and rec programs have begun to spend economic stimulus money at different speeds.

The Interior Department, which had been trailing the field, caught up April 22 when it announced \$750 million in Park Service projects. As expected, the projects heavily emphasize reduction of a multi-billion dollar maintenance backlog.

"These projects - at places like Ellis Island in New York and Dinosaur National Monument in Utah - are ready to go and will create jobs in communities across the country," said Secretary of Interior Ken Salazar at an Earth Day event held on the green roof of the main Interior Department building in Washington, D.C.

A department press release explains the standards NPS applied to the selection of the projects. "All the projects announced today are long-standing priorities of the National Park Service based on its capital planning process. With an array of projects identified by stakeholders as critical, the service worked through a rigorous merit-based process to identify investments that met the criteria put forth in the Recovery Act," said the department.

Interior said the projects would help both large parks such as Yellowstone (a \$9 million overhaul of a waste treatment facility) to small units such as Perry's Victory and International and Peace Memorial in Ohio (a \$7 million renovation of a 352-foot monument.)

Separately, on April 15 Salazar announced that \$260 million of \$1 billion in Bureau of Reclamation economic stimulus projects will be allocated to California. The money will be spent on water projects. And on April 15 Salazar announced the allocation of \$29.4 million by the U.S. Geological Survey for earthquake network upgrades.

The Federal Highway Administration (FHWA), working with state transportation departments, is rapidly shoveling money out the door.

Meanwhile, local park and rec agencies - with no dedicated program money - are scrambling to obtain funding at the edges. They are looking most closely at such things as making park facilities energy efficient and jobs programs.

So implementation of the \$790 billion economic stimulus law (PL 111-5 of February 17) is moving along briskly, including outdoors-related initiatives. Congress wants all the money obligated by the end of September of next year when fiscal year 2010 ends.

The law includes the following broad allocations:

- * Park Service construction/maintenance, \$735 million
- * Park Service roads (Federal highway money), \$170 million
- * Historic preservation grants, \$15 million
- * FWS construction, \$165 million
- * FS construction, \$650 million
- * BLM construction, \$315 million
- * Bureau of Reclamation, \$1 billion
- * Wildfire prevention, \$515 million
- * Surface transportation, \$47 billion.

The FHWA has made more progress in distributing money to projects than most other agencies with oversight of programs that affect park and recreation programs. Just last week President Obama participated in a ceremony marking the approval by FHWA of the 2,000th state surface transportation project. The projects will receive \$6.5 billion.

However, park and recreation projects won't necessarily receive much of that FHWA money. According to one analysis, only \$1.5 billion of \$27.5 billion FHWA will distribute under the existing surface transportation law will be set aside for discretionary grants. The rest of the money is being allocated under formulas in the existing law.

Said Rich Dolesh, public policy

director for the National Recreation and Park Association (NRPA), "There seems to be an emphasis in the stimulus for back country trails and not so much a priority for bike trails and community facilities."

The Forest Service has already begun doling out money. It has allocated about 10 percent of its share, a spokesman said this week. Some of the \$650 million in Forest Service construction money will come the way of recreation, the service said.

"The Act will provide private sector employment for thousands of people to maintain and enhance the Forest Service's recreational infrastructure, including trails and developed sites," says the Forest Service. "The agency has the largest network of trails in the world and these funds will enable the agency to work with partners to begin to address the maintenance backlog."

State and local governments are finding a mixed bag of benefits in the greater stimulus law. Not all are doing well. "Some state parks are telling us they have combed through the law and have come up empty," said NRPA's Dolesh. "A couple said the only place they found opportunities was in the jobs title."

Indeed, he said communities are finding some park and rec opportunities in youth summer job programs, job training and green jobs.

Dolesh also said energy projects showed promise. "We think our best opportunities for state and local agencies is in energy efficiency - green infrastructure, water resources, clean vehicle, green buildings. Most of those apply to local and state governments," he said. "In some cases we may need nonprofit partners."

Finally, some in the recreation community are viewing the development and implementation of the economic stimulus law as a learning experience for when a massive climate change law and a new surface transportation law come down the pike later this year.

Court dismisses suit against Valley Forge museum/hotel

A federal judge April 7 threw out a lawsuit that challenged the construction of a \$375 million project on private land within Valley Forge National Historical Park.

U.S. District Court Judge Anita B. Brody in the Eastern District of Pennsylvania said the litigation should be argued in state court because the action at issue was a local zoning decision.

"Pennsylvania's interest in land use outweighs the federal interest expressed in an act establishing a National Park Service," she held. "Here, private citizens are contesting an Ordinance allowing development on private land."

By coincidence the day before the court handed down its decision the sponsor of the museum/hotel, the American Revolution Center, announced that it would not construct a centerpiece hotel for 15 years. The proposed four-story hotel is the most contentious and expensive piece of the project.

Thus just as the court eliminated a major hurdle from the American Revolution Center's \$375 million project, the sponsor pulled the plug on the hotel.

The American Revolution Center (ARC) did announce that it would proceed with the other two pieces of its project - a museum and a trailhead building. The museum would provide a central clearing point to commemorate the entire American Revolution.

The 78-acre project was approved Sept. 6, 2007, by the Lower Providence Township Board of Supervisors by a 3-to-2 vote. The center's Board of Scholars includes such luminaries as historian David McCullough as founding chairman.

But the executive council chair of the Coalition of National Park Service Retirees, Bill Wade, said last year, "This proposal by ARC is nothing short of a 'hostile takeover bid' designed to

create a new, private entrance to the park, lure visitors to the development in order to present ARC's version of the history of the area and collect the revenue from their visitors."

The plaintiff in the case, the National Parks Conservation Association (NPCA), takes issue with judge Brody's assertion that the issue is a local one, not a federal one. "In 1999 Congress authorized a Revolutionary War museum," said Joy Oakes, a senior regional director for NPCA, "but it said the museum must be consistent with the resources of the park and not interfere with the management of the park."

In addition, she said, the Park Service signed off on acquisition of the private land that the American Revolution Center wants to use. However, Congress has not put up the money from the Land and Water Conservation Fund to buy the property.

Judge Brody noted in her injunction that the Park Service did not file a lawsuit against the local zoning decision in federal court. "The fact that the National Park Service neither initiated nor joined the suit undermines the assertion of a strong federal interest," she said. "A federal law governing park management does not create a sufficient interest to deprive a state of the ability to govern land use of privately-owned land and hear appeals of zoning hearing board decisions."

Congress has been involved. In 1980 it expanded the park's boundaries to include the land where ARC intends to build its project. And, as Oakes noted, in 1999 Congress approved construction of a museum.

NPCA's Oakes said that just because the backers of the project have deferred construction of a hotel for 15 years doesn't mean the issue is dead. "Just as ARC announced this week that they will defer construction of the commercialized hotel and conference center, they could announce at any time to move forward with those damaging plans because the rezoning of the property allows for this development, and

more, on historic land critical to the Continental Army's encampment," she said.

Judge Brody's decision, *NPCA v. Lower Providence Twp - 04/07/2009 NO. 08-5578* is available at <http://www.paed.uscourts.gov/usrecent.asp>. Scroll down by date to the 04/07/2009 decisions.

Oberstar still determined to write SAFETEA successor

For the record House Transportation Committee leaders intend to produce a new surface transportation bill before the existing law expires on September 30. But the chances of final Congressional enactment range from slim to none.

That's because the powers that be - the Obama administration and the Democratic majority in Congress - are nowhere near an agreement on how to find hundreds of billions of dollars needed to pay for a new law. So a temporary extension of the existing Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) for a year or two is a good bet.

For now, House Transportation Committee Chairman James Oberstar (D-Minn.) is sticking to a goal of writing a committee bill this year. "At this point all I can say is our plan is to do it by the end of September," said a committee staff member. "Mr. Oberstar has not said one word about an extension."

But the aide acknowledged, "We have no control of how fast the Senate moves. We can only control how fast the T&I Committee (transportation and infrastructure) moves. We intend to move on schedule by the end of September." And, of course, the House Ways and Means Committee also must decide whether the program will continue to be funded by gasoline taxes or by a mix of sources.

Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.) occasionally mentions the

need for a new surface transportation law, but is clearly focusing most of her fire on climate change legislation.

The Oberstar staff member acknowledged that Congress and the administration are nowhere near a decision on revenue sources. "I've said all along the revenue part of the equation will be the last thing that will be decided," he said.

Interest groups that have a piece of the pie don't expect action on a multi-year surface transportation bill any time soon. "It's not going to happen this year or next year, which is an election year," said Derrick Crandall, president of the American Recreation Coalition. "My guess is Congress may increase the gas tax by four-to-five cents to get us through next year."

Among the revenue sources for surface transportation being tossed about in Congress and by interest groups is a significant increase in the gasoline tax which now provides the money to power the law.

Other possible sources include charges for miles traveled, bonds and even a change in the federal-state contribution from the existing 80 percent federal and 20 percent state.

The House Transportation Committee may ask for significantly more money than Obama is willing to spend in a new surface transportation law to replace SAFETEA-LU.

In "Views and Estimates" submitted to the House Budget Committee in February the panel said the nation needs \$131.7 billion per year to improve conditions on highways and bridges. The Obama administration's total request for the Department of Transportation for fiscal 2010 is just \$72.5 billion. Meanwhile, a broad alliance that supports a recreational trail program financed by SAFETEA-LU recommended April 22 that Congress increase spending for the program from \$85 million in fiscal 2009 to \$90 million in fiscal 2010, and to \$130 million after four more years.

Says a working paper put together by the coalition, "The Recreational Trails Program has had a dramatic and positive impact on the quality of life in America through thousands of projects nationwide and through new cooperation among diverse trail enthusiasts, government officials at the federal, state and local levels, and national organizations in the conservation, recreation, and transportation fields. We now understand better the role of RTP-aided trails in the nation's campaign to attack inactivity and obesity."

The 30 national member groups of the coalition include such varied interests as America Bikes, the American Hiking Society, the American Motorcyclist Association, the BlueRibbon Coalition, the International Snowmobile Industry Association, the National Recreation and Park Association, and the Recreation Vehicle Dealers Association. They are backed by more than 100 local and regional groups.

One proposed new surface transportation bill (S 575, HR 1329) was introduced last month by two senators and five House members. The measures emphasize "livability," which could boost park and recreation initiatives. The bills - called CLEAN TEA - would allocate ten percent of revenues from a climate change bill to cleaner transportation, including such things as encouraging bike and pedestrian use.

One of the three major allocations in the livability bills is for "sidewalks, crosswalks, bicycle paths, greenways, pedestrian signals, pavement marking, traffic calming techniques, modification of public sidewalks (including projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)), and other strategies to encourage pedestrian and bike travel." The other two allocations are transit and intercity rail.

The sponsors of CLEAN TEA include Sens. Thomas Carper (D-Del.) and Arlen Specter (R-Penn.) and Reps. Earl Blumenauer (D-Ore.), Ellen Tauscher (D-Calif.), Steven La Tourette (R-Ohio),

Melissa Bean (D-Ill.), and Mark Kirk (R-Ill.)

The CLEAN TEA money would be allocated to regional, state and local entities of more than 200,000 population.

EPA climate change proposal accelerates drive for bill

The Environmental Protection Agency (EPA) proposed a momentous policy change on air pollution April 17 that, if adopted, would put tremendous pressure on Congress to enact climate change legislation this year. That legislation, in turn, could produce major infusions of money to conservation programs.

The proposal from EPA Administrator Lisa Jackson is simple - the government must control green house gases to protect the nation. The Jackson proposal when finalized would not do anything by itself. But it would set the stage for several uncoordinated regulations from EPA, thereby pressuring Congress to write comprehensive climate control legislation.

Democratic Congressional leaders are already laying the groundwork for such comprehensive legislation, so the Jackson finding would only add to the momentum.

That is how House Energy and Commerce Chairman Henry A. Waxman (D-Calif.) reads it. "EPA is legally compelled to take action and I commend them for complying with the law," he said. "However, I believe it is Congress that should create a comprehensive framework to combat global warming that will break our dependence on foreign sources of energy and help transform our economy with millions of new clean energy jobs."

Which brings us to the crass subject of money. Waxman has written a draft climate change bill that his committee intends to mark up early next month that would charge producers of six climate change gases for their pollution, within a national cap. The revenues in Waxman's draft bill would then

be allocated to dozens of programs, including major conservation programs.

The Waxman draft has not yet identified how much the government should charge for pollutants. The fees are called "allowances." The Obama administration estimates \$646 billion over 10 years.

The draft bill does take a stab at allocating the percentages for each program. The Waxman draft says the Land and Water Conservation Fund should receive 12 percent of a Natural Resources Climate Adaptation Fund each year.

In addition the states would receive 40 percent of the fund's money for climate adaptation activities, the Interior Department would receive 22 percent for a raft of programs run by land management agencies, the state wildlife conservation grant program would receive one percent, the Forest Service five percent, EPA five percent, the Corps of Engineers 7.5 percent and the Department of Commerce 7.5 percent.

There will be all-out resistance from the Republican Party. Sen. James Inhofe (R-Okla.), the ranking Republican on the Senate Environment and Public Works Committee, said Congress should simply block Jackson from issuing a final ruling. "It's worth nothing that the solution to this 'glorious mess' is not for Congress to pass cap-and-trade legislation, which replaces one very bad approach with another," he said. "Congress should pass a simple, narrowly-targeted bill that stops EPA in its tracks." There is little chance that will happen, however.

Ranking Senate Energy Committee Republican Lisa Murkowski (R-Alaska) also opposed the Jackson proposal, but she did leave room for Congress to write new legislation. "Congress should be given the time to thoroughly consider the benefits and risks of legislation to curb emissions," Murkowski said.

The National Parks Conservation Association (NPCA) said it was about time EPA issued its findings because climate change was already taking a toll

on the parks, such as melting glaciers in Glacier National Park in Montana.

Mark Wenzler, director of Clean Air and Climate Programs for NPCA, said, "We hope Congress will take up this work now, and pass strong clean energy and jobs legislation that will reduce our nation's greenhouse gas emissions and alleviate the impacts of global warming on our nation, including our national parks."

The House and Senate April 2 approved fiscal year 2010 budgets (H Con Res 85, S Con Res 13) that are designed to open the way for Waxman's committee to write climate change legislation this year. Those budgets anticipate that allowances assessed on pollution would bring in around \$80 billion per year, beginning in fiscal 2012. A House-Senate conference committee is presently attempting to work out the differences between the two resolutions.

However, and this is crucial, the Senate budget does not authorize climate change legislation to be considered by the Senate as part of a reconciliation bill, which would require only a 50-vote majority to pass. The Senate rejected by a vote of 67-to-31 an amendment to allow the legislation to be passed with 50 votes instead of 60.

Court rejects county demand that BLM clarify RS 2477 ROWs

A federal appeals court April 13 upheld the dismissal of a lawsuit from a Utah county that demanded that the Bureau of Land Management (BLM) identify RS 2477 rights-of-way (ROWs) in land management plans.

The appeals court said the U.S. District Court in Utah correctly ruled that the county is effectively asking BLM to rule in plans on the validity of RS 2477 ROW claims. Only federal courts have the authority to make such validity determinations, both the district and appeals court said.

"Here, as noted, we have expressly held, in recognition of binding federal

law, that the BLM lacks the authority to conclusively resolve R.S. 2477 claims," ruled a three-judge panel of the 10th U.S. Circuit Court of Appeals. "Thus, the County plaintiffs are not entitled under the APA (Administrative Procedures Act) to an order directing the BLM to resolve all outstanding R.S. 2477 claims as part of its Plan."

The Tenth Circuit holding follows the lead of the panel's own landmark 2005 decision that said BLM could not adjudicate the validity of RS 2477 ROW assertions, only a federal court could, and then under a Quiet Title Act.

The plaintiff in the case, Kane County, readily agreed with the district court that the place to obtain a final legal decision on the validity of RS 2477 ROWs is in a federal court under the Quiet Title Act. But the county argued in this instance it was not seeking a validity determination but only a clarification of the status of various ways and washes in the Grand Staircase-Escalante National Monument in southern Utah.

The Tenth Circuit rejected the argument. "In our view, the County plaintiffs failed to clarify in their district court pleadings that they were seeking only an informal, non-binding administrative determination of their purported rights-of-way," said the court.

Environmental groups that intervened in the lawsuit on BLM's side, viewed the lawsuit as an attempt to open up routes through the monument to off-highway vehicles. "The monument plan protects nearly two million acres of wildlife habitat, streams, wilderness, and archeological wonders while providing nearly 1,000 miles of roads and off-road trails," said Ted Zukoski, an attorney for the environmental law firm Earthjustice. "The counties wanted to eliminate all protections limiting dirt-bikes, ATVs and other off-road vehicles based on the counties' word that somewhere out there were a bunch of roads."

Kane County has been litigating for years to gain control of RS 2477

ROWS in the monument, arguing that under the law old rights-of-way through the monument are supposed to be under the control of state and local governments. The county in the past has posted signs on the roads that cross the monument and other areas to encourage public access.

Congress has been involved. In the mid-1990s it forbid the Interior Department from writing regulations to guide the adjudication of RS 2477 ROW claims.

Now with a new Democratic President supported by a solid Democratic majority in Congress, environmentalists may be tempted to ask Congress to order the Interior Department to adjudicate RS 2477 ROWs, rather than leave the job up to the Quiet Title Act and the courts.

Concessioners ask partnership with NPS on parks visitation

National park concessioners proposed last month a partnership with the National Park Service to entice more visitors to the parks.

The National Park Hospitality Association, concerned about a decade-long decline in visitation, said it would put its money where its mouth is. The association said it would allocate \$6 million per year from franchise fees for the partnership.

The concessioners said the effort could be modeled on a Sport Fishing and Boating Fishing Foundation that Congress established in 1998 to increase interest in fishing. That foundation uses revenues taxes on fishing equipment and motorboat fuels to enhance sport fishing and boating in the country.

Said a white sheet prepared by the association describing its proposal, "A parallel dedicated source of revenue would be sought for the park outreach program. One option would be dedicating half of the franchise fees paid by concessioners which are NOT retained locally. This would yield some \$6 million annually, and could increase if visitation trends improved."

The concessioners met with acting NPS Director Dan Wenk March 9 on the proposal and wrote him March 24 to sum up their qualifications as promoters of the National Park System.

"Concessioners are fully capable of cooperative research on park visitation issues and proficient with the use of new communications channels, including social networking and multimedia," the association said. "We are uniquely positioned to deliver special outreach efforts to urban Americans, minorities, youth, students, new Americans and the military."

The concessioners also met last month with Rep. Norman Dicks (D-Wash.), chairman of the House subcommittee on Interior appropriations. While Dicks did not endorse the proposal, hospitality association counselor Derrick Crandall said, "I think he's very interested."

Crandall said concessioners already promote the national parks in the course of their daily business. "We are the de facto volunteer arm for the Park Service," said Crandall. "Concessioners such as Xanterra (Parks & Resorts) and Forever Resorts already spend substantial amounts of money promoting the national parks."

Without fanfare the Park Service late last year produced a new tourism policy that not only is designed to attract more visitors to the parks but also to improve the quality of visits.

The policy anticipates several strategies to pay the freight, beginning with an appropriations base for overhead costs. "We would look for appropriations for costs that can't be assigned elsewhere to what will be one of the smallest Washington offices," said Dean Reeder, national tourism chief for the Park Service.

Beyond that the policy considers two new strategies to pay for specific marketing projects - a share of entrance fees and revenues brought in by the projects. The entrance fees would come from the 20 percent of existing revenues that are distributed from the Washington

office. (The other 80 percent is reserved for the collecting park.)

Visitation to the national parks has been a sore spot for several years for concessioners and gateway communities. Younger citizens and minorities in particular are not visiting the parks in the numbers park managers would like.

NPS is aware of the complaints and developed the new tourism policy under the lead of Reeder. The strategy contains a half-dozen common sense recommendations, to wit, engage partners, improve marketing, increase off-season visits, improve visitor experience, improve NPS training, and establish an extra funding source.

NPS uneasy about big solar projects in southern Nevada

The Park Service is the latest entity to object to proposed solar energy projects in the deserts of the southwestern United States.

The environmental group Public Employees for Environmental Protection (PEER) April 20 released a memorandum from NPS Pacific Regional Director Jon Jarvis that expressed deep misgivings about 63 proposed solar energy projects in southern Nevada.

Jarvis, who is being mentioned as the possible next NPS director, wrote the Bureau of Land Management (BLM), the permitting agency, in February, "The NPS asserts that it is not in the public interest for BLM to approve plans of development for water-cooled solar energy projects in the arid basins of southern Nevada, some of which are already over-appropriated, where there may be no reasonable expectation of acquiring new water rights in some basins, and where transference of existing points of diversion may be heavily constrained for some basins."

Jarvis said the projects could harm a number of National Park System units. "The park units that appear most threatened include Devils Hole, a detached unit of Death Valley National

Park, Lake Mead National Recreation Area, and Mojave National Preserve, located immediately west of the Nevada-California state line," he told BLM.

The Jarvis memorandum was sent before Sen. Dianne Feinstein (D-Calif.) in March asked the Interior Department to place off limits to renewable energy development a large swath of the California Desert.

She said she is working on legislation to designate the land as a national monument. One estimate puts the size of the recommended monument at more than 800,000 acres.

Secretary of Interior Ken Salazar rejected Feinstein's immediate demand but said BLM and the State of California are conducting a comprehensive planning exercise now and will be careful about where they site projects.

Salazar told Feinstein, "However, under BLM regulations these lands are not automatically closed to filing of applications such as rights-of-way for renewable energy. These areas are identified to potential applicants as having possible resource conflicts, and as areas they may wish to avoid."

On the other hand Salazar said the department and California are attempting to identify renewal energy zones. "This effort is now underway in the California Desert, and I assure you the lands donated and acquired through your efforts and the generosity of The Wildlands Conservancy will be very carefully considered before any renewable energy siting decisions are made," he wrote Feinstein.

In the national picture Salazar and the Interior Department intend to write a programmatic EIS on solar development in six western States: Arizona, California, Colorado, Nevada, New Mexico and Utah. A draft EIS is expected to be published later this year.

The Feinstein initiative and the Jarvis memorandum risk pitting traditional allies who support solar energy development against those who support protection of the desert. Among others,

California Gov. Arnold Schwarzenegger (R) is growing impatient with environmentalist critic of solar projects

BLM has as yet approved no rights-of-way for solar projects on public lands. However, it has received 226 applications covering some 2.3 million acres, according to a BLM spokesman. The bureau may approve some of the applications where BLM has completed environmental documentation before the bureau completes the programmatic EIS, he said.

Notes

Are odds better for FLREA repeal?

Sen. Max Baucus (D-Mont.) April 22 reintroduced his legislation (S 868) to repeal a comprehensive federal lands recreation fee law. Baucus lost one key sponsor this year but gained in the end when that sponsor turned up as Secretary of Interior Ken Salazar. That, plus a new administration that is not reflexively opposed to the existing law, may give the legislation a boost this year. Supporters of the legislation argue that the existing law - the Federal Lands Recreation Enhancement Act (PL 108-447 of Dec. 8, 2004) - should be repealed because the Forest Service in particular has violated it by charging fees to broad, high impact recreation areas. The critics say the law authorized fees only in developed recreation areas. But the Bush administration argued that because developed recreation areas were within the areas, the fees are within the sweep of FLREA, as the law is called. Sens. Jon Tester (D-Mont.) and Mike Crapo (R-Idaho) cosponsored S 868.

FS policy setter named by USDA.

Although a chief political supervisor of the Forest Service has not been nominated yet, Secretary of Agriculture Tom Vilsack April 22 did name a deputy to whoever becomes supervisor, Jay Jensen. Jensen, executive director of the Western State Foresters, will serve as deputy under secretary of Agriculture. Two months ago the rumor mill named Chris Wood, a vice president of Trout Unlimited and former Forest Service official, as likely nominee as under secretary. The under secretary and his

deputy set policy for the Forest Service. Abigail Kimbell is presently the agency's chief.

Yellowstone cell phone plan done.

Yellowstone National Park announced April 20 it has completed a wireless communications plan that would restrict the use of cell phones to a few developed areas. Cell phone service is now available at Canyon, Grant Village, Mammoth Hot Springs, and Old Faithful, and would continue. The plan anticipates new cell service for the Fishing Bridge/Lake Village area. And it anticipates the relocation of a cell tower at Old Faithful so that it will be less visible. The park said it intends to allow concessioners to offer Wi-Fi service in some buildings but not in the Old Faithful Inn and the Lake Hotel. And, blessedly, the park says it will establish cell phone free zones.

Obama asks for new fire money.

Congress and the Obama administration continue to chip away at the financial imbalance between fire fighting and regular land management agency operations. The Obama administration took the most concrete step April 9 when it requested \$250 million in emergency fire fighting money in a fiscal year 2009 Iraq war supplemental spending request. Of that \$200 million would be allocated to the Forest Service and \$50 million to the Interior Department. The administration would also authorize the transfer of up to \$50 million of the Forest Service money to Interior, if needed. The \$250 million would be in addition to a \$357 million contingency fund for fighting major fires the Obama administration said it would request for fiscal 2010 when the budget is sent up later this month. Of that total \$282 million would go to the Forest Service and \$75 million to the Interior Department. To make room for the \$357 million in fiscal 2010 the Senate approved a Congressional budget (S Con Res 13) April 2 that anticipates the extra money will be made available as emergency appropriations. The House approved a counterpart budget April 2 that does not single out fire fighting expenditures for special treatment. The House and Senate intend to convene a conference committee on the

budget shortly. Appropriators have not published a schedule for processing the emergency Iraq war supplement.

OCS conservation money allocated.

The Interior Department April 20 said it will share with six coastal states \$500 million in offshore oil and gas revenues over two fiscal years. Louisiana will receive the most, \$121 million each year in fiscal 2009 and 2010; and California will receive the least, \$5 million each year. Alaska, Texas, Mississippi and Alabama will also receive revenues. The money is to be used to protect coastal wetlands, wildlife habitat and marine areas. The Energy Policy Act of 2005 established the Coastal Impact Assistance Program that provides the money to states. In a separate law the following year - the Gulf of Mexico Energy Security Act of 2006 - Congress directed the Minerals Management Service to distribute to the state side of the Land and Water Conservation Fund (LWCF) 12.5 percent of royalties from oil and gas lease sales from the 181 Area and the 181 South Area of the Gulf of Mexico. That money is to be distributed to all states, not just the six coastal states. In fiscal 2008 state LWCF revenues from the sales amounted to \$8.3 million. Secretary of Interior Ken Salazar has repeatedly said he would like to use the Gulf of Mexico law as a prototype for new legislation authorizing additional offshore drilling to distribute hundreds of millions of dollars per year in royalties to the state side of LWCF. On March 19 Salazar took his message to the American Petroleum Institute. "I believe we can also find common purpose in a vision for land conservation that President Kennedy first dreamed in 1964," he told the oilmen. "President Kennedy's idea was simple: we should be using the revenues we generate from energy development and the depletion of our natural resources for the protection of other natural resources, including parks, open space, and wildlife habitat."

Missouri River plan to take time.

The Corps of Engineers announced April 16 it is accepting public recommendations until December 1 on how to prepare an EIS and plan that would protect the

Missouri River Ecosystem. States in the north central United States have been at war for a decade with Missouri and several southern states over proper water flows through the river. The lower states want controlled, modulated flows to protect barge traffic and downstream recreation. The upper states want more natural flows to benefit wildlife and upriver recreation. Congress directed the Corps in 2007 to prepare the EIS and stop the ongoing warfare between the

states. The EIS and plan are going to take some time to complete. The Corps anticipates it will not get around to identifying alternatives until the 2010-2012 period and won't publish a final EIS and plan until 2016. Comment electronically by December 1 to: comments@mrerp.org. Send written comments to: *Missouri River Ecosystem Restoration Plan: Ms. Jennifer Switzer, Project Manager, 601 E. 12th Street, Kansas City, MO 64106.*

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations fiscal 2010 No bill yet	Obama administration outlined February 26. Details expected in early May.	Would provide broad increases for park and rec programs.
Congressional Budget 2010 H Con Res 85 (Spratt) S Con Res 13 (Conrad)	House approved April 2. Senate approved April 2.	Would allow for increased natural resources spending.
Appropriations Stimulus HR 1 (Obey)	President Obama signed into law Feb. 17 as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
Appropriations 2009 (DoI, FS, Corps, Transportation, etc.) HR 1105 (Obey)	President Obama signed into law March 11 as PL 111-8.	Provides modest increases for most park and rec programs.
Omnibus Lands Bill S 22 (Bingaman) HR 146 (Holt)	President signed into law March 30 as PL 111-11.	Includes 160+ individual bills, including NLCS, new national parks.
National Landscape Conservation System HR 404 (Grijalva) S 22 (previous item)	Grijalva introduced Jan. 9. Included in omnibus (above.)	Gives NLCS official designation by Congress.
Grand Canyon withdrawal HR 644 (Grijalva)	Grijalva introduced Jan 22.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
Surface Transportation HR 1329 (Blumenauer) S 575 (Carper)	Blumenauer introduced March 5. Carper introduced March 11.	Would establish a piece of a surface transportation law with climate change money.
FLREA (rec fee law) repeal S 868 (Baucus)	Baucus introduced April 22.	Would repeal the comprehensive federal rec fee law.
Fire suppression HR 1404 (Rahall) S 561 (Bingaman)	House approved March 24. Bingaman introduced March 10.	Would establish an emergency fire-fighting fund to limit borrowing from line programs.
Ski area uses S 607 (M. Udall)	Udall introduced March 17.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.
Weapons in parks HR 1684 (Hastings) S 816 (Crapo)	Hastings introduced March 24. Crapo introduced April 2.	Would direct DoI to allow concealed weapons in national parks, refuges.