

# Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 32 Number 24, December 19, 2014

In this issue. . .

## **Final money bill is finally final.**

*President signs behemoth of a spending law that maintains the status quo for most park and rec programs. Extends FLREA through September 2016. Inclusion of PILT money limited help for land management, conservation.... Page 1*

## **Congress approves big omnibus.**

*President expected to sign lands bill. Includes many new parks and wilderness areas. Revises a FS cabin fee formula. Okays NPS Centennial coins..... Page 4*

## **Easements good for one year only.**

*Congress completes tax extenders bill that authorizes conservation easements for tax year 2014. But permanent provision fails... Page 8*

## **Hill drops TIGER rec limits.**

*From jumbo approps bill. House would have forbid use for bike trails. Obama talks of next big highway bill in 2015..... Page 9*

## **Utah land claim will take time.**

*Although state law demands title transfer at end of December the state anticipates long process. No lawsuits filed yet..... Page 10*

## **Congress passes on wetlands rider.**

*Does not include in approps bill House provision to block rule.. Page 12*

## **Senators fault no fire action.**

*They criticize Congress for not approving disaster bill..... Page 13*

**Notes..... Page 14**

**Conference calendar..... Page 15**

## **Appropriators keep outdoor spending level in final bill**

President Obama signed into law December 16 a fiscal year 2015 appropriations bill (HR 83) that maintains fiscal 2014 appropriations levels for park and rec programs.

The Senate gave final Congressional approval to HR 83 December 13 by a vote of 56-to-40. The House had approved the bill December 11 by a fairly close 219-to-206 vote.

For the federal side of the Land and Water Conservation Fund (LWCF) the law appropriates \$165.7 million, or \$21 million less than the \$187 million in fiscal 2014. For the state side of LWCF it appropriates \$48 million, or the same as the \$48 million in fiscal 2014.

Although the appropriators okayed some money for LWCF they did not include a provision to extend the program beyond fiscal 2015, to the consternation of conservationists.

The Land and Water Conservation Fund Coalition faulted Congress for not increasing the LWCF appropriation and for not reauthorizing the program.

Said coalition co-chair Alan Rowsome, "(W)e are disappointed that Congress chose not to increase funding for LWCF as the Senate version of the bill had proposed, putting key resource areas and the economies that depend on them at serious risk across the country. Moreover, the session will end without reauthorization of LWCF - whose current legislation expires next September - creating uncertainties for landowners and localities that could undermine ongoing efforts."

Rowsome also serves as senior director of government relations for

lands at The Wilderness Society.

For Park Service operations the appropriators put up \$2.276 billion, or \$39 million more than the \$2.237 billion in FY 2014. That includes an extra \$35 million for the Park Service Centennial in 2016.

On the policy side the appropriators extends the **Federal Lands Recreation Enhancements Act** of 2004 through September 2016. That would allow federal land management agencies to charge for annual visitation passes next year.

Appropriators did not include in HR 83 a rider to block enactment of a proposed Obama administration wetlands permit rule. The House on September 9 had approved a stand-alone bill (HR 5078) to stop the rule on navigable waters. Several House spending bills included the provision as a rider. (See *related article page 12.*)

One rider forbids the use of any fiscal 2015 appropriations money on the listing of the sage-grouse as a threatened or endangered species. Conservationists faulted that provision because, they said, it could prevent the Bureau of Land Management and western states from completing conservation plans.

A copy of the whole bill is available at <http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT91668/pdf/CPRT-113HPRT91668.pdf> and a copy of the Interior bill report is available at: <http://docs.house.gov/billsthisweek/20141208/113-HR83sa-ES-F.pdf>.

HR 83 was not a lock in either the House or Senate. Liberal Democrats joined conservative Republicans in criticizing the bill. The Democrats, led by Sen. Elizabeth Warren (D-Mass.), objected to a provision to make it less risky for bankers to sell derivatives. The Republicans, led by Sen. Ted Cruz (R-Texas), objected to the absence of a provision to stop an Obama administration immigration policy.

House and Senate appropriators

reached agreement December 9 on the comprehensive fiscal year 2015 appropriations bill that would maintain most park and rec spending at fiscal 2014 levels.

With an interim appropriations bill due to expire on December 11 the House and Senate were under the gun to act. To give the Senate time appropriators were reportedly working on an interim spending bill to keep the government funded through Wednesday (December 17).

The big breakthrough on the bill came December 2 when Speaker of the House John Boehner (R-Ohio) and Republican leaders committed to moving a spending bill to appropriate money for almost all agencies through September 2015.

(The exception is the Department of Homeland Security, which oversees immigration; it received a short-term appropriation through February to give Republicans an opportunity to stop or modify Obama administration immigration policy next year.)

That the appropriators wrote one giant, 12-bill omnibus by definition limited the number and kind of riders and restrictions House and Senate appropriators can add to it. Indeed the measure contains few riders.

As for the details of a fiscal 2015 Interior and Related Agencies portion of HR 83, much depended on appropriators' final approach to a payments-in-lieu of taxes (PILT) federal lands county assistance program. They decided to appropriate \$372 million for PILT.

Senate leaders had hoped to pay for PILT from separate authorizing legislation. That was not to be. Because of the allocation to PILT the Interior portion of HR 83 had \$372 million less to spend on federal land management and conservation.

**Centennial:** The appropriators approved extra money for the Park Service in anticipation of its Centennial in 2016, as requested by the Obama administration. They approved

\$25 million for NPS operations and \$10 million for matching endowment grants. That's new money.

The House-Senate appropriations bill conferees said the \$25 million is to be used "to strengthen visitor services, public safety, and infrastructure programs in anticipation of increased visitation leading up to the Centennial of the National Park Service in 2016."

Senate Finance Committee Chairman Ron Wyden (D-Ore.) acknowledged inclusion in HR 83 of the endowment grant money. "I am also glad that the National Park Service received \$10 million for the Centennial Challenge," he said on the Senate floor December 15. "As the National Park Service moves into celebrating its centennial, it is so important that our parks receive the care and attention they need."

In addition to the appropriations for the Centennial the administration asked authorizing committees to pony up more than \$600 million in new money. Congress has not acted on that part of the Centennial request.

**Riders:** True to their word appropriators struck numerous riders inserted in an Interior bill (HR 5171) by the House Appropriations Committee July 15. But they did not include an amendment that would limit EPA from completing a proposed April 21 rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The bill does include an amendment that forbids EPA from issuing a rule to regulate lead content in ammunition or fishing tackle.

However, the conferees did NOT approve House riders that would have forbid any federal agency from attempting to transfer water rights to the federal government on renewal of a permit.

In addition the appropriators did not block implementation of an administration National Ocean Policy,

although they did demand numerous reports on past spending to implement the policy and anticipated future spending.

Finally, HR 83 does not include a Senate rider to designate a Blackstone River Valley National Historical Park in Rhode Island. Instead, Senate subcommittee on Interior chairman Jack Reed (D-R.I.) secured Congressional passage Blackstone National Park in an omnibus lands bill (HR 3979). (See following article.)

**The numbers:** Here is a summary of the final appropriations bills, compared to Senate subcommittee recommendations of August 1, the House Appropriations Committee recommendations of July 15 and fiscal 2014:

**LWCF FEDERAL:** The appropriators agreed to \$165.7 million, compared to \$186 million recommended by Senate leaders, \$49 million approved by the House committee and \$187 million in a fiscal 2014 appropriations law.

**LWCF STATE:** The appropriators agreed to \$48 million, compared to \$48 million recommended by Senate leaders, \$46 million approved by the House panel and \$48 million in the 2014 appropriations law.

**PARK SERVICE OPERATIONS:** The appropriators agreed to \$2.276 billion, compared to the senators' \$2.279 billion, the House committee's \$2.269 billion and \$2.237 billion in fiscal 2014.

**PARK SERVICE RECREATION AND PRESERVATION:** The appropriators recommended \$63.1 million, compared to the senators' \$63.1 million, the House committee's \$52 million and \$52 million

---

#### HOLIDAY PUBLISHING SCHEDULE

*Federal Parks & Recreation* newsletter will not be published over the holidays so that we may take a brief vacation. The next issue of *Federal Parks & Recreation*, Volume 33 Number 1, will be published January 16, 2014. If news breaks over the holidays, we will E-mail you a bulletin.

---

in fiscal 2014. (The big difference lies in National Heritage Area spending, a subset of rec and pres, as follows.)

**NATIONAL HERITAGE AREAS:** The appropriators recommended \$20.3 million, compared to the senators' \$20.3 million, the House committee's \$9.2 million and \$18.4 million in the fiscal 2014 appropriation.

**PARK SERVICE CONSTRUCTION:** The appropriators recommended \$138.3 million compared to the senators' \$138 million, the House committee's \$138 million and \$138 million in fiscal 2014.

**PARK SERVICE HISTORIC PRESERVATION:** The appropriators recommended \$56.4 million, compared to the senators' \$66.4 million, the House committee's \$56 million and \$56 million in fiscal 2014.

**STATE WILDLIFE CONSERVATION GRANTS:** The appropriators recommended \$58.7 million, compared to the senators' \$58.7 million, the House committee's \$58.7 million and \$58.7 million in fiscal 2014.

**NATIONAL FOREST SYSTEM:** The appropriators agreed to \$1.494 billion, compared to the Senate leaders' recommendation of \$1.497 billion, the House committee recommendation of \$1.497 billion, and a fiscal 2014 appropriation of \$1.497 billion.

**NATIONAL FOREST RECREATION:** The appropriators recommended \$261.7 million, compared to the senators' \$259 million, the House committee's \$263.9 million and \$261.7 million in fiscal 2014.

**NATIONAL FOREST TRAILS MAINTENANCE AND CONSTRUCTION:** The appropriators recommended \$77.5 million, compared to the senators' \$77.5 million, the House committee's \$86.8 million and \$75 million in fiscal 2014.

**BLM RECREATION:** The appropriators recommended \$67 million compared to the senators' \$68.5 million, the House committee's \$63.9 million and \$66.9 million in fiscal 2014.

**BLM LANDSCAPE SYSTEM MANAGEMENT:** The appropriators agreed to \$31.8 million, compared to the Senate leaders' recommendation of \$34 million, the House committee recommendation of \$30.8 million, and a fiscal 2014 appropriation of \$31.8 million.

**WILDLIFE REFUGE MANAGEMENT:** The appropriators agreed to \$474 million, compared to the Senate leaders' recommendation of \$475 million, the House committee recommendation of \$477 million, and a fiscal 2014 appropriation of \$477 million.

**FIRE FIGHTING:** The conferees approved \$2.636 billion for the Forest Service, compared to \$2.402 billion in fiscal 2014.

The conferees approved \$896 million for the Interior Department, compared to \$861.5 million in fiscal 2014.

**TIGER GRANTS:** The appropriators agreed to \$500 million, compared to a Senate committee bill recommendation of \$550 million and a House committee recommendation of \$100 million. In addition appropriators did not mention a House proposal to bar the use of TIGER (Transportation Investment Generating Economic Recovery) money for bicycle and pedestrian paths. (*See separate article page 9.*)

## **Congress approves significant 96-piece omnibus lands bill**

The Senate gave final approval December 12 to a massive omnibus public lands bill (HR 3979) that includes dozens of important park and rec measures.

The House approved the bill December 4 by a vote of 330-to-119, the Senate by 89-to-11. Although Secretary of Interior Sally Jewell objected to a key provision of the bill, the President is expected to sign it into law.

There was some uncertainty on the Senate floor. Sens. Tom Coburn (R-Okla.) and Ted Cruz (R-Texas), among other conservatives, promised to attempt

to excise the 96 natural resources provisions in HR 3979. Coburn wrote Senate Minority Leader Mitch McConnell (R-Ky.) last month and threatened an all-out attack against the natural resources package.

But supporters of HR 3979 prevailed on the Senate floor.

The public lands package would among other things:

- \* establish a new system of *cabin fees* on the national forests,
- \* authorize a *Manhattan Project* National Park to commemorate the development of the Atomic Bomb,
- \* authorize a first national park unit in Delaware,
- \* authorize a North Fork Watershed Act to protect Glacier National Park,
- \* require a review of a *Cape Hatteras* National Seashore management plan,
- \* add two important tracts to *Gettysburg* National Military Park,
- \* establish a 200,000-acre Rocky Mountain Front Conservation Management Area in Montana,
- \* authorize a *coin* to commemorate the Park Service Centennial,
- \* extend numerous national *heritage* areas, and
- \* authorize a Blackstone River Valley heritage area in Rhode Island.

The National Parks Conservation Association (NPCA) said the bill includes the "most significant National Park System expansion in nearly three decades."

"This bipartisan legislation represents years of work by community members, business leaders, scientists and the National Parks Conservation Association," said Clark Bunting, president of NPCA. "It also represents years of history that deserve to be preserved, and acres of land that deserve to be protected in the name of strengthening our country's best idea."

The public lands legislation was written into a must-pass Defense bill and is not an amendment, a crucial difference under Congressional rules.

The House approved its Defense

bill May 22 without the public lands package and the Senate Armed Services Committee approved its bill May 22 without the public lands package.

One of the lead architects of the omnibus, Sen. Lisa Murkowski (R-Alaska), said the entirety of the public lands section was well thought out.

"This package is the result of bipartisan and bicameral negotiations - weeks of meetings among the members and staff of the committees of jurisdiction, the committees who have crafted the overall (Defense) bill, leadership in both chambers, and a wide range of individual members," she said.

"Our final result is hardly a rush to judgment, but instead the end of a long and actually very traditional process. We have considered, debated, and amended these provisions over the course of the Congress, using the Committee process and the House and Senate floor when we could."

Murkowski added, "We don't need to start over, working on the same bills in a new Congress."

A wide range of interest groups endorsed the agreement, including the Independent Petroleum Association of America, the Public Lands Council, The Wilderness Society and other conservation groups.

Critics included not just conservative Republican senators, who were worried about private property rights and an expansion of federal land, but also a half-dozen environmental groups. The latter objected to public lands grazing provisions.

Sen. Coburn led the conservative critics. He offered numerous amendments to remove dozens of individual provisions, especially the addition of new parks. And he offered an amendment (No. 4005) that would have forbid the acquisition of any more land for any national park unit until the Park Service maintenance backlog decreased for at least two years in a row. None of the amendments came to a vote. (Coburn is ailing with prostate cancer.

He is retiring from Congress this year.)

Murkowski responded, "To those who have spoken out against creating new national parks, given the maintenance backlogs that I think we recognize - it could be as high as \$20 billion. I get it. I agree with Sen. Coburn that we must address the backlog issues, the maintenance issues, and I thank him for the scrutiny he and his staff have given to this issue and the report they came out with. We are going to be working to address that in a manner that is constructive and long term. I want to reduce the backlogs, and we will do it."

As for the cost of additional parks, she said, "Again, this (bill) has been judged to be revenue neutral. Through its passage, we could make progress on the backlog issue."

The public lands package includes 96 individual items and covers 451 pages of the massive 1,648-page Defense bill. The measure and supporting documents can be found at these links: <http://1.usa.gov/1tErMyg>, <http://1.usa.gov/1vnaxpY>, and <http://1.usa.gov/1Ag2ETa>.

The outlook for the natural resources portion of the bill was, as always, problematic, particularly on the Senate floor where rules offer all sorts of opportunities to stop legislation. And Coburn promised to take advantage of those opportunities. But the strong 89-to-11 vote on passage indicated he had little support, perhaps because the bill was needed for the defense of the country.

This is about as far as an omnibus lands bill has gone since 2009 when President Obama signed into law the Public Land Management Act of 2009 (PL 111-11 of March 30, 2009). It included 2 million acres of wilderness, the establishment of a National Landscape Conservation System within the Bureau of Land Management, the designation of thousands of miles of wild and scenic rivers, and the designation of 10 national heritage areas at a price tag of \$103.5 million, among other items.

Jewell generally praised the legislation December 6 but took

exception to a land exchange for the Arizona copper mine with Resolution Copper company. She called the provision "profoundly disappointing."

Here are summaries of some key provisions in the new public lands package:

**Forest Service cabin fees:**

Supported by members of both political parties the popular cabin fee bill (HR 5476 by itself) would replace an existing law - the Cabin User Fee Fairness Act of 2000. That law bases fees on Forest Service appraisals set at five percent of the market value. The House Natural Resources Committee approved the bill September 18. Section 3024.

The new provision would establish 11 tiers of fees from \$650 up to \$5,650. The Senate Energy Committee approved a counterpart bill (S 1341) on Dec. 19, 2013.

Said the National Forest Homeowners and Cabin Coalition, "The Cabin Fee Act ensures the continuation of recreation residence cabins on National Forest lands by implementing a fair and equitable permit fee system that can be efficiently administered by the USDA Forest Service."

**Delaware park:** Would designate a First State National Historical Park as the first national park unit in Delaware. The park would commemorate Delaware's role in the country's history and as the first state to ratify the constitution. Section 3033.

Rep. John Carney introduced HR 703 on Feb. 27, 2013. Sen. Thomas R. Carper (D-Del.) introduced a counterpart Senate bill (S 347) that the Senate Energy Committee reported to the floor April 22, 2013.

**Manhattan Project:** Would designate a Manhattan Project National Park to commemorate the development of the Atomic Bomb. Section 3039.

House Natural Resources Committee Chairman Doc Hastings (R-Wash.) moved a stand-alone bill (HR 1208) through his

committee April 24, 2013.

Sen. Maria Cantwell (D-Wash.) introduced a counterpart stand-alone bill (S 507), along with senators from Tennessee and New Mexico. Their states include potential park sites.

**Hatteras park plan:** The Senate Energy Committee approved a bill (S 486) Sept. 10, 2013, that would strike a compromise on the future of a Cape Hatteras National Seashore management plan. That compromise is included in the omnibus lands bill. Section 3057.

The compromise would leave in place a Park Service plan, but would require a review of it. Democrats and Republicans, led by bill sponsor Sen. Richard Burr (R-N.C.), hashed out the compromise.

House Republicans would straight-up reverse an MPS plan for the national seashore that reduced beach access to off-road vehicles. The House February 6 approved the legislation (HR 819) sponsored by Rep. Walter Jones (R-N.C.) The omnibus dropped the House plan.

**National heritage areas:** The omnibus includes a provision that extends into 2021 a dozen existing national heritage areas (NHAs). Among the NHAs are the Delaware and Lehigh National Heritage Area, the National Coal Heritage Area, The Steel Industry Heritage Project, The Essex National Heritage Area, The America's Agricultural Heritage Partnership, The Ohio & Erie Canal National Heritage Corridor and The Hudson River Valley National Heritage Area. That's not an exclusive list. Section 3052.

The package does not include legislation (HR 445) that would establish a national policy for NHAs. Under the present system NHAs are usually established when powerful legislators attach riders to omnibus lands bills or to appropriations bills, no questions asked.

Heritage areas usually consist of a mix of public and private lands with striking social, economic, historical and natural features. NHAs don't, in

their entirety, quite rise to the level of national parks. However, some NHAs do actually include national park units.

**Blackstone heritage corridor:** The omnibus includes a provision that would designate a Blackstone River Valley National Historical Park in Rhode Island. Sen. Jack Reed (D-R.I.) sponsored the Senate bill (S 3773), which the Senate Energy Committee approved June 27, 2013. Rep David Cicilline (D-R.I.) introduced the House bill (HR 706), which the House Natural Resources Committee reported September 18. Section 3031.

Reed, as chairman of the House subcommittee on Interior and Related Agencies Appropriations, had included the provision in a draft fiscal year 2015 appropriations bill.

**Gettysburg expansion bill:** The provision would add two important tracts to Gettysburg National Military Park. The proposal, which has been around for several Congresses, would add to the park the Gettysburg Railroad Station and a 45-acre tract at the south end of the battlefield that hosted cavalry battles. The 45-acre tract along Plumb Run was the site of a cavalry encounter during the battle of Big Round Top. Section 3034.

Sen. Robert P. Casey, Jr. (D-Pa.) introduced the Senate bill (S 782). Rep. Scott Perry (R-Pa.) introduced a counterpart House bill (HR 1513, which the House approved January 13.

**Montana forests:** Would establish a Rocky Mountain Front Conservation Management Area in Montana from 195,073 acres of Lewis and Clark National Forest and 13,087 acres of BLM land where the front meets the plains. Section 3065.

Former Sen. Max Baucus (D-Mont.) introduced the lead bill (S 364). Said Rep. Steve Daines (R-Mont.), "I'm proud that we're taking historic steps today to protect some of our state's greatest treasures, expand the responsible development of Montana's energy resources, and expand and protect access to our public lands for generations to come."

**NPS Centennial coin:** This bill (HR 627 as a stand-alone bill) was approved by the House April 29. It would authorize the Treasury Department to mint \$5 gold coins, \$1 silver coins and half-dollar coins during calendar year 2016 for the Centennial. Section 3055.

The bill would also assess a huge surcharge on each minting - \$35 for each dollar coin, \$10 for each silver coin and \$5 for each half-dollar coin. By our math if all coins were sold, the program would bring in \$13,625,000.

## **Bigger conservation tax easements valid for this year**

It was good news and bad news for conservation easements in the waning days of the 113<sup>th</sup> Congress.

The good news for the easements is that the Senate December 16 gave final Congressional approval to an extension of the provision for tax year 2014. It allows a significantly higher deduction for the donation of conservation easements than an old law. That bill is numbered HR 5771.

The bad news is the House December 11 defeated a second tax bill (HR 5806) that would have made the provision permanent. The vote was 275-to-149, or 65 percent in favor; however, the House procedure required a two-thirds vote.

The Land Trust Alliance expressed dismay with the House vote. "We're extremely disappointed and saddened that this bipartisan legislation, which would have helped every community across America meet urgent needs now, fell short in the House," said Rand Wentworth, the alliance's president. "The good news is a majority of House members demonstrated today that they share our firm belief that land conservation is good for America and Americans."

The fate of a long-term extension was sealed December 2 when House and Senate leaders said they would abandon a long-term tax bill in favor of a one-month extension of favored tax laws. The House voted on the tax bill anyway.

Separately, the House December 3 approved a temporary extenders bill (HR 5771) that would keep the easement provision alive through this tax year (2014). The vote was 378-to-46. The Senate then approved the extenders bill December 16 by a 76-to-16 vote.

The White House played a key role in the House defeat of a permanent extension of the conservation easement in HR 5806, the Supporting America's Charities Act. The Office of Management and Budget (OMB) on December 10 promised a veto.

OMB said permanent extensions would run afoul of sound budget practice. "As the Administration stated when strongly opposing similar legislation this past July, if this same, unprecedented approach of making certain traditional tax extenders permanent without offsets were followed for the other traditional tax extenders, it would add \$500 billion or more to deficits over the next ten years, wiping out most of the deficit reduction achieved through the American Taxpayer Relief Act of 2012," said OMB.

The Land Trust Alliance said that when the provision was in effect from 2006 through December 2013, farmers and other landowners protected as much as 1 million acres per year.

Sen. Bill Nelson (D-Fla.) said on the Senate floor before the Senate approved the short-term extension that conservation easements are a boon to the Everglades ecosystem. "There is an interest in environmental restoration; for example, the Everglades restoration, that the headwaters that ultimately flow to the Everglades be preserved from being developed," he said. "So there is an interest in the environment to obtain the development rights or a conservation easement."

Nelson also put in a plug for long-term tax provisions. "American businesses and American taxpayers would like to have some certainty of knowing, as they are doing their planning for the year, that they can plan on this or that deduction or tax credit," he said.



House bill sponsor James Gerlach (R-Pa.) said that the legislation would raise "the maximum deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income (AGI) in any year to 50%"; allow "qualified farmers and ranchers to deduct up to 100% of their AGI"; and increase "the number of years over which a donor can take deductions from 6 to 16 years."

Still in place was an even older law that allows donations of up to 30 percent of adjusted gross income. Unless Congress acts next year easement donors will go back to that formula. But conservationists would like to see the deduction swell.

## **Hill drops TIGER rec limits; Obama looks ahead to 2015**

Congress placed no restrictions on TIGER regional transportation grants in a final, fiscal year 2015 appropriations bill (HR 83) that President Obama signed into law December 16.

When the House approved a fiscal 2015 Transportation-only bill (HR 4575) June 10 it voted to bar the use of the regional grant money for bicycle and pedestrian trail projects. The Senate Appropriations Committee approved its version of a bill (S 2438) June 5 without the trails limitation.

In a final version of HR 83 appropriators followed the Senate committee lead and placed no new restrictions on TIGER (Transportation Investment Generating Economic Recovery) grants.

At the same time the appropriators agreed to TIGER spending in fiscal 2015 of \$500 million, compared to a Senate committee bill recommendation of \$550 million and a House committee recommendation of \$100 million.

The maneuvering over recreation projects in TIGER grants doesn't necessarily set a precedent for next year when a base surface transportation law comes up for renewal. Indeed both the House and Senate in 2015 will be

controlled by Republicans and they by definition are tougher on recreation spending limits tied to transportation than Democrats.

When the House and Senate do begin work on a new surface transportation bill (the existing one expires May 31, 2015), more than anything they must find a new source of money to complement gasoline taxes that feed the Highway Trust Fund. Those gasoline taxes have waned in recent years and without the extra money Congress will be tempted to cut out conservation programs tied to surface transportation.

Thus, President Obama himself at the first of the month met with the Business Roundtable and suggested a short-term fix and a long-term fix to find money for surface transportation. He said those fixes may depend for revenue on corporate and private tax reform initiatives next year.

In response to urging by FedEx Chairman Fred Smith to support legislation to increase gasoline taxes, Obama said, "So, Fred, I guess the answer is, I'm going to talk to McConnell and Boehner to see what we can do short term and to see whether these bipartisan bills (to increase gasoline taxes) have any legs. They'll have a better sense of head counts. And I'll have to talk to Harry Reid and Nancy Pelosi as well. But even if we were able to get something done, it would not be the kind of 10-year solution that we need."

McConnell is Senate Majority Leader-to-be Mitch McConnell (R-Ky.,) and Boehner is Speaker of the House John Boehner (R-Ohio). Reid (D-Nev.) is current (former?) Senate Majority leader and Pelosi (D-Calif.) is House Minority Leader.

Obama then threw cold water on higher gasoline taxes for now by saying, "The best I suspect they could do would be to stagger through another year."

Rep. Earl Blumenauer (D-Ore.) introduced legislation (HR 3636) December 3 that would increase the gasoline tax to fully fund highway and

mass transit programs. Backed by both the U.S. Chamber of Commerce and labor unions, Blumenauer proposed a 15 cents per gallon gasoline tax increase, on top of the existing 18.4 cents per gallon.

On June 18 Sens. Bob Corker (R-Tenn.) and Chris Murphy (D-Conn.) proposed a 12 cents per gallon increase, with a six cents hike each year for the next two years.

Such increases would be especially helpful for recreation programs because Congressional Republicans in particular demand that existing gasoline taxes be spent on roads and bridges, and not on "fluff," such as recreation, as Rep. John Mica (R-Fla.) once put it.

Surface transportation money of course is crucial to park and rec programs because the current law allocates about \$720 million per year to an umbrella Transportation Alternatives Program. It in turn allocates money for such individual programs as Recreational Trails, Transportation Enhancements, Scenic Byways, and Safe Routes to School.

The Rails-to-Trails Conservancy December 17 put out this alert to its members: "2015 could determine the fate of trails for years to come. The last transportation funding bill, called MAP-21, was already a huge setback, slashing trail funding by more than 30 percent. But the next bill could be even worse—expanding these drastic cuts...endangering the rail-trails we treasure...and preventing thousands of miles of former rail lines from becoming trails."

The alert was posted by conservancy president Keith Laughlin.

Without comment President Obama August 8 signed into law (PL 113-159) the legislation that will keep surface transportation programs going for a few more months.

But only through May 31 of next year. And that, said Secretary of Transportation Anthony Foxx, guarantees another crisis next spring when the temporary money runs out.

## Despite Utah law demand, fed land shift may take time

On December 31 a Utah law requires the federal government to transfer title to more than 31 million acres of federal land to the state. But don't hold your breath.

That deadline, according to an aide to Gov. Gary Herbert (R-Utah), does not mean the federal government must physically begin transferring federal land to Utah on January 1.

Rather, Herbert's office said the law just starts the process. Alan Matheson, the governor's land and environment advisor, told us the law "does not specify a mechanism for the transfer." He said the (Utah) Public Land Stewardship Commission is developing recommendations on the process.

Said Matheson, "Everyone recognizes that if a transfer were to happen, it would be a complex process. In general, they are looking at negotiation, federal legislation and litigation."

Utah officials make no secret that development of those public lands is a major goal of the Transfer of Public Lands Act (TPLA), HB 148, signed into law on March 23, 2012, by Herbert. It demands the transfer of more than 31 million acres of federal land, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

The Southern Utah Wilderness Alliance (SUWA), a lead critic of the legislation, doesn't expect any action soon. Said Steve Bloch, legal director for the SUWA, "The ball is going to be in Utah's court to follow through on the threat in this legislation - turn over America's public lands to the state of Utah or we will sue to 'take them back.' The state, however, has made clear that it doesn't intend to do anything too soon/is not ready to sue."

As to a lawsuit from the federal

government or from environmentalists Bloch said, "I'm not aware of anyone who plans to sue over HB 148."

Despite the assumption by Bloch and Matheson that the state does not anticipate taking over those public lands right off, the plain language of the law does suggest an immediate transfer.

The law says that, "On or before December 31, 2014, the United States shall: (a) extinguish title to public lands; and (b) transfer title to public lands to the state."

At least two reports have questioned the legality of H.B. 148. In one the Utah Office of Legislative Research said shortly before Herbert signed the law in 2012, "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain."

"Under the Gibson case, that requirement would interfere with Congress' power to dispose of public lands," the office continued. "Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

On October 27 two University of Utah officials published a "white paper" that rejected the legal basis for the Utah state government's claim to federal lands.

The paper said that a number of legal precedents, individually and collectively, forbid the wholesale transfer of federal lands to a state at the request of a state. Those legal precedents include the Property Clause of the U.S. Constitution, the equal footing legal doctrine, the Federal Land Policy and Management Act, and the enabling acts that established western states. The paper is available at: [http://content.lib.utah.edu:81/cdm4/item\\_viewer.php?CISOROOT=/utlawrev&CISOPTR=9160](http://content.lib.utah.edu:81/cdm4/item_viewer.php?CISOROOT=/utlawrev&CISOPTR=9160).

When the law was enacted Herbert offered this legal argument for it, "Legal justification for the transfer of

the public lands into State ownership is based on the history of federal land policy. From the inception of this Nation and through much of its history, it was the policy of the federal government to dispose of the public lands both to pay off federal debt and to encourage the settlement of western lands for the benefit of the states and the nation."

As for the economics of wholesale transfer a massive report requested by the state says state management could prove to be financially risky.

Researchers from three Utah universities said in the 784-page report, "In conclusion, from a strictly financial perspective, it is likely the state of Utah could take ownership of the lands and cover the costs to manage them. Our research also suggests that it could put a strain on the state's funding priorities in the early years as the state adjusts to the loss of federal dollars, evaluates land resources and conditions, and develops programs to replace those now managed by federal agencies."

Economists from the University of Utah, Bureau of Economic and Business Research; Utah State University; and Weber State University prepared the report, *An Analysis of a Transfer of Federal Lands to the State of Utah*. The report is available at: <http://publiclands.utah.gov/plpco-releases-report-and-study-on-transfer-of-public-lands/>.

The report was submitted to the (Utah) Public Lands Policy Coordinating Office.

Separately, on Dec. 14, 2011, the State of Utah launched an initiative to gain the right to manage 12,000 ways across federal lands. In "notices of intent" the state advised the Interior Department it will file formal lawsuits to claim the RS 2477 rights-of-way (ROWS) across department-managed lands. The state has continued to aggressively demand RS 2477 ROWs in court.

In a more conciliatory development Rep. Rob Bishop (R-Utah) is negotiating

with all parties to sort out management of public lands in the state by the federal government.

On October 21 Bishop and Utah politicians reached an extraordinary agreement with environmentalists, sportsmen and other parties on a half-dozen thorny public land management issues in Daggett County, Utah.

The agreed-to principles for Daggett County - one piece of a projected massive land use compromise in the state - include a land exchange with the state to open up 10,000 acres to energy development, the designation of wilderness areas, the designation of a conservation area, the exchange of land to open the way for a resort, and an approach to resolving disputes over RS 2477 ROW claims.

HB 148 exempts by name five national parks units - Arches, Bryce Canyon, Canyonlands, Capitol Reef and Zion. It exempts six national monuments - Cedar Breaks, Dinosaur, Hovenweep, Natural Bridges, Rainbow Bridge and Timpanogos Cave. And it exempts by name 23 wilderness areas.

### **Congress passes on wetlands rider in big spending bill**

Congress last week left out of a giant appropriations bill (HR 83) a rider that would have blocked enactment of a proposed Obama administration wetlands permit rule.

But Congress did include in HR 83 a provision blocking a related administration proposal that would govern definitions of agricultural exemptions from the existing wetlands rule.

Section 112 of the Energy and Water Division of the bill orders EPA and the Corps of Engineers to pull the proposed interpretive rule.

So the broader wetlands navigable waters rule is still alive. It would extend a Section 404 permit requirement beyond an existing mandate to protect navigable waters. The administration

would also require permits for seasonal streams, wetlands near navigable waters and other waters.

As we reported in past issues of *FPR*, interested parties from all sides have taken stands on the administration proposal of April 21. Twenty-four Republican senators charged the proposal would extend the authority of EPA and the Corps of Engineers to regulate virtually every water body, no matter how small.

One hundred and eight-five sportsmen's groups countersigned a letter backing the proposed rule and asserting it is essential to the preservation of conservation lands.

But the sportsmen were checkmated by the Small Business Administration. It commented on October 1 that the proposal should be withdrawn because it "would have direct, significant effects on small businesses."

In addition the National League of Cities, the National Association of Counties and other local governments November 14 asked the Obama administration to substantially revise a proposed wetlands permit rule.

The local government action is different than the usual criticism because local governments are often allies of the administration. They complained the proposal could expose local governments to a wave of lawsuits over implementation of the rule because of unclear definitions.

Congress has already attempted in several pieces of legislation to prevent completion of the rule. Notably the House on September 9 approved a stand-alone bill (HR 5078) that would stop the rule. The vote was 262-to-152. The House had earlier approved similar legislation June 17 in a fiscal year 2015 Energy and Water appropriations bill (HR 4923).

Despite all that momentum and firepower appropriators did not include the wetlands provision in the final fiscal year 2015 omnibus-spending bill. One theory holds that Sen.

Lisa Murkowski (R-Alaska) asked her Republican colleagues to hold back in hopes of a stronger position next year when Republicans take over the Senate. Murkowski herself is expected to chair the Senate Energy Committee and the Senate subcommittee on Interior appropriations.

Some sportsmen anticipate the rider will be back next year. Said Jimmy Hague of the Theodore Roosevelt Conservation Partnership, "We'll see it again at a minimum by the time we get to a fiscal 2016 appropriations bill."

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.

## **Senators decry Hill inaction on emergency fire funding**

Two Democratic senators took to the floor this week to criticize Congress for not including in a jumbo fiscal year 2015 appropriations bill (HR 83) legislation to shift emergency fire-fighting money out of regular appropriations to disaster appropriations.

Said Sen. Ron Wyden (D-Ore.), chief sponsor of a lead Senate bill (S 1875) that has 23 cosponsors, "This legislation would have solved the problem of paying for the ever-increasing costs of fighting wildland fires without decimating the agencies'

core budgets, where they get the money to pay for their essential work – including the forest restoration work that can help us get ahead of these infernos."

He added, "Our commonsense solution would have paid for these natural disasters like other natural disasters are paid for, instead of cannibalizing the agencies' budgets."

The chairman of the Senate subcommittee on Interior appropriations, Sen. Jack Reed (D-R.I.), had inserted the provision in a version of a draft fiscal 2015 spending bill, but House and Senate appropriators did not include it in a final version of HR 83, which President Obama signed into law December 16.

Reed blamed the House for the provision's failure. "I am dismayed, however, that the House refused to accept the Senate's language that would have allowed for a more rational way to account and pay for emergency wildfire suppression," he said. "Every member of the House Interior Appropriations subcommittee had cosponsored nearly identical legislation."

He warned, "I believe my colleagues in the West may regret not taking the opportunity when they had the chance." Although numerous Republicans supported the provision, it was also endorsed by the Obama administration budget, which may have been the kiss of death in the House.

Rep. Michael Simpson (R-Idaho) was the chief sponsor of a lead House bill (HR 3992) with 76 cosponsors. All the western governors endorsed the legislation in June, according to the Western Governors' Association.

House Republican leaders resisted the proposal. They dealt the fire-disaster proposal a setback April 10 by approving a fiscal 2015 Congressional budget (H Con Res 96) that rejected the proposal. The Republicans argued that fire-fighting expenses should be paid out of regular appropriations because Congress could lose control if the expenses were paid with disaster funds.

In HR 83 Congress approved a fiscal 2015 fire-fighting appropriation of \$2.636 billion for the Forest Service, compared to \$2.402 billion in fiscal 2014. Congress approved \$896 million for Interior Department fire fighting, compared to \$861.5 million in fiscal 2014.

## Notes

### **Yellowstone snowmobile rule on.**

Yellowstone National Park opened for oversnow travel December 15 under new regulations, after a decade of legal battles over the regulations. However, the BlueRibbon Coalition, a snowmobiling advocacy group, notes that warm weather and light snowpack are limiting access to the park. The regulation authorizes up to 50 groups of guided snowmobiles daily to enter the park with up to seven vehicles in a group and up to 60 snowcoaches. That's a total of 110 "transportation events." In addition both snowmobiles and snowcoaches would have to pass tougher noise emission standards eventually. Last winter (2013-2014) the park allowed up to 318 snowmobiles per day and up to 78 snowcoaches per day. The program was authorized in a 2013 Winter Rule that the park published Oct. 24, 2013.

### **ORVs enter off-limits Mojave.**

Off-road vehicles (ORVs) drove into hundreds of thousands of acres of wilderness and conservation areas in the Mojave Desert Thanksgiving weekend, the Bureau of Land Management (BLM) says in a new report. The ORVers may have moved into those areas because a site that they have long used in Johnson Valley has been closed because it will be added to the 29 Palms Marine Corps Base. The author of the BLM report, ranger Patrick Chassie said, "Evidence suggests the 29 Palms MCLB expansion with associated reduction of Johnson Valley OHV area, has led to an increase of OHV use into other non-traditional riding areas to include sensitive biological and cultural sites." Complicating BLM's job in managing the conservation lands is the checkerboarded nature of the area with private lands interspersed with public lands and with public lands up against populated areas. For now, complained Ileene Anderson, a senior

scientist with the Center for Biological Diversity, "This ugly and illegal destruction of public lands in the California Desert Conservation Area is a travesty. This report confirms that despite the best of intentions, the BLM does not, and cannot, control ORVs in the west Mojave Desert." Anderson recommended that BLM reduce the number of routes into the areas in a Renewable energy Conservation Plan and a West Mojave Route Designation Plan that are in the works. More information and the report are available at the center's website, [www.biologicaldiversity.org](http://www.biologicaldiversity.org).

### **NPS chooses Sauvajot at NRSS.**

The Park Service said a fortnight ago that Dr. Raymond Sauvajot will be the next associate director in charge of the Natural Resource Stewardship and Science (NRSS) Directorate. Sauvajot for much of this year has served as deputy director of NRSS. Before that he was the natural resource program chief for the Pacific West Region of the Park Service. Sauvajot will oversee 720 scientists and other experts who study and manage national park resources.

### **MacLean to head U.S. Park Police.**

The Park Service said December 10 that Robert D. MacLean will serve as the next chief of the U.S. Park Police. McLean has served as acting chief. He will replace as chief Teresa Chambers, who retired. MacLean has 23 years of service in the U.S. Park Police. The Interior Department bounced Chambers from the chief's position in 2003 for discussing staff shortages with the press. After an eight-year legal battle she was reinstated. She officially retired on Dec. 7, 2013.

### **NPS chooses Vogel as Capitol lead.**

The Park Service said December 10 that Robert "Bob" Vogel will serve as the new director of the National Capital Region of the agency. Vogel has 33 years experience at NPS, for the last three and one-half years as superintendent of the National Mall. He will oversee 14 superintendents, 1,200 employees and 700 park locations in the District of Columbia, Maryland and Virginia. He officially took over his new position in the Capitol Region on December 14.

**NPS culture awards vary greatly.**

The Park Service December 12 honored three employees with cultural resources awards for strikingly different accomplishments. One award was presented for preserving battlefield monuments to Lucas Flickinger from Gettysburg National Military Park. He led a team preserving 1,300 battlefield monuments. A second award was presented to Mary Blatt from the Boston African American National Historic Site for conceiving historical pageant linking the Haitian Revolution to the Civil War. The third Appleman-Judd-Lewis Award was presented to Duane Hubbard, currently the superintendent of Tonto National Monument, for his work as a regional archaeologist on projects in 10 southern Arizona parks.

**Subcommittee chairs next year?**

Incoming House Natural Resources Committee Chairman Rob Bishop (R-Utah) has not yet named his subcommittee chairmen, a committee staff member said this week. More than likely he will wait until next year. However, the House Appropriations Committee has said Rep. Ken Calvert (R-Calif.) will remain chairman of the subcommittee on Interior and Related Agencies. Possible candidates to chair the House subcommittee on Public Lands to replace Bishop are Rep. Doug Lamborn (R-Colo.), who would move over from his chairmanship of the House subcommittee on Energy; Rep Tom McClintock (R-Calif.), who represents Yosemite National Park; and Rep. Cynthia Lummis (R-Wyo.), who represents Yellowstone National Park. Senate committees have not yet begun to sort out assignments, either for committee or subcommittee chairs. However, Sen. Lisa Murkowski (R-Alaska) will likely chair the Senate Energy Committee and the Senate subcommittee on Interior Appropriations.

**Conference calendar**JANUARY

8-11. **Archaeological Institute of America Annual Meeting** in New Orleans, La. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

20-21. **National Ski Areas Association Eastern Conference** in Killington, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

21-23. **U.S. Conference of Mayors Winter Meeting** in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, D.C. 20006. (202) 293-7330. <http://www.usmayors.org>.

21-24. **Outdoor Retailer Winter Market** in Salt Lake City, Utah. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

FEBRUARY

1-4. **National Association of Conservation Districts Annual Meeting** in New Orleans, La. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.

10-12. **National Ski Areas Association Western Winter Conference** in Snowbird, Utah. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

16-20. **Association of Partners for Public Lands 2015 Partnership Convention & Trade Show** in Atlanta, Ga. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

MARCH

8-13. **North American Wildlife and Natural Resources Conference** in Omaha, Neb. Contact: Wildlife Management Institute, 1146 19th Street, NW, Suite 700, Washington, DC 20036. (202) 371-1808. <http://www.wildlifemanagementinstitute.org>.

17-21. **American Alliance for Health, Physical Education, Recreation and Dance National Convention & Expo** in Seattle, WA. Contact: AAHPERD, 1900 Association Drive, Reston, VA 20191(703) 476-3400. <http://www.aahperd.org>.