

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Celina Richardson

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Fiscal 2011 appropriations guessing game has begun

Is there anything left in the till for fiscal year 2011 appropriations bills, given big spending increases in fiscal 2010 appropriations bills and in a big economic stimulus law before that?

The Obama administration will provide the first hints when a fiscal 2011 budget comes out in just over two weeks on February 1. But early speculation suggests that at the federal level the Interior Department will do so-so and the Forest Service not as well.

And state and local governments are praying for any help they can get.

Kristen Brengel, director of legislative and government relations for the National Parks Conservation Association, is not optimistic. "I've heard lots of things including a five percent across-the-board decrease," she said. "There are low expectations for funding new programs, but I hope to see a budget more like fiscal 2010."

Said Derrick Crandall, president of the American Recreation Coalition, "I think the budget will be okay," he said. "I think generally there will be some increase for park and recreation programs at the Interior Department, but I'm less sanguine about the Forest Service."

The Forest Service rec budget depends in large part on what Congress and the administration do about fire-fighting costs. For the last decade the Forest Service has been forced to shift recreation money to fight huge emergency fires.

"Although the numbers in recent years suggest an increase in Forest Service recreation spending, the reality on the ground is down as the Forest

Service has put money into fire fighting," Crandall said.

Congress did add an extra \$474 million for emergency fire fighting in this fiscal year (2010) under a new law called the Federal Land Assistance Management and Enhancement Act (FLAME.) It was included in a fiscal 2010 appropriations bill. However, while the FLAME law will be in effect in fiscal 2011 there is no guarantee Congress will fund it.

Crandall cautioned that the Obama administration has been particularly close-mouthed about the upcoming budget, compared to previous administrations.

Rich Dolesh, public policy director for the National Recreation and Park Association, said state and local governments are hopeful that Secretary of Interior Ken Salazar will follow up on his repeated speeches championing secure, full-funding for federal, state and local land acquisition.

"The secretary promised in a number of forums to increase the Land and Water Conservation Fund (LWCF) to full funding," said Dolesh. "I hope there will at least be incremental progress and I hope he lives up to his promises."

Brengel from the National Parks Conservation Association agreed. "Secretary Salazar has been talking for some time about a secure LWCF and land acquisition," she said. "I hope he can do so. That's about the only area where there might be increases."

Some interest groups are already banging the drums to persuade the Obama administration to help their causes. In December the National Trust for Historic Preservation asked House members to sign a letter from the Congressional Historic Preservation Caucus seeking \$125 million for the Historic Preservation Fund. Congress appropriated \$79.5 million in fiscal 2010.

But for all programs in fiscal 2011 much will depend on the fate of a second economic stimulus bill that could provide more than \$1 billion in supple-

mentary assistance to federal land management agencies, the states, AmeriCorps and the National Service Trust.

The House approved the bill (HR 2847) December 16, but by a close 217-to-212 vote. Sen. Richard Durbin (D-Ill.) and others are now developing a smaller Senate bill than the \$154 billion House measure. (*See following article.*)

In total an Interior Department and related agencies fiscal 2010 money bill appropriated \$32.24 billion, or \$4.66 billion more than a \$27.58 billion appropriation for fiscal 2009.

Here is a comparison of the Interior bill (PL 111-88 of October 30), with the Senate, the House, the administration and fiscal 2009:

* FEDERAL LWCF BY AGENCY (with fiscal 2009 in parenthesis): Park Service, \$86.3 million (\$64.2 million in fiscal 2009); Fish and Wildlife Service, \$86.3 million (\$42.5 million in fiscal 2009); Bureau of Land Management, \$29.7 million (\$14.8 million in fiscal 2009); and Forest Service, \$63 million (\$49.8 million in fiscal 2009);

* STATE LWCF: Conferees, \$40 million; Senate, \$35 million; House, \$40 million; administration, \$30 million; fiscal 2009, \$20 million;

* STATE WILDLIFE GRANTS: Conferees, \$90 million; Senate, \$80 million; House, \$115 million; administration, \$115 million; fiscal 2009, \$75 million;

* HERITAGE AREAS: Conferees, \$16.8 million; Senate, \$16.7 million; House, \$16.8 million; administration, \$15.8 million; fiscal 2009, \$15.7 million;

* NATIONAL FOREST SYSTEM: Conferees, \$1.551 billion; Senate, \$1.556 billion; House, \$1.565 billion; administration, \$1.507 billion; fiscal 2009, \$1.510 billion;

* NATIONAL FORESTS RECREATION: Conferees, \$292.6 million; Senate committee, \$290.1 million; House, \$292.6 million; administration, \$280.1 million; fiscal 2009, \$277.6 million;

* FOREST TRAILS: Conferees, about \$85 million, but not precisely specified; Senate, \$82.2 million; House, \$85.3 million; administration \$82.1

million; fiscal 2009, \$81.2 million;

* NATIONAL LANDSCAPE CONSERVATION SYSTEM: (not broken out but conferees did ask for \$2 million more for monuments and conservation areas than the \$28.8 million the administration requested); Senate, \$75 million; House \$74 million; fiscal 2009, \$67 million;

* WILDLIFE REFUGE MANAGEMENT: Conferees, \$503.3 million; Senate, \$488.6 million; House, \$503 million; fiscal 2009, \$468 million;

* FIRE FIGHTING FS: Conferees, \$2.592 billion; Senate, \$2.587 billion; House, \$2.652 billion; fiscal 2009, \$2.137 billion. The conference total includes \$413 million in FLAME money;

* FIRE-FIGHTING DOI: Conferees, \$981 million; Senate, \$979.6 million; House, \$1.008 billion; fiscal 2009, \$856 million. The conference total includes \$61 million in FLAME money;

* PARK SERVICE OPERATIONS: Conference, \$2.262 billion; Senate, \$2.261 billion; House, \$2.261 billion; administration request, \$2.266 billion; fiscal 2009 appropriation, \$2.132 billion;

* NPS CENTENNIAL CHALLENGE: Conference, \$15 million; Senate, no money; House, \$25 million; Obama administration, \$25 million; fiscal 2009, no money;

* NPS REC AND PRES: Conference, \$68.4 million; Senate, \$67.4 million; House, \$59.4 million; administration, \$53.9 million; fiscal 2009, \$59.7 million;

* NPS CONSTRUCTION: Conference, \$233 million; Senate, \$219.7 million; House, \$213.7 million; administration, \$206 million; fiscal 2009, \$233.2 million;

* SAVE AMERICA'S TREASURES: Conferees, \$25 million; Senate, \$20 million; House, \$30 million; administration, \$20 million; fiscal 2009, \$20 million; and

* PRESERVE AMERICA: Conferees, \$4.6 million; Senate, \$3.2 million; House, \$6 million; administration, \$3 million; fiscal 2009, no money.

Senate preparing smaller stimulus bill than House did

Senate Democratic leaders are now poring through more than 120 suggestions

for provisions in a second economic stimulus bill, in anticipation of moving a bill early this year.

If the Senate follows the lead of the House, outdoor programs will be prominently featured. The House approved a bill (HR 2847) December 16 that contains more than \$1 billion for federal land management agencies, states, the AmeriCorps and the National Service Trust.

However, Senate Democrats, led by Senate Majority Whip Richard Durbin (D-Ill.), are expected to propose a less-costly version of a stimulus bill after the Senate returns to work January 19. The bill will have a top Senate priority behind health care legislation.

Although House Democrats were barely able to muster enough votes to move HR 2847 (217-to-212), the political situation has changed substantially this month with a devastating jobs report a fortnight ago.

Transportation projects are in the forefront of the House bill and are expected to be given an even greater priority in the Senate because they are politically popular.

Thus, the American Highway Users Alliance and the American Public Transportation Association January 6 in separate statements called on the Senate to move a stimulus bill laden with transportation projects.

The House stimulus bill would appropriate \$27.5 billion for highway infrastructure programs, many of which would involve trails and parks.

The highway money would set aside \$550 million for Indian and federal roads as follows: Indian Reservation Roads, \$310 million; NPS roads, \$170 million; Forest Highways, \$60 million; and Refuge Roads, \$10 million.

For land management activities that involve "term employment" the bill would appropriate \$50 million for the Park Service, \$40 million for the Forest Service, \$30 million for the Fish and

Wildlife Service, and \$20 million for the Bureau of Land Management.

In addition the bill would appropriate for hazardous fuels reduction projects \$35 million for the Forest Service and \$20 million to the Interior Department.

Finally, the bill would appropriate \$75 million for State and Private Forestry "term employment" projects overseen by the Forest Service. That's \$270 million total for federal land management agencies.

AmeriCorps and the National Service Trust would receive a separate \$200 million from the legislation. For water resource projects the Corps of Engineers would receive \$715 million. The bill would appropriate \$100 million to the Bureau of Reclamation for clean water initiatives.

The Obama administration led the way last month in the development of the stimulus legislation by recommending an infusion of about \$50 billion for infrastructure programs.

In the economic stimulus bill the House passed December 16, the surface transportation money would be allocated proportionately in line with priorities in the existing surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). (See following article on the future of highway transportation money.)

American Association of State Highway and Transportation Officials Executive Director John Horsley said the states were prepared. "States have 9,500 transportation projects ready to go with a potential value of \$70 billion that can proceed toward construction within 120 days of enactment and after approval by the appropriate federal agency," he said.

The stimulus bill would theoretically be paid for by remaining balances in a \$700 billion bank bailout program. By some estimates the fund may contain as much as \$200 billion, with repayments from banks coming in regularly.

Temporary SAFETEA spending may lead to more of the same

The House last month approved stopgap legislation that would beef up surface transportation programs through the end of the fiscal year on September 30.

But the legislation - a massive new economic stimulus bill (HR 2847) - barely made it through the House and faces at best an uncertain future in the Senate. So the immediate, mid-term and long-term future of park and rec programs tied to surface transportation continues murky.

The Senate returns to work January 19, but it already has a loaded plate with health insurance and climate change legislation demanding attention.

Still, Senate Democrats, led by Senate Majority Whip Richard Durbin (D-Ill.), are expected to propose a less-costly version of a stimulus bill after the Senate returns to work January 19.

One thing is known. President Obama December 21 signed a law (PL 111-118) that extends the existing SAFETEA-LU surface transportation law (the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) through the end of February. That gives Congress time to move the economic stimulus bill.

In passing the economic stimulus bill that would in turn extend SAFETEA-LU through September, Congress would give itself time to write a new five- or six-year surface transportation law.

That is not the preference of House Transportation Committee Chairman James Oberstar (D-Minn.), the lead player on transportation policy in Congress. He would have preferred that Congress last year follow the lead of his House subcommittee on Highways and Transits that approved an unnumbered six-year surface transportation bill June 24. The measure would authorize spending \$500 billion.

But, said an aide to Oberstar, the

chairman took what he could get in the stimulus bill. "He couldn't get everything he wanted so he said, 'Let's do some good,'" said the staff member. Oberstar did obtain enough extra money in the bill to bolster existing highway programs.

That is, the bill (HR 2847) would boost fiscal year 2010 spending to make up for automatic rescissions of past-year spending. According to the American Association of State Highway Transportation Officials, that amounts to more than \$10 billion. In addition HR 2847 would provide almost \$20 billion to replenish the Highway Trust Fund.

The bill doesn't include earmarks, but it would provide states with a proportionate amount of money compared to earmarks in SAFETEA-LU.

But the future of HR 2847 is less than rosy, given the slender margin of passage in the House, 217-to-212. The Senate nowadays requires a 60-vote majority to bring anything to the floor, a tougher standard than the House has.

So what do Oberstar and company do if the stimulus bill fails? "If we do nothing then all Hell breaks loose," said the Oberstar aide. He said as many as 30 states can't make the 20 percent match for federal funds provided by SAFETEA-LU as it is.

Oberstar may be coming around to a piecemeal approach over the next year or two, rather than the full six-year bill he has been demanding. "We may not do it in one big bite," his staff member said, "but in a lot of nibbles. We hope to get to the same place."

Other, independent analysts are not bullish. "I hope the stimulus provides a little help, but it would not do much," said one outdoor lobbyist. "Right now I don't see the forces coming into play for a six-year bill. You may see an extension of SAFETEA for two or three years with minor modifications."

If by some long-shot Congress did approve Oberstar's six-year, \$500 billion bill, it would reauthorize all the traditional park and rec programs such

as transportation enhancements, recreational trails, scenic byways, federal and Indian land roads, and Safe Routes to School.

Feds promise to do their part to fix Everglades ecosystem

The Obama administration committed itself last week to spend the money required for restoration of the Everglades ecosystem, a \$12.5 billion job.

At an Everglades Coalition Conference at Palm Beach Gardens, Fla., Nancy Sutley, chair of the White House Council on Environmental Quality, said, "When the 2011 budget comes out, I think you'll see a continued commitment not only to the Everglades but other ecosystem restoration projects." That's according to Florida newspapers.

But the Obama administration and the Democratic Congress will be hard put to meet the demands of conservationists who support the restoration of the Everglades. They are demanding that Congress and the administration this year (1) appropriate \$305 million for already-authorized restoration projects and (2) authorize four major new projects.

"This is an exciting time in restoration, but we can't stop now," said Mark Perry, cochair of the coalition and executive director of the Florida Oceanographic Society. "As the Everglades continues to decline, we believe our list of priorities for 2020 is key to turning restoration around."

The coalition is also pushing the State Of Florida, a 50-50 partner in the restoration effort, to get moving on the acquisition of more than 70,000 acres from the U.S. Sugar Corp. The land lies between Lake Okeechobee, a main source of water for Everglades National Park, and the park.

The 70,000 acres is down from 187,000 acres that U.S. Sugar agreed to dispose of last year. But the corporation would lease back to the state another 40,500 acres for \$150 per acre for seven years.

Said the coalition, "This unprecedented opportunity to fix long-standing shortcomings in restoration projects and our ability to meet the region's water supply, ecosystem restoration, and flood protection demands must be seized for the benefit of all Floridians."

But the federal government is under even more pressure than the state because over the last eight years Florida has outspent the Bush administration by a six-to-one margin.

The restoration of the Everglades ecosystem was authorized by a Comprehensive Everglades Restoration Plan (CERP) of 2000 that was originally expected to cost \$7.8 billion, with half from the federal government and half from the State of Florida.

However, the CERP law is just the first step. Congress must also (1) approve individual projects once feasibility studies are completed and (2) appropriate money to pay for the individual projects.

At the appropriations level a fiscal 2010 Energy and Water spending bill (PL 111-85 of Oct. 28, 2009) will provide \$34 million less than the Obama administration had requested for the Everglades. Although the administration asked for \$214 million, Congress provided \$180 million in the law. However, a separate economic stimulus law (PL 111-5 of Feb. 17, 2009) also provided some money for Everglades projects.

At the authorization level in 2007 Congress approved the first two major construction projects for CERP - a \$1.365 billion Indian River Lagoon proposal, with half of the money - \$682.5 million - coming from the feds and half from the State of Florida. It also authorized a \$375 million Picayune Strand project with half the money - \$187.5 million - provided by the feds and half by Florida. Congress appropriated seed money for the programs in the economic stimulus law and in the fiscal 2010 appropriations law.

The House Transportation Committee late last year began laying the ground-

work for a new law to authorize additional water resource projects around the country, including the Everglades. The committee solicited recommendations for project to include in a new Water Resources Development Act (WRDA) of 2010.

At an initial hearing Nov. 18, 2009, members of the Florida Congressional delegation indicated they would request money for old and new projects for CERP.

The Everglades Coalition identified these four projects it wants included in the 2010 WRDA - Biscayne Bay Coastal Wetlands, C-111 Spreader Canal phase 1, C-43 Reservoir and the Broward Country Water Preserve Area.

Park visitation goes up as (most) agency budgets shrink

Visitation to federal, state and local park and recreation areas increased substantially in calendar year 2009, even as budgets for some government agencies plummeted.

The reason for the visitation increases was the same at about every level - the national recession. Conversely, the lousy economy was also the driving force behind the budget decreases.

For the year the Park Service received a 4.37 percent increase in visitation in 2009 compared to 2008. That translates into almost 12 million more visitors, 286,850,984 in 2009 compared to 274,852,949 in 2008, according to NPS visitation data.

Camping at national parks was up almost five percent in 2009 compared to 2008 with 8,384,192 visits compared to 7,992,069 in 2008.

The Corps of Engineers posted an even bigger gain just for camping, 17 percent, hitting 756 million visitor days versus just 631 million in 2008. (However, 2008 was not a representative year because in 2005 the Corps hosted even more visitor days than in 2009, 784 million.)

A survey of state parks by the National Association of State Park Directors showed that of 28 systems polled all but one (Hawaii) posted significant gains in camping. The average increase over 2008 was 7.4 percent. And for all park visitation the increase was 6.92 percent.

North Dakota saw the largest percentage increase in overall visitation with 16.6 percent, followed by Montana with 14 percent. For camping only Kansas topped the list with 24 percent followed by New York with 21 percent.

At the National Park Service a representative of concessioners believes the visitation increases can be sustained. "We think it can be, but if you talk to the Park Service the numbers weren't up much over historical numbers, just from 2007 and from 2008," said Derrick Crandall, counselor to the National Park Hospitality Association. "But we think international visitation is going to be more important. And I think the American public, when looking at parks and public lands, realizes there is great value."

Early numbers from the Forest Service indicate an 18 percent increase in campground reservations in 2009 and a 12.2 percent increase in overall occupancy.

But while the foul economy has boosted visitation it has also devastated state and local park and rec budgets across the country. California has been the lead example but other states such as Georgia and Arizona are facing a meltdown in their operating budgets.

In fact if Arizona Gov. Jan Brewer (R) and a fractured state legislature don't agree on some new budget revenues soon, the whole state park system could be forced to close. A looming \$1.5 billion budget deficit could even force the state treasurer to withhold payments to schools next month. State officials this week were looking at numerous budget options to close the deficit.

Federal land management agency budgets have been spared the ax, at

least through fiscal year 2010. But the Obama administration is expected to propose some cuts in fiscal 2011 when it rolls out a fiscal 2011 budget February 1.

FS expected to emphasize 'restoration' in plans rule

Secretary of Agriculture Tom Vilsack will have an opportunity to put in place his ambition to "restore" the national forests when the Forest Service writes a planning rule over the next few years. The rule would govern the writing of more site-specific plans by individual forests.

The Forest Service announced December 18 that not only will it prepare a new planning rule but also that restoration will play a prominent role in the content of the rule.

In a notice of intent to write the rule and an EIS the service outlined five principles it will consider. The first principle is "the need for restoration." By restoration Vilsack has said he means "managing forest lands first and foremost to protect our water resources, while making our forests more resilient to climate change."

That represents a marked change in philosophy from the Bush administration, which attempted to give roughly equal weight to protection and consumptive uses.

Not everyone is sure that restoration is the philosophy that fits the needs of the national forests. George Leonard, until recently chairman of the board of directors of the National Association of Forest Service Retirees, says there is nothing in the various laws governing the Forest Service that mentions restoration.

"In nature there is a constant state of change with an inherent random occurrence of major disturbing events. Trying to restore an ecosystem to some specific time period is a foolish concept," Leonard told us in remarks that represent his own views. "If we are in a period of rapid climate change we

should be trying to develop healthy, resilient forest ecosystems that are able to adapt to change and thus able to fulfill the statutory objectives for which they are managed."

While the Forest Service prepares the new rule it will use a 2000 Clinton administration rule to guide individual forests. However, that 2000 rule allows forests in turn to use a 1982 rule. The 1982 rule may be the choice of most forests because the 2000 rule was so complex, the agency said.

In writing the new rule Vilsack and the service will face the same dilemma as the Clinton administration - how to determine the best science in ever-changing, variegated ecosystems. The Clinton administration chose to use a committee of scientists to advise it on best science, a strategy that helped cause a decade-long delay in completing the rule.

Environmentalists are already demanding that the Obama administration establish a committee of scientists to guide the preparation of the next planning rule. More than 100 groups wrote Vilsack December 16 asking him to appoint such a committee, as permitted by the National Forest Management Act of 1976 (NFMA.)

As directed by NFMA the Forest Service has since 1976 prepared 127 forest plans to guide land uses in 155 national forests and 20 grasslands (some plans cover more than one forest and/or grassland.)

Under NFMA forest plans are to be revised every 15 years. However, the agency said 68 of the existing plans are overdue for revision because they should have been rewritten between 1998 and 2008.

The Clinton administration issued controversial new Forest Service planning regulations in November 2000 that emphasized ecological sustainability. The Society of American Foresters and the timber industry complained bitterly because they said the regulations gave ecological sustainability priority over

economic uses. The Bush administration stayed those regs on May 17, 2001, and moved to replace them.

On January 5, 2005, the Bush administration did complete a first set of planning rules, but without an EIS. Judge Phyllis J. Hamilton on March 30, 2007, threw out the regs, charging the agency failed to document impacts of the rule on the environment and imperiled species.

On April 21, 2008, the Bush administration tried again with another final planning rule. Although the Forest Service made some modifications in the rule, it followed the same planning template as the 2005 rule. In addition the service included a perfunctory EIS that would leave further environmental analysis to specific proposed projects.

On June 30, 2009, U.S. District Court Judge Claudia Wilken for the Northern District of California again held that the Forest Service failed to adequately evaluate the environmental impacts of the rule.

In the December 18 notice the Forest Service said it is soliciting advice on the details of environmental documentation, including the identification of issues and alternatives to be analyzed. Comment by February 16 by E-mail to fspr@contentanalysisgroup.com or by mail to *Forest Service Planning NOI, C/O Bear West Company, 172 E 500 S, Bountiful, UT 84010.*

The administration listed several principles that it would follow in the writing of the plan/EIS that left little doubt about which direction it is trending. The agency announcement, signed by Under Secretary of Agriculture Harris Sherman, says of the restoration principle:

"When the health and integrity of our lands deteriorate, so do the environmental, economic, and social benefits they provide, with enormous potential impacts on drinking water, greenhouse gas emissions, climate, wildlife, recreation, community health, and prosperity. Plans could promote restoration and

management of national forests and grasslands to make them more resilient to these threats, and to ensure the continued delivery of important ecosystem services and benefits."

Wetlands permit bill at top of DU wish list for 2010

Ducks Unlimited (DU) last week said legislation to require wetlands protection permits for most water bodies will be its number one priority for this year.

DU urged its members to ask the House and Senate to move the legislation that has been frozen in place by attacks on its possible impacts on private property rights.

DU says that more than 20 million acres of marshes, wetlands, and lakes across the country are at risk if Congress doesn't act. "Waterfowling could lose millions of birds a year if these breeding habitats are destroyed," said Dr. Scott Yaich, director of conservation operations for the association. "This is a top priority for sportsmen in this Congress."

The legislation would require EPA and the Corps of Engineers to regulate all water bodies. Under the landmark *Rapanos* Supreme Court decision only navigable waters must be regulated.

But persuading Congress to act is easier said than done because of opposition to the legislation from farmers and private property rights advocates. The critics warn that the legislation would give the federal government authority to regulate all waters, down to the meanest farm stock pond.

As an American Farm Bureau Federation position paper warns, "In sum, the proposed change to the CWA (Clean Water Act) would expand the reach of the law in an unprecedented manner. Never before has Congress so broadly defined federal jurisdiction as extending to all intrastate waters, given federal agencies the authority to regulate 'activities affecting' water bodies, or granted

sweeping authority to regulate to the fullest extent of Congress's legislative power."

The federation argues the legislation would give the feds jurisdiction over "essentially all wet areas within a state, including groundwater, ditches, pipes, streets, municipal storm drains, gutters, desert features and farmland."

But, countered Neil Shader, a spokesman for DU, the legislation would simply return federal policy to 2001, before the Supreme Court became involved.

Shader acknowledged the influence of the legislation's critics, "The opposition is very vocal in calling the bill an infringement on private property rights. We want to keep reminding Congress of the loss of wetlands without this legislation."

DU faces hurdles in both the House and Senate. In the House, where 176 members cosponsored versions of legislation in 2008, no bill has been introduced yet this Congress. House Transportation Committee Chairman James Oberstar (D-Minn.) has reportedly been on the verge several times of reintroducing his bill with a large number of cosponsors.

Oberstar's office did not say when a bill would be introduced but implied the committee has not given up. "No timeline at this point," an aide to Oberstar E-mailed us. "We're working within the House and with the Administration."

In the Senate the Senate Environment and Public Works Committee June 18, 2009 did approve a bill (S 787) but the measure has not moved any further toward Senate floor action. The American Land Rights Association, among other private property rights advocates, has helped keep S 787 off the Senate floor with repeated attacks.

Supporters of the legislation such as DU argue that the legislation is needed to reverse the June 2006 *Rapanos* Supreme Court decision. The court said

that only water bodies related to navigable waters should be regulated. The legislation would effectively reverse the *Rapanos* decision and require permits from the Corps of Engineers and EPA under Section 404 of the Clean Water Act.

The bill says that the Corps of Engineers, working with EPA, must approve Section 404 permits under the Clean Water Act for all projects on waters of the United States. Those waters are defined in S 787 as "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, . . ."

Rec fee critics fault day-use fees from concessioners

Recreation fee critics have a second objection to a proposed new Forest Service rule, in addition to elimination of a 50 percent discount in camping fees for holders of senior passes.

They object to a proposed service regulation that would allow private operators of day-use sites to charge fees at the sites. When the Forest Service operates such sites it may not charge fees unless the sites offer a suite of services.

"The FS claims it can enter into a contract with a private concessionaire to charge fees for anything and everything, free of the requirements, prohibitions, or public participation that would be required if the FS were charging the fee directly," said Western Slope No-Fee Coalition President Kitty Benzar.

More specifically, Benzar charged that the Forest Service is violating the spirit and the letter of the overarching recreation fee law by allowing concessioners to operate day-use sites and charge a fee. When the Forest Ser-

vice operates day-use sites it may not charge fees, unless it provides a half-dozen services at the site.

This is one of a series of disputes between the concessions industry and recreation users over fees that concessioners may charge at both campgrounds and day-use sites. The Forest Service, in attempting to referee the battle, proposed regulations December 1 that generally take the concession industry's side.

For instance the Forest Service recommended the elimination of a 50 percent discount in camping fees for holders of senior passes. The proposed new discount would be lowered to 10 percent. About half of all national forest campgrounds are operated by concessioners. Total campground revenue now runs about \$35 million per year.

The concessioners, allied as the National Forest Recreation Association, view the proposal as a trade-off - slightly higher fees for seniors to prevent higher fees for everyone else, including youngsters.

As we reported in the last issue, Warren Meyer, president of Recreation Resource Management, said, "In this context, the reduction in some senior pass camping discounts should be seen in the broader context of a financial give-and-take intended to make it feasible for concessionaires to increase free and discounted use at other sites."

But Benzar charged, "The Forest Service is not showing good faith by changing the terms of the passes after the fact. They encouraged people to turn in their Golden passes, which guaranteed a 50 percent camping discount, in exchange for (an America the Beautiful) pass which does not, without telling them that they were giving up an important benefit."

The December 1 Forest Service proposal does not address the agency's authority to allow concessioners to charge day-use fees, per se, but does require concessioners to provide a 10 percent discount for holders of senior

citizen passports. In addition holders of annual and volunteer passes would receive free admission.

The senior discount would cost concessioners about \$50,000 from its estimated fee-site revenue of \$4.2 million, the Forest Service estimated. And free admission from annual and volunteer passes would cost from \$134,000 to \$420,000, the service estimated.

But Benzar argued that the Forest Service should not be allowed to charge day-use fees, period, where the service itself may not. "The FS now claims that once they contract public facilities to concessionaires to manage, these sites are no longer subject to (the fed rec fee law) because they somehow morph into the realm of contracted goods-and-services instead of recreation fees," she said. "They claim the Granger-Thye Act as authority for this."

Indeed, James Bedwell, director of recreation for the Forest Service, wrote Benzar on October 8, "Concession permits for campgrounds and day use areas are issued under the Granger-Thye Act. Permit fees paid to the government are subject to Granger-Thye requirements. Fees paid by visitors to concessionaires are considered revenue of those private businesses."

While the Forest Service may win this immediate battle, it is in danger of losing the greater war because three western senators have introduced legislation (S 868) that would repeal the overarching recreation fee law called the Federal Lands Recreation Enhancement Act (PL 108-447 of Dec. 8, 2004.)

The repeal bill was introduced by Sens. Max Baucus (D-Mont.), Jon Tester (D-Mont.) and Mike Crapo (R-Idaho.) on April 22. No hearings have been held on it, but Baucus is in position to insert it in any big tax bill that comes before the Senate Finance Committee that he chairs.

The Forest Service will take public comment on its December 1 fee proposal until February 1 by E-mail to <http://www.regulations.gov> or by mail to

U.S. Forest Service, Attn: Carolyn Holbrook, Recreation and Heritage Resources Staff, 1400 Independence Ave., S.W., Stop 1125, Washington, D.C. 20250-1125.

Feinstein bill shakes up California Desert management

Sen. Dianne Feinstein (D-Calif.) last month kept her promise and introduced legislation (S 2921) that would put more than one million acres of the California Desert off limits to solar power development.

After Feinstein had announced last spring her intention to introduce the bill several solar power companies backed out of proposed projects on Bureau of Land Management (BLM) land between the Joshua Tree National Park and the Mojave National Preserve.

Feinstein clearly is trying to walk a tightrope between protection of the desert on one side and encouragement of solar power development on the other. To offset the new monument land Feinstein would offer in her bill incentives for solar development on other BLM lands.

Feinstein acknowledged her balancing act on introducing her bill. "I strongly believe that conservation, renewable energy development and recreation can and must co-exist in the California Desert," she said. "This legislation strikes a careful balance between these sometimes competing concerns."

Feinstein said she was motivated to protect the desert lands in part because of an expensive federal/non-profit acquisition of former railroad lands in the California Desert between 1999 and 2004. The 600,000 acres had been owned by the Catellus Development Corporation. The federal government put up \$18 million and the Wildlands Conservancy paid \$40 million to acquire them. The lands were transferred to BLM to manage.

When Feinstein learned earlier this year that BLM had approved right-

of-way (ROW) applications for solar and wind projects on the former Catellus lands, she hit the roof. "As the sponsor of the legislative provisions that helped secure the deal to acquire the roughly 600,000 acres of former private land, I found the BLM's actions unacceptable," she said last month.

Feinstein holds a lot of cards because she chairs the Senate subcommittee on Interior appropriations.

According to press reports, at least two companies have canceled projects in the proposed monument area. They include BrightSource Energy, with Robert F. Kennedy, Jr. as a partner, and Tessera Solar. BLM said it has approved applications for solar development on 30,000 acres in the desert ROWs. But Feinstein noted that the projects had not received permits yet or taken other serious steps toward development.

The bill would designate a 941,000-acre Mojave Trails National Monument which includes about 266,000 acres of the former Catellus lands. It would also designate a Sand-to-Snow National Monument of about 134,000 acres.

As a quid pro quo the legislation would streamline the solar project permitting process by establishing strict deadlines to ensure developers move quickly into production, require federal land managers including the military to write programmatic EIS to identify high-potential areas to be developed (the Department of Defense manages 3 million acres in the desert), and provide grants and loan guarantees for new transmission technologies. The bill also offers ROW holders an opportunity to relocate to federal renewable energy zones that the Interior Department is now developing.

Feinstein is not the only senator who is apprehensive about solar and wind development. The ranking Republican on her appropriations subcommittee, Sen. Lamar Alexander (R-Tenn.), said in early June that a large solar plant would cover 30 square miles, compared to one square-mile for a nuclear power plant that would produce an equivalent amount of energy. Similarly, he said wind

energy would take up even more land, 270 square miles by his telling, to reach the equivalent energy output of a square-mile nuclear plant.

BLM has as yet approved no construction permits for solar projects on public lands. However, it has received more than 225 applications covering more than 2 million acres. The bureau may approve some of the applications where BLM has completed environmental documentation before the bureau completes the programmatic EIS.

CBO gives Senate climate bill a positive budget score

Backers of a huge Senate climate change bill (S 1733) are touting a Congressional Budget Office (CBO) budget score of their bill.

CBO said last month the bill would not add to the deficit either in this decade or succeeding decades. CBO said S 1733, approved by the Senate Environment and Public Works (EPW) Committee Nov. 5, 2009, would provide a \$21 billion surplus to the budget over the decade from 2010 to 2019.

EPW Chairman Sen. Barbara Boxer (D-Calif.) said, "The CBO score shows that there is a way to design a clean energy and climate bill that is fiscally responsible and gets the job done - while protecting the health of our families and the planet."

Still, Senate Republicans are maintaining an all-out attack against the bill. Because of that attack in part Senate Majority Leader Harry Reid (D-Nev.) has deferred action on the bill until spring.

The legislation holds the potential to create major park and recreation policy revisions. If by chance climate change legislation does move through the Senate, it would go to a House-Senate conference committee with a House-passed bill (HR 2454.)

The Senate committee bill, S 1733, and the House bill, HR 2454, would make

major changes in the management of conservation programs on federal and state lands by revising fundamentally management priorities on those lands. The bills would have every federal agency or department complete a plan to comply with standards in the legislation. States would have to take similar actions.

The bills would establish a Natural Resources Climate Change Adaptation Fund that would provide billions of dollars to protect natural resources. In a major difference from the House bill S 1733 would guarantee money in the fund. The House would subject distribution of the money to appropriations in annual spending bills.

In addition S 1733 and HR 2454 are targets for riders to guarantee \$900 million per year for the Land and Water Conservation Fund. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) and Senate Finance Committee Chairman Max Baucus (D-Mont.) recently introduced a bill (S 1933) to do that.

Notes

Salazar to stay put. Secretary of Interior Ken Salazar, who has laid out an ambitious park and rec agenda for the nation, will not leave office and pursue the governorship of Colorado. That post will open up this fall because current Gov. Bill Ritter (D-Colo.) said he will not run for reelection. In a statement Salazar, a former senator, said, "I have a job to do as Secretary of the Interior to implement President Obama's vision for a clean energy economy and to better protect America's great outdoors." Salazar is still popular in Colorado and was a leading choice of many Democrats in Colorado to succeed Ritter.

Pombo trying a comeback. Former Rep. Richard Pombo (R-Calif.), once a major player in park and rec policy in the House, said last week he will run for Congress this fall in the Congressional District that includes Yosemite National Park. The current Congressmen, Rep. Rep. George Radanovich R-Calif.), has announced that he will not run for

reelection. The Yosemite district, the 19th, is adjacent to the 11th district that Pombo represented for seven terms before he was defeated in the 2006 election. Environmental groups such as the Sierra Club vowed to oppose Pombo, who once chaired the House Resources Committee, as it was called then. Said Richard Hamilton, Sierra Club deputy executive director, "When Pombo represented Dublin and Pleasanton he wanted to sell off the only national park that was in his district (Eugene O'Neill National Historic Site). Now he wants to represent Yosemite. National Parks were America's best idea, film director Ken Burns reminds us. Having Richard Pombo represent Yosemite may be America's worst idea." Other Republicans are already in the fray including State Sen. Jeff Denham (R), who Radanovich has endorsed.

Y'stone adjusts winter numbers. Yellowstone National Park said January 8 that it published misleading numbers about snowmobile and snowcoach use in the park in December. The park said that in an original report on January 5 it undercounted when it failed to include the numbers of snowmobiles and snowcoaches that began their trips from Old Faithful. Still, acknowledged the park, oversnow travel was down somewhat in December 2009 compared to December 2008 and December 2007. The average number of snowmobiles in the park last month was 190 per day compared to 233 the previous year and 365 the year before that. The average number of snowcoach trips in December 2009 was 36 per day compared to 39 in December 2008 and 45 the year before. The park authorized up to 318 guided snowmobile visits per day this winter and up to 78 guided snowcoach visits. The State of Wyoming has filed a lawsuit, alleging the rule is overly restrictive.

NPS O&G regs may affect 13 units. The Park Service said late last month that the new oil and gas regulations that it is planning to write could affect 13 national parks that host ongoing oil and gas development. NPS announced its intent to write a new rule November 25. The 13 units affected, NPS said December 22, are Alibates Flint Quarries

National Monument (TX), Aztec Ruins National Monument (NM), Big Cypress National Preserve (FL), Big Thicket National Preserve (TX), Big South Fork National River and Recreation Area (TN, KY), Cuyahoga Valley NP (OH), Fort Union Trading Post National Historic Site (ND), Gauley River National River (WV), Lake Meredith National Recreation Area (TX), New River Gorge National River (WV), Obed Wild and Scenic River (TN), Padre Island National Seashore (TX), and Tallgrass Prairie National Preserve (KS). Under existing practice more than half of oil and gas operations within the National Park System do not have to prepare a plan of operations or provide the feds with a bond. That's because NPS exempts from its regs oil and gas projects adjacent to a park that don't require access through the park. That's 109 of the 693 operations within the system. NPS also exempts operations that were grandfathered when the NPS regs went into effect in January 1979 because they were subject to state regulations. That's 255 operations. Comment on the announcement by January 25 to: <http://www.regulations.gov> with an identification of RIN 1024-AD78 or write to *Department of the Interior; National Park Service; Attention: 9B Rulemaking Team, Geologic Resources Division, National Park Service, P.O. Box 25287, Denver, CO 80225-0287.*

Salazar will revive NPS board.

Even though Congressional authority for a National Park System Advisory Board expired December 31, Secretary of Interior Ken Salazar said he would keep the board going on his own authority. The board was first established in 1935 and Congress most recently extended it in a fiscal year 2009 appropriations bill. Salazar said he would use separate authority he has under a separate law to establish discretionary committees. If Congress does reauthorize the board, the panel would at that time revert to a legislative board. Indeed, the House approved legislation (HR 3804) December 7 that would reauthorize the advisory board for 10 years. The bill, sponsored by Rep. Paul Tonko (D-N.Y.), now goes to the Senate. The advisory board, with members from a wide range of interests, has enjoyed varying degrees of influ-

ence. Rep. Henry Brown (R-S.C.) complained on the House floor last month that the advisory board had been used to delay agency decisions.

Glen Canyon protocol steps taken.

The Obama administration took a second step December 31 toward developing a policy to govern high water flows through Grand Canyon National Park from Glen Canyon Dam. In the first step on December 10 Secretary of Interior Ken Salazar committed his department to conducting more frequent high water flows. In the second step on December 31 the Bureau of Reclamation described how it would develop a protocol governing the extra releases of water. The bureau also announced a meeting of an advisory committee on the protocol in Phoenix on February 3-4. The upcoming Obama administration protocol will represent a major change in policy from the Bush administration, which limited high water flows. In the December 31 announcement the department said the U.S. Geological Survey will complete an analysis of the last high-flow release of March 2008. Under the Clinton and Bush administrations the Bureau of Reclamation conducted three high-flow experiments from 1996 to 2008. When and how often additional tests will be conducted remains to be seen. The department said the tests would occur when enough sediment builds up to meet a "trigger." That trigger point will presumably be developed in the protocol. The release of high volumes of water from Glen Canyon Dam has long formed a flashpoint of contention between the National Park Service and environmentalists on one side and power companies and communities on the other side.

DoI enters Cape Wind dispute.

Secretary of Interior Ken Salazar and the Park Service have jumped into the middle of a debate about the possibility of constructing a mammoth Cape Wind wind energy project in Nantucket Sound off Massachusetts. Salazar this week met with the warring parties and directed them to reach an agreement by March 1. Salazar said, "If an agreement among the parties can't be reached, I will be prepared to take the steps necessary to bring the permit process to conclusion."

In that Salazar is a lead advocate of wind energy, he is expected to side with the developers of the proposed project, even though some Massachusetts politicians who are usually his allies oppose it, including the Kennedys. The Park Service opened the way for Salazar's intervention on January 4 by announcing the entire Nantucket Sound was eligible for listing on the National Register of Historic Places. NPS was responding to a request of two Wampanoag Indian tribes who say the sound is sacred to them. Even if Salazar sides with the developers the listing as a historic place would provide legal ammunition for the tribes to block the project. The wind farm would consist of 130 turbines on 24 square miles of the sound.

Historic preservation procedures aired. The Bureau of Land Management (BLM) said December 29 it intends to revise a basic policy on historic preservation consultation to include Native American lands. BLM does have in place a procedure for consulting with Native Americans in its Manual Section 8120 and Handbook Section H-8120-1. But BLM did not include Native Americans in a 1997 programmatic agreement with the Advisory Council on Historic Preservation. Now BLM has developed a draft strategy for consultation with the Native Americans as an addendum to the programmatic agreement. The draft strategy is at: http://www.blm.gov/wo/st/en/prog/more/CRM/historic_preservationx.html. Send comments by January 28 to: *Robin Burgess, BLM Preservation Officer, U.S. Department of the Interior, Bureau of Land Management, 1849 C St., N.W., Mail Stop 204-LS, Washington, D.C. 20240 or to robin_burgess@blm.gov.*

DeGette offers Colorado wild bill. Rep. Diana DeGette (D-Colo.) continued a decade-long campaign last month by introducing legislation (HR 4289) to designate 850,000 acres of wilderness in Colorado. The proposed wilderness areas - in all Colorado legislative districts - lie roughly two-thirds in national forests and one-third in BLM-managed land. DeGette said a recent Wilderness Society poll found that more than 70 percent of Coloradoans support additional wilderness. DeGette's bill would

include as wilderness such areas as alpine vistas in Red Cloud Peak, the Dolores River Canyons, and Beaver Creek near Colorado Springs. No comparable Senate bill has been introduced.

Conference Calendar

JANUARY

19-21. **National Ski Areas Association** western conference at Steamboat, Colo. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

20-22. **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. 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. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.

7-10. **Association of Partners for Public Lands** annual convention in San Diego. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

9-10. **National Ski Areas Association** eastern conference at Mount Snow, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

MARCH

6-10. **National Association of Counties** legislative conference in Washington, D.C. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, D.C. 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.