

# Federal Parks & Recreation

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## Jarvis nominated at NPS (at last); McCain opposes Abbey

It took awhile, but the Obama administration finally announced July 10 that it will nominate NPS Pacific West Regional Director Jon Jarvis as agency director. The nomination will require Senate confirmation.

An association of NPS retirees, often a good indicator of the thinking of most NPS employees, was enthusiastic. "We're delighted Jon has been nominated and hope the Senate moves quickly on the confirmation process," said Bill Wade, chair of the executive council of the Coalition of National Park Service Retirees.

He added, "The Park Service needs him right now to advocate with the White and Congress on several issues. . . I hope he is confirmed before the (August) recess."

In a late Friday afternoon announcement (a time usually reserved for bad news) the Obama administration confirmed that it would nominate an agency professional to head NPS. The rumor that Jarvis would be selected has been in the mill since February.

The delay in Jarvis's nomination stemmed in part from a disagreement between the Park Service and Sen. Diann Feinstein (D-Calif.) about a permit for an oyster farm in Point Reyes National Seashore. The Park Service opposed extension of the permit because it said the farm did not conform to uses allowed in potential wilderness, even though the farm has been in operation since 1934.

But Feinstein countered that the Park Service (and Jarvis was in charge of the Pacific West Region at the time) ignored sound science, as described in a study of the National Academy of Sciences. Feinstein has not yet said if

she will oppose Jarvis's nomination or will place a "hold" on it.

In addition, Feinstein, chairman of the Senate subcommittee on Interior appropriations, has inserted a provision in a fiscal year 2010 Interior appropriations bill to extend the farm license for 10 years from its current expiration date in 2012 until 2022.

Jarvis received a friendlier welcome from the National Trust for Historic Preservation said Jarvis knows the historic preservation field and is a backer. "Funding increases will help address the backlog in maintenance projects," said trust President Richard Moe, "but we also need to ensure that NPS staff understand and appreciate the value of the historic resources they manage. As a long-time Park Service employee with a background in cultural and historic resource management, I know that Jon Jarvis understands these challenges, . . ."

The most recent NPS director in the Bush administration, Mary Bomar, was also an agency professional. She stepped down January 20. Deputy NPS Director Dan Wenk is acting director.

So now the Obama administration has either had confirmed or nominated almost all of its outdoor leaders. The one major park and rec vacancy is at the Department of Agriculture, where an under secretary to oversee the Forest Service has not been nominated.

Once the Obama administration selects nominees, the problems just begin because individual senators can delay Senate confirmation with "holds." For instance at a confirmation hearing for a director of the Bureau of Land Management (BLM) July 9, Sen. Sen. John McCain (R-Ariz.) said he would oppose the nomination of Robert Abbey. McCain didn't say he would place a hold on the nomination, only that he would oppose it in committee. Still, the hold is an option for him.

At the hearing McCain also said he would oppose the nomination of Wilma Lewis as assistant secretary of Interior for Land and Minerals Management, where

she would oversee BLM policy. McCain said he will oppose the nominations until the Obama administration develops a position on a proposed copper mine in southeast Arizona.

McCain and Sen. Jon Kyl (R-Ariz.) have sponsored legislation (S 409) that would authorize a land exchange that would open the way for expansion of a Resolution Copper Mining operation.

Abbey is a former director of the Nevada State Office of BLM. Lewis is a former Interior Department Inspector General.

Meanwhile, in the Department of Agriculture the Forest Service July 5 got a new chief when former Northern Regional Forester Tom Tidwell took over. He replaced Gail Kimbell. The Forest Service chief does not require Senate confirmation.

The Senate has approved several Obama administration Interior Department nominees, including deputy assistant secretary David Hayes, solicitor Hilary Chandler Tompkins, assistant secretary of Interior for Policy Management and Budget Rhea S. Suh, and assistant secretary of Interior for Fish and Wildlife and Parks Thomas Strickland, who doubles as chief of staff.

At the agency level, in addition to Abbey at BLM, the administration June 9 nominated the Fish and Wildlife Service's (FWS's) Southeast Director Sam Hamilton as the new FWS director. Hamilton is a 30-year FWS veteran. His nomination requires Senate approval.

Hamilton's nomination continues to garner an all-out assault from the environmental group Public Employees for Environmental Responsibility (PEER.) Among other things PEER said that under Hamilton as the southeast director of the agency FWS did not move aggressively to protect the Florida panther.

"In Florida the Fish & Wildlife Service has abetted a developer orgy at the expense of the wildlife it was supposed to shield," said PEER Executive Director Jeff Ruch. "Under Hamilton, the Service's motto is 'Even More'."

## Senate approps bill nears floor, with differences

Now that the details are in, it is clear that a Senate Appropriations Committee version of a fiscal year 2010 Interior appropriations bill contains a few important - but not earthshaking - differences from a House-passed version of the bill (HR 2996.)

Most prominently the Senate committee provided no money for a Park Service Centennial partnership program, in contrast to the \$25 million approved by the House committee and the \$25 million requested by the Obama administration.

The Senate committee argued that an emergency fiscal 2009 economic stimulus law provided \$735 million to NPS, much of which could be used for Centennial grants. And it argued that the Park Service has more than \$250 million in unused recreation fees on hand that should be used first.

Of the fee money a Senate committee report says, "Indeed, the current unobligated balance is \$255,000,000. The Committee believes that, before further funds are provided for park-specific projects, Recovery Act funds and Recreation Fee funds must be fully utilized."

In other differences between the two bodies the Senate committee would authorize elk hunting in Theodore Roosevelt National Park in North Dakota, and the House would not. The Senate committee would extend a ban on competitive sourcing by the Forest Service, and the House would not.

Money-wise, the Senate committee would spend significantly less for Save America and Preserve America grants administered by NPS than the House, but it would spend significantly more for recreation and preservation in NPS than the House.

The Senate bill was approved by the Senate Appropriations Committee June 25, but the panel didn't provide details until last week. The full House ap-

proved its version of HR 2996 June 26.

The House and Senate are thus far acting quickly on a fiscal year 2010 Interior and related agencies appropriations bill that would provide a 17 percent increase in spending, bill-wide. The House and Senate are also moving quickly on a Department of Agriculture bill and an Energy and Water bill. A Transportation appropriations bill is even beginning to move, albeit slowly. (See related article page 11.)

The House approved its Interior bill (HR 2996) June 26 by a 254-173 margin and the Senate Appropriations Committee approved its version of a bill June 25 without opposition.

Now Senate Democratic leaders must muster the 60 votes needed to defeat a certain filibuster. Republicans are up in arms about the amount of spending in HR 2996 - 17 percent above fiscal year levels bill-wide.

For most park and rec programs - such as NPS operations, Forest Service recreation, state conservation grants - the House and the Senate committee were within shouting distance of one another. (See numbers below.) But the two do disagree on these park and rec details:

**NPS CENTENNIAL CHALLENGE:** The Senate committee believes the Park Service already has enough money to pay for partnership programs in fiscal 2010. In addition to the \$255 million in unspent recreation fees, it said, "Congress recently provided the Service with \$735,000,000 through the American Recovery and Reinvestment Act. Clearly, not all of the funds provided in the Recovery Act will be, or could be, used for the type of projects that would otherwise be proposed through this appropriation, but a substantial amount of Recovery Act funding will be used for precisely this type of project."

**THEODORE ROOSEVELT ELK HUNT:** This amendment from Sen. Byron Dorgan (D-N.D.) addresses a growing elk herd in Theodore Roosevelt National Park. Dorgan says the Park Service has not come up with a solution. "I've been pushing the National Park Service for

more than two years to come up with a common sense plan to thin the elk herd after I saw that they were considering hiring federal sharpshooters and using helicopters to transport the meat out of the park," he said.

Dorgan added, "The plan does not open up any regular hunting season in the national parks. Rather, it allows the Park Service to use qualified hunters to do the job under Park Service supervision, just as they do in Grand Teton."

But the National Parks Conservation Association says the rider would interfere with the Park Service's attempts to work out a consensus approach to thinning the herd. Said Kristen Brengel, NPCA's legislative director, "The Park Service is now developing strategies for controlling the park's burgeoning elk population; the rider would preempt and override the Park Service's work and erode longstanding agency policy. We hoped that Congress and the Administration could have identified a common-sense solution, as has been employed at Rocky Mountain and other parks, to work with other federal agencies and local partners to protect our national heritage, keep visitors safe, and responsibly balance the park's delicate ecosystem."

As an incentive to hunters the Senate committee said that "each volunteer would be allowed to cull a single elk and to keep its meat, and the Secretary would have the discretion to select as many volunteers as necessary to sufficiently cull the elk overpopulation at the Park."

FS COMPETITIVE SOURCING: Throughout the Bush administration years Democratic and Republican senators attacked attempts to privatize various functions in the Forest Service and the Interior Department. Their usual weapon was a rider to limit spending for competitive sourcing to private enterprise. The Senate committee would continue to ban spending Forest Service money on competitive sourcing, even with a new administration. The House bill does not include the provision.

NPS HISTORIC PRESERVATION: The Senate committee would provide \$17.2 million less than the House for a historic preservation line item. Almost all the extra House money would go to a Save America program and a Preserve America program. The House would provide \$30 million to Save America, compared to the Senate committee's \$20 million and \$6.2 million for Preserve America grants, compared to no money from the Senate.

NPS REC AND PRES: The Senate committee would provide \$8 million more for recreation and preservation than the House, \$67.4 million compared to \$59.4 million. Within the appropriation both the Senate committee and the House would provide more money for National Heritage Areas than the Obama administration called for. The Senate committee would provide \$2 million more than the administration requested, or \$17.7 million, compared to a request of \$15.7 million. The House would provide \$100,000 more, or \$17.8 million.

The Senate committee is working off a spending cap for its bill almost as generous as a House cap. The Senate ceiling for discretionary spending is \$32.1 billion, compared to a House ceiling of \$32.3 billion. While that is a \$200 million difference, the Senate cap is still \$4.5 billion above a fiscal 2009 appropriation of \$27.6 billion.

Here is a comparison of the Senate committee, the House, the administration and fiscal 2009:

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

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

\* FEDERAL LWCF: Senate committee, \$262 million; House, \$212.4 million; administration, \$199 million; fiscal 2009, \$160 million;

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

million;

\* FOREST LEGACY: Senate committee \$55 million; House, \$100 million; administration, \$50 million; fiscal 2009, \$50 million;

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

\* PRESERVE AMERICA: Senate committee, no money; House, \$6 million; administration, \$3 million; fiscal 2009, no money;

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

\* FOREST TRAILS: Senate committee, \$82.2 million; House, \$85.3 million; administration \$82.1 million; fiscal 2009, \$81.2 million;

\* NATIONAL LANDSCAPE CONSERVATION SYSTEM: Senate committee, not broken out; House, \$74 million; administration, \$72 million; fiscal 2009, \$67 million;

\* NATIONAL WILDLIFE REFUGE SYSTEM: Senate committee, \$488.6 million; House, \$503 million; administration, \$483 million; fiscal 2009, \$468 million;

\* BLM RECREATION MANAGEMENT: Senate committee, \$68.4 million; House, \$67.7 million; administration, \$67.7 million; fiscal 2009, \$63.7 million.

\* FIRE FIGHTING FS: Senate committee, \$2.587 billion; House, \$2.652 billion; fiscal 2009, \$2.137 billion. The total for both the Senate committee and the House includes a contingency fund to fight emergency fires of \$282 million; and

\* FIRE FIGHTING DoI: Senate committee, \$979.6 million; House, \$1.008 billion; fiscal 2009, \$856 million. The total includes a contingency fund to fight emergency fires of \$50 million.

## **ORRG favors more conservation spending, new commission**

Sen. Jeff Bingaman (D-N.M.) will, as expected, take a close look at recommendations submitted to him last week by a blue ribbon recreation commission report.

Bingaman, who chairs the Senate

Energy Committee and is an honorary cochair of the Outdoor Resources Review Group (ORRG), will consider a recommendation to increase dramatically spending for the Land and Water Conservation Fund (LWCF.)

"Sen. Bingaman is open to any idea to increase funding for the Land and Water Conservation Fund," the aide said, if new revenues can be identified to pay for it.

In addition the Bingaman aide said many recommendations of the commission won't require Congressional intervention because they are administrative, such as for a new outdoor recreation bureau in the Interior Department. Bingaman was an honorary cochair of the ORRG with Sen. Lamar Alexander (R-Tenn.) ORRG presented its report to the senators and Secretary of Interior Ken Salazar July 6.

The commission recommended that Congress and the White House follow up with other initiatives, such as an even grander commission or a White House conference.

"This is the end of the beginning," said commission member Steven Williams, president of the Wildlife Management Institute and former director of the U.S. Fish and Wildlife Service (FWS.) "One of the things we suggest is that a blue ribbon panel, for the lack of a better name, expand on the report we put out. Our report is intended to start a more in-depth national discussion."

Another commission member, Derrick Crandall, president of the American Recreation Coalition, is lukewarm about a new commission. "My personal belief is we lost an opportunity for (an even broader Congressionally-sponsored) commission. If a commission had been created before Obama was elected, it might have worked. But a new commission couldn't be put together before the end of the year and it would take another year before it submitted a report. I don't know if that would do any good."

Crandall saw more optimistic about

a Presidential conference. "A White House conference would by definition include the governors and everyone else," he said. "In some respects it would be better. That's what I expressed in the ORRG debate."

The ORRG recommended among other things "full" funding for LWCF of \$3.2 billion. The program is currently authorized at \$900 million per year, but the commission report says inflation should increase the payout to \$3.2 billion. The ORRG also calls for the study of a broader, \$5 billion per year fund to replace LWCF beginning in 2015, presumably by Congress, the White House and any new commission/conference.

Is the \$3.2 billion per year for LWCF practical now, given the grim national economic picture? "I certainly would hope so," said ORRG member Williams. "The demand for outdoor recreation hasn't decreased over the last few decades with the increase in population. Our goal is to make Congress aware of the importance of getting outdoors to the nation's youth and to the health of the nation."

The commission anticipates that Salazar will be an important player in implementing its report. A key recommendation says the secretary of Interior should consider the creation of a new agency in the department to oversee outdoor recreation at the level of the Park Service and FWS.

"The Secretary of the Interior should examine options for a new entity in the Department of the Interior, for example, a bureau on a par with the National Park and Fish and Wildlife Services, to administer the LWCF and to advocate on behalf of an expanded and reinvigorated national agenda for outdoor resources," said the report.

"This bureau could be established by secretarial order in the Department of the Interior to enable the federal government to pursue near-term needs and opportunities in outdoor resources and recreation," the report adds.

In another striking recommendation

the commission suggested that the secretary of Interior work with state and local governments and private parties to establish a national system of waterways. "This will build momentum for improving water quality, creating close-to-home recreation opportunities, revitalizing communities, protecting wildlife corridors, and employing conservation strategies that link together urban and rural settings," says the report.

Henry Diamond, a partner with the law firm Beveridge & Diamond, and Patrick Noonan, chairman emeritus of The Conservation Fund, led the 18-member ORRG. The Resources for the Future think tank provided research and staff. For more information go to <http://www.rff.org/orrg>.

The Laurance S. Rockefeller Fund, the American Conservation Association, the Richard King Mellon Foundation, and the David and Lucile Packard Foundation paid the ORRG bills.

ORRG submitted eight distinct recommendations, but its number one priority clearly is LWCF. On the first page of the executive summary the commission says, "The impact and utility of the LWCF, intended as the main funding mechanism for federal and state land acquisition, has declined because of inadequate, undependable appropriations, making it nearly impossible to plan future projects."

The report said state grants are in the most trouble: "This is particularly so for the state share and, in turn, for urban areas, even though states and localities are on the front lines in providing parks and recreation opportunities as elements critical to their economic wellbeing, community livability, public health, and education."

As *FPR* has frequently reported Salazar has all year been beating the drums for Congress to use any new offshore oil and gas royalties to provide secure revenues to LWCF.

He apparently has an ally in Rep. Norman Dicks (D-Wash.), chairman of the

House subcommittee on Interior appropriations. Dicks told us last month that he has staff members working on the idea and will meet with Democratic leaders who have supported such initiatives in the past.

But the Bingaman aide cautioned that finding the guaranteed revenues from offshore royalties won't be easy, because revenues from most of the new drilling is already spoken for in the budget. So offsets may be required. "If you come up with new revenues, you would still have spending issues," the staff member said. "I don't know if people have identified significant new revenue sources."

For the time being the ORRG commission "proposes for study" the establishment of a broad new, \$5 billion per year conservation trust to replace LWCF after the year 2015. To pay for the fund the commission suggests a new commission examine such things as royalties from conventional and renewable energy development onshore and offshore, new conservation and recreation user taxes, and compensatory payments from commodity developers who use the public lands.

"To meet the outdoor resource and recreation challenges for the 21st century, ORRG proposes for study a fundamental reorientation and restructuring of federal responsibility and funding for outdoor resources," says the report.

NPS COMMISSION: A second national outdoor commission is also at work, this one focusing just on the National Park Service. The National Parks Second Century Commission met last month at Great Smoky Mountain National Park to firm up final recommendations. The 30-member commission intends to submit the recommendations to Congress and President Obama in September.

The parks commission met recently with its chairmen - former Sens. J. Bennett Johnston, Jr. (D-La.) and Howard H. Baker, Jr. (R-Tenn.) - to iron out final recommendations.

It is understood the commission is considering a broad range of recommenda-

tions, including (1) a greater emphasis on education in the parks with, perhaps, a proposal to amend the Park Service Organic Act to include education in the agency's mission; (2) options for providing money and resources for the parks; (3) guarantees that park policy would be based on independent science; (4) a greater emphasis on cultural resources to the level of 10-to-12 years ago.

## **NPS tells Calif. that park closures risk loss of aid**

The Park Service weighed in on the California budget crisis last month with a warning that if the state closes parks supported with federal contributions, it could lose future federal contributions.

Specifically, NPS Pacific West Regional Director Jon Jarvis told the state it could miss out on future state grants from the Land and Water Conservation Fund (LWCF.) And Jarvis, the Obama administration's nominee for NPS director, told the state it could lose the six parks it obtained from a Federal Land to Parks Program. That is, the parks would revert back to the federal government.

"The National Park Service stands by the (LWCF) and Federal Lands to Parks Programs as important extensions of our core mission, and will work with you to protect the public's recreation estate in these challenging times," Jarvis wrote Gov. Arnold Schwarzenegger June 8. "The public has no less need for recreational opportunities and access to open space in times of economic hardship."

To help California cope with a \$24 billion deficit, Schwarzenegger would, first, cut core funding for the state's 279 parks this month. That would save \$70 million. Second, over the next fiscal year he would gradually eliminate all funding for the parks system. That could force the closure of more than 200 park units.

But Schwarzenegger and the state legislature have not agreed yet to a fiscal 2010 budget. They seemingly go

through this budget battle every year. This time it's different because of the size of the deficit and because state law forbids major tax increases. The California State Parks Foundation is fighting back with petitions and an Internet campaign. It argues that the California state park system actually makes money for the state.

As *FPR* reported in the last issue many other state park programs are up against an economic wall. Georgia has instituted massive lay-offs and closure of park facilities. Other states are choosing other options besides out-and-out closures, such as leasing facilities to communities or privatizing them. Still others are instituting deep furloughs.

Last month the outdoor recreation industry weighed in with a letter to Schwarzenegger asking him to keep California's parks open. "While we understand the grave budget constraints you face, the plan to close 220 state parks puts a disproportionate share of the burden onto the parks system and the people who visit them," an alliance of industry officials wrote.

The companies, including North Face and Camelback REI, said the parks actually help the state's economy. "A 2007 study conducted by Outdoor Foundation found that the outdoor recreation economy contributes \$46 billion annually to California's economy," they wrote Schwarzenegger. "Recreation also supports 408,000 jobs across California; produces \$28.1 billion annually in retail sales and services and generates \$3.1 billion in annual state tax revenue."

Jarvis's warning was of a different sort: The state actually risked losing future LWCF money and properties. He warned Schwarzenegger, "The purpose of this letter is to alert you that closures affecting state park facilities that have received assistance from the Federal (LWCF) State Grant Program would jeopardize future reimbursements and funding under this program."

Jarvis noted that state and local

governments in California over the years have received more than 40,000 LWCF grants. The state alone has received \$286 million from LWCF state grants for 67 state parks on the closure list, he said.

The situation involving the Federal Lands to Parks program is just as dire, Jarvis wrote, because federal law requires transferred lands to be kept in park and recreation service "in perpetuity." "Any parkland thus conveyed, if it is found to be unavailable to the public for park and recreation use, may revert to federal ownership for re-disposal," Jarvis wrote. The state has six such areas including the Fort Ord Dunes State Park.

Meanwhile, the state legislature and Schwarzenegger at press time were still arguing about a fiscal 2010 budget. The California House did approve a new \$15 surcharge for motor vehicle registration which would provide about \$220 million per year to keep parks open. However, on June 26 the state senate refused to take up the legislation. The measure needed a two-thirds vote. It received 22 votes with 14 opposed.

## **Colorado asks for, and gets, a delay in FS roadless rule**

Colorado Gov. Bill Ritter (D) apparently got the message from the recreation community: A proposed rule for roadless areas in the state needs more work.

So on July 13 Ritter said the state would propose a new draft of its recommendations later this month, effectively bringing the proposed rule to a halt. The state will then take public comments for 60 days.

"I remain committed to crafting a roadless plan that addresses Colorado's unique circumstances, including the need to respond to the bark beetle epidemic; to ensure that our recreation, tourism and natural resource industries are able to grow; and to help our local communities and economies on the Western Slope

thrive," Ritter said.

Forest Service Rocky Mountain Regional Forester Rick Cables agreed to the delay. "Another round of public review will help us to build a durable solution that provides lasting protection for the roadless areas in the national forests in Colorado," he said.

An alliance of hunters and fishermen, the Theodore Roosevelt Conservation Partnership (TRCP), is already making specific recommendations. "Now, the state must take advantage of this window of opportunity to eliminate loopholes allowing water projects and power-line corridors in valuable backcountry lands, as well as coal mining in the Currant Creek area," said Forrest Orswell, a TRCP field representative who lives in Fort Collins.

The outdoor recreation industry has also been pressing Ritter to demand major changes in the proposed Colorado roadless rule of July 25, 2008. The proposal, submitted by Ritter's Republican predecessor Bill Owens, has not been completed because the state late last year asked for a delay.

So the Outdoor Industry Association and the Outdoor Alliance, representing a broad base of human-powered recreation interests and businesses, asked for more protections for the backcountry on the 4.4 million acres of roadless forest in Colorado.

Meanwhile, conservation groups have joined a broad base of human-powered recreation interests in calling on the Obama administration to restore a nationwide, 2001 Clinton era roadless rule. It would bar road construction in almost 60 million acres of national forest.

One set of conservationists, including leading national environmental groups, aimed a new campaign at President Obama. Long term they want Obama to restore the Clinton rule.

Short term they want the Obama administration to stop defending a competing 2005 Bush administration roadless

rule in court. The Ninth Circuit Court of Appeals is presently considering a Bush administration appeal of a lower court decision that threw out the Bush rule. That Bush rule allowed the Colorado to petition for a site-specific rules for forests in the state.

A dummy letter for followers of the environmental groups to send to Obama says, "I urge you to instruct your lawyers at the Department of Justice to stop defending the flawed 2005 Bush roadless rule in the 9th Circuit. . ."

The letter also encourages the Obama Justice Department to appeal to the Tenth U.S. Circuit Court of Appeals a second federal court decision in Wyoming that called the Clinton rule illegal.

Finally, the letter urges the Obama administration to restore nationally the Clinton rule that at one time protected 60 million acres of national forests from road construction and timber sales.

The campaign is being conducted by the Earthjustice law firm, the National Resources Defense Council, the League of Conservation Voters, the Sierra Club, The Wilderness Society and Defenders of Wildlife. Among other things the group is running ads in journals such as The Washington Post, Politico and the New Yorker.

For all the letter writing, the national legal impasse over national forest roadless areas may be coming to a head. A federal court in Wyoming June 16 moved the debate along by sticking to an Aug. 12, 2008, decision that said the 2001 Clinton era regulation that largely protects roadless forests from road construction is illegal. A federal court in California has disagreed with the Wyoming court and essentially held that the Clinton rule is legal.

Now both the Wyoming and California decisions are headed for appeals courts, the Tenth for the former and the Ninth for the latter. The Ninth Circuit is expected to rule momentarily on a Bush administration appeal of the Cali-

fornia decision upholding the Clinton rule.

The Obama administration May 28 took a first tentative step toward restoring the 2001 Clinton administration roadless rule. Secretary of Agriculture Vilsack issued a directive that gives him authority to review all proposed projects in 49 million acres of roadless areas for the next year.

Nine million acres of roadless areas in Idaho are not affected by the directive, although environmentalists believe they should be.

The key provision of the directive removes authority from the Under Secretary of Agriculture and the Forest Service chief to make final decisions regarding projects in roadless areas. The directive is renewable for another year.

## **Railtrails law in dispute, even on its 25<sup>th</sup> anniversary**

The agency that oversees the conversion of abandoned rail corridors to trails opened a can of worms last week by holding a hearing on the 25<sup>th</sup> anniversary of a railbanking law.

Trail advocates complained that two-thirds of the potential trails that could have been saved, haven't been. And trail critics, i.e. adjacent property owners with reversionary rights, complained of burdens railtrails put on them, financial and otherwise.

As an initial order of business the acting chairman of the Surface Transportation Board Francis P. Mulvey said at a July 8 hearing that the board has no plans to terminate the program. "We are not and we cannot," he said. "Railbanking was established by statute and will remain available for interested parties." So only Congress can change that law.

To make the law work better, submitted Marianne Fowler, senior vice president of federal relations for the Rails-to-Trails Conservancy, railbanking should be mandatory every time a rail

line is closed. "If the board is genuinely interested in exploring enhanced use at time of abandonment, the only thing I can reasonably think of is some sort of mandatory application," said Fowler. She acknowledged, "That would be difficult given the position of other interest groups."

Indeed, the National Association of Reversionary Property Owners (NARPO) said mandatory conversion would offend not only railroads but also landowners adjacent to the rail line. Said Kathleen Kauffman, a private attorney for the Ackerman Kauffman Fex law firm representing NARPO, "I submit that you look at the economic consequences of making rail-trail banking mandatory."

"The American Association of Railroads is not interested because they have private property involved," she said. "If they don't like a deal with a trail group, they will (opt out and) see to their property rights. The (NAPRO) has the same interests. If there is mandatory railbanking you will create a huge unfunded liability for the federal government. Each one of those property owners would have the right to go in for compensation."

The Rails-to-Trails Conservancy laid out the pluses and minuses, as it sees them, of the 25 year-old law. "On the success side since program inception the board has since issued 698 railbanking orders," said Fowler. "Of these orders only 301 have been successfully railbanked, representing just over 5,000 miles. Ninety-two are currently in negotiations and 159 failed. Of railbank corridors 120 representing 2,700 miles are open to the public and 72 corridors representing just over 1,000 miles are currently under development."

She summed up, "In short, 5,079 miles have been saved as a part of our federally railbanked corridor system; 9,105 miles lost. If we were playing baseball, a .358 average would be exceptional. When playing with our nation's future the loss of two-thirds of what could have been saved does not constitute success."

The reversionary private property owners see the last 25 years from a different perspective. They say the railroads and the trail advocates win. But, "The major losers in this process are the property owners who adjoin the trail," said Kauffman.

"That is the reason trails are welcomed when they are on someone else's property. Trails drive down property values and increase crimes against their property and person," she added. "Sometimes they are beautifully managed and sometimes they are poorly managed. Sometimes the managers default."

In addition, Kauffman said the reversionary landowners effectively lose the value of their property. "Although some property owners are entitled to compensation because the trail is taking of private property, the odds are stacked against them. The statute of limitations may expire before they even know trails (have been approved). . . Then the only option is to bring suit under the Tucker Act as recognized by the Supreme Court. Suits are very expensive and can take a decade (to obtain compensation.)"

The 1990 Supreme Court decision gave both sides a little something. It ruled that the railbanking law was constitutional, but it also held that if private property was "taken" the landowner was entitled to compensation from the U.S. Court of Claims. Following the Supreme Court decision, *Preseault v. Interstate Commerce Commission* 494 U.S. 1 No. 88-1076 of Feb. 21, 1990, the U.S. Court of Claims awarded the Preseaults more than \$1.5 million for damages and attorney fees.

J. Paul Preseault and Patricia Preseault were landowners in Vermont adjacent to a rail line that was abandoned in 1975. The Preseaults argued that they owned reversionary property rights that should have been returned to them when the rail line was abandoned. But the Supreme Court upheld the railbanking law while agreeing the Preseaults merited compensation.

## Water, Agriculture, highway money bills are moving

While we have focused myopically on an Interior and related agencies money bill, other outdoors appropriations measures are beginning to move through Congress, some with alacrity.

For instance, the House July 15 approved a fiscal year 2010 Energy and Water appropriations bill that covers the Corps of Engineers and the Bureau of Reclamation.

The Senate Appropriations Committee July 7 approved a counterpart Energy and Water bill. While the Senate committee bill generally maintains fiscal 2009 spending levels, it would provide no money for two key Everglades restoration projects.

In a second bill the House subcommittee on Transportation July 13 approved a fiscal 2010 Transportation appropriations bill, setting up possible floor action by the end of the month. The full House Appropriations Committee was scheduled to take up the bill today (July 17.) The Senate Appropriations Committee has not begun working on its counterpart bill yet.

Finally, the House approved a fiscal 2010 Agriculture appropriations bill July 9 that would restore some conservation spending that the Obama administration was attempting to cut. The Senate Appropriations Committee approved a counterpart bill July 7 that would also restore some conservation spending.

And of course the House approved an Interior and related agencies appropriations bill June 26 and the Senate Appropriations Committee approved its version July 25.

The early actions of the House and the Senate and their committees are giving rise to the hope that, for once, Congress will be able to complete most of its money bills before the next fiscal year begins October 1. "I really think it is likely we will have a budget

in place by October 1," said one source close to appropriators. "It's been many year since Congress did that."

This source said the key is Democratic leadership in the Senate and that those leaders appear committed to completing appropriations bills. The difference this year of course is the significant Democratic majority in the Senate and House, teamed with a Democratic President. Here are the three outdoor appropriations bills:

\* ENERGY AND WATER: HR 3183, S 1436. The House approved its bill July 15 and the Senate Appropriations Committee approved S 1436 July 9. For the Corps of Engineers the House bill roughly meets the fiscal 2009 spending level of \$5.4 billion, with \$5.5 billion. The Senate committee approved \$5.4 billion. However, both the House and the Senate committee would increase spending for the key operations and maintenance line item by \$300 million and \$248 million respectively.

As for the Everglades, the Senate committee rejected an Obama administration request for \$47 million for two initial major construction projects that are key parts of the multi-billion dollar Comprehensive Everglades Restoration Project (CERP.) The projects are known as Site One and Indian River Lagoon-South.

In total for the Everglades in the Energy and Water bill the Obama administration requested \$214.4 million. The Senate committee approved \$163.4 million and the House approved \$210.2 million.

On its behalf the Senate committee said of CERP, "Even without the new starts, the funding level for fiscal year 2010 is nearly \$40,000,000 more (for CERP) than what was provided in fiscal year 2009." In addition an economic stimulus bill (PL 111-5 of February 17) did put up \$28.5 million for the projects.

A House Appropriations Committee report expressed concern about runaway spending and asked for a full accounting of CERP. It said, "Therefore, the Corps shall provide the House Appropriations

Committee, within 30 days of enactment of this Act, a comprehensive plan for all elements of the Everglades Restoration outlining all existing authorized activities and projects, their estimated cost, funding requirements and completion schedule. Upon provision of this report, the Corps may obligate funding on new elements of the project."

\* AGRICULTURE: HR 2997. The House approved its version of HR 2997 July 9 and the Senate Appropriations Committee approved its version July 7. Both the House and Senate committee restored some - but not all - spending reductions recommended by the Obama administration for conservation programs.

The Obama administration recommended a total of \$600 million in reductions from spending levels included in a new farm law for these conservation programs: Agricultural Management Assistance Program, Environmental Quality Incentives Program, Farmland Protection Program, Healthy Forest Reserve Program, Wetlands Reserve Program and Wildlife Habitat Incentives Program.

The Senate committee restored about all the conservation money except it cut the Environmental Quality Incentive Program by \$270 million, compared to the farm bill. The Senate committee reduced it by \$250 million.

Said Sara Hopper, director of agricultural policy for Environmental Defense Fund and a former staff member of the Senate Agriculture Committee, "We are pleased that appropriations panels in both the House and Senate have rejected most of the proposed cuts to conservation programs, but we urge Congress to look for ways to restore the cuts it has made as it finalizes the legislation."

\* TRANSPORTATION: The House Appropriations subcommittee on Transportation approved the bill July 13. The committee approved a survival appropriation for highway programs. Subcommittee Chairman Rep. John Olver (D-Mass.) said it was not the committee's responsibility to make up for a \$13 billion to \$17 billion deficit in the Highway Trust Fund.

## Enviros win another lawsuit against FS planning rules

As two federal judges did before her, a U.S. District Court judge recently said a 2008 Forest Service rule designed to guide planning by individual forests failed to evaluate the environmental impacts of the rule.

But U.S. District Court Judge Claudia Wilken for the Northern District of California said she does not know what rule should guide forests now. She left it to the Obama administration to choose between a 2000 Clinton administration rule and a 1982 Reagan administration rule.

"It appears that the 2000 Rule was in force before the 2008 Rule was promulgated," the judge said. "However, the USDA has expressed in the past its view that the 2000 Rule is unworkable in practice. Accordingly, the agency may choose whether to reinstate the 2000 Rule or, instead, to reinstate the 1982 Rule."

Environmentalist plaintiffs in the litigation prefer the 1982 rule, even though the 2000 rule was prepared by their allies in the Clinton administration. "Our strong view is the 1982 rule should resume because it has governed planning for years and the agency knows how to use it," said Timothy Preso from the Earthjustice law firm that represents one set of plaintiffs in the litigation. "And it has strong environmental protections."

The plaintiffs included the Sierra Club and The Wilderness Society. A separate lawsuit was filed on behalf of other environmental groups including Citizens for Better Forestry. Judge Wilken consolidated the suits in one decision.

The Forest Service argued that the 2008 rule at issue - a landmark Bush administration national forest policy - didn't require in-depth environmental documentation because it would not affect any specific land uses by itself. The service would perform further environmental documentation in response to

specific proposed projects, it said.

Judge Wilken rejected that argument and said the planning rule could have on-the-ground impacts, thus requiring an EIS. She cited substantive key changes in the old rule, such as elimination of a 1982 provision requiring viability of vertebrate species, and said, "Although the EIS discusses the differences between the various standards, it fails to acknowledge the effect of eliminating the viability requirement."

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 at the time because they said the regulations gave the environment priority over economic uses.

On January 5, 2005, the Bush administration did complete a first set of planning rules, but without an EIS. Judge Phyllis J. Hamilton, also in the Northern California District, 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 and BA, leaving in-depth environmental analysis and BAs to specific proposed projects.

## Climate change bill schedule slows to a walk in Senate

Faced with a loaded agenda, Senate Democrats have delayed mark-up of climate change legislation until September.

And, with final committee action not expected until September 28, that raises the strong possibility of no bill this session.

Still, Senate Democrats with a large majority and the support of the Obama administration intend to keep up the arm-twisting and deal-making necessary to get a bill to the Senate floor. And there is always next year, the second half of the 111<sup>th</sup> Congress.

For now Senate Majority Leader Harry Reid (D-Nev.) has postponed a deadline for final committee action from early August to September 28. And Senate Environment and Public Works (EPW) Committee Chairman Barbara Boxer (D-Calif.) has delayed the beginning of mark-up of a bill until September.

Although Boxer told reporters the delay was caused by the press of other business, such as health care legislation, Republicans say it's because the legislation won't fly. "A firestorm of opposition arose from across the country this week as Democrats kicked-off debate on global warming legislation," said ranking EPW Republican James Inhofe (Okla.)

But the EPW committee is not sitting idly by. It has held several hearings in the last fortnight, including a July 7 session when the Obama administration in force made its case for a massive new climate change bill. EPA Administrator Lisa Jackson and Secretary of Interior Ken Salazar were among the four Cabinet members who made the Obama administration's case at the hearing.

EPW has the ball after the House June 26 approved a landmark climate bill (HR 2454.) The House measure would produce an estimated \$845 billion in revenues for the government over the next decade.

Inhofe said the close House vote (219-to-212, with a significant 44 House Democrats opposed) "spells doom" for the bill in the Senate. "Despite a large Democratic majority in the House, and the fact that this is one of the President's top priorities, the Democratic leadership was forced to do everything possible to get a bill passed," he said.

Senate committees, including Fi-

nance and Energy as well as EPW, have begun to grind out recommendations that will supposedly be combined in one bill on the floor this fall.

The great obstacle in the Senate, as always, is the 60 votes needed to overcome a filibuster threat. Last year on June 6 a predecessor bill similar to the House measure was rejected when it received only 48 votes, with 36 opposed.

The key park and rec provision in the House bill would establish a Natural Resources Climate Change Adaptation Fund. The National Wildlife Federation estimates the fund would receive an average of \$2.6 billion per year from fees paid by companies that produce carbon pollution.

The version the House approved June 26 made a major change in the bill as passed by the House Energy Committee May 21: It would subject to annual appropriations all allocations to federal programs from the fund. Federal allocations, if appropriators felt like putting up the money, would be allocated thusly: 27.6 percent to the Department of the Interior for endangered species, bird, and Fish and Wildlife Service programs, wildlife refuges, and the Bureau of Reclamation; 8.1 percent to Interior for cooperative grant programs; and 4.9 percent to Interior for tribal programs.

In addition the fund would allocate 19.5 percent to the Land and Water Conservation Fund; 5 percent to the Forest Service; 12.2 percent to EPA; 8.1 percent to the Army Corps of Engineers; and 11.5 percent to National Oceans and Atmospheric Administration.

## Notes

**Big Cypress plan splits the baby.** In an effort to satisfy competing users of the Big Cypress National Preserve in Florida, the Park Service has proposed a new plan with both extensive wilderness recommendations as well as new access through the wilderness. The access would provide non-wilderness corridors for hunters and off-highway vehicle

(OHV) users for access to the backcountry. The plan, if adopted, would end 20 years of litigation over OHV use, hunting and preservation in the preserve, which feeds the Everglades ecosystem. The proposed plan, announced in the *Federal Register* July 13, would designate as wilderness 85,862 acres of the 146,000 acres added to the preserve in 1988. Congress would have to formally designate the wilderness. Through corridors in the wilderness and in other areas the proposal would open up 140 miles of trails to OHV use. Early newspaper reports from Florida indicate that hunters and OHV users want more access than the plan offers and environmentalists dislike the access corridors. Comment until September 30 to: *Big Cypress National Preserve Planning Team*, P.O. Box 25287, Denver, CO 80225-0287 and through this website: <http://parkplanning.nps.gov>.

#### **Grand Canyon boating changes?**

Grand Canyon National Park proposed July 13 to extend its permitting system for boat trips to the full length of the Colorado River within the park. An existing rule requires permits for commercial and noncommercial river runners for the first 226 miles of the river; the proposed rule would add the last 51 miles that run into Lake Mead National Recreation Area. In addition the proposed rule would extend all limitations on uses in the first 226 miles to the entire 277 miles. The proposed rule would implement a portion of a final Colorado River Management Plan (record of decision of March 23, 2006) that sorted out allocations of river running time between commercial and noncommercial users. Some 30,000 visitors per year run the river and another 50,000 visitors take flat-water excursions on pontoon boats operated by the Hualapai Tribe. The park has not heretofore required permits for operators on the lower portion of the river where the pontoon boats are prevalent. There is active litigation against the plan from a group of environmentalists, including the River Runners for Wilderness. They argue that the wilderness quality of the river corridor demands that powered boats be kept off the river. A federal judge in 2007 upheld the plan. The

environmentalists appealed to the Ninth U.S. Circuit Court of Appeals which held an oral hearing June 10. The River Runners for Wilderness speculates that the appeals panel will rule "anywhere from a few weeks to many months." Comment on the NPS proposal by September 11, 2009 (using Regulatory Information Number 1024-AD50) to: *National Park Service, WASO, Mike Archer, Chief Ranger, Grand Canyon National Park*, P.O. Box 129, Grand Canyon, AZ 86023.

**Senators offer jobs bill.** Two senators introduced legislation (S 1442) July 10 that would beef up an existing Public Lands Corps program that gives employment to young people on the public lands. Among other things the bill would expand the kinds of projects young people 16 to 25 could work on, including the addition of climate change initiatives. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) and a leading Republican, Sen. Olympia Snowe (R-Me.), introduced the bill. The House Natural Resources Committee June 10 approved a counterpart bill (HR 1612.) The House bill, introduced by Rep. Raúl Grijalva (R-Ariz.), would affect job corps type programs run by NPS, the Bureau of Land Management, the Fish and Wildlife Service, the Forest Service, and the National Oceanic and Atmospheric Administration in the Department of Commerce. The bill would rename an existing Public Lands Corps, established in 1993, as the Public Lands Service Corps.

#### **Yellowstone visitation jumps.**

Running counter to recent trends, Yellowstone National Park in the last two months showed a sudden and marked increase in visitation, as compared to previous years. In June visitation increased by 8.5 percent, from 593,406 in June 2008 to 643,844. In May visitation shot up by 20.1 percent from 217,938 in June 2008 to 261,763. NPS has been hit with broad decreases in visitation to national parks over the last decade, to the concern of concessioners and gateway communities. Speculation holds that the outdoors in general and parks in particular are not connecting with youth because of electronic games and with non-white Americans because the parks aren't relevant to their lives. For the first six

months of the year Yellowstone visitation jumped by 9.3 percent, or by 85,536 from 915,344 in June 2008 to 1,000,880. The park didn't speculate about reasons

for the increase but did note more visitors are proportionately arriving on RVs than in buses and that campgrounds are filled more often.

## Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
<b>Appropriations fiscal 2010 (Interior)</b> HR 2996 (Dicks)	House approved June 26. Senate Committee approved June 25.	Would provide broad increases for park and rec programs.
<b>Appropriations fiscal 2010 (Energy and water)</b> HR 3383 (Visclosky) (Dorgan)	House approved WHEN WHEN. Senate committee approved July 9.	Would roughly maintain FY 2009 levels. 1436 Senate omits Everglades projects.
<b>Appropriations fiscal 2010 (Agriculture)</b> HR 2997 (DeLauro)	House approved July 9. Senate. committee approved July 7.	Would restore some conservation money, but would leave EQIP short.
<b>Appropriations fiscal 2010 (Transportation)</b> No number yet	House subcommittee approved July 13.	Would provide
<b>Appropriations fiscal 2009 emergency</b> HR 2346 (Obey) June 24 as PL 111-32.	President Obama signed into law for emergency fire assistance.	Will provide FS and DoI with \$250 million
<b>Congressional Budget 2010</b> H Con Res 85 (Spratt) S Con Res 13 (Conrad)	House approved April 2. Senate approved April 2.	Would allow for increased natural resources spending.
<b>Appropriations Stimulus</b> HR 1 (Obey)	President Obama signed into law Feb. 17 as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
<b>Appropriations 2009 (DoI, FS, Corps, Transportation, etc.)</b> HR 1105 (Obey)	President Obama signed into law March 11 as PL 111-8.	Provides modest increases for most park and rec programs.
<b>Omnibus Lands Bill</b> S 22 (Bingaman) HR 146 (Holt)	President signed into law March 30 as PL 111-11.	Includes 160+ individual bills, including NLCS, new national parks.
<b>National Landscape Conservation System</b> HR 404 (Grijalva) S 22 (previous item)	Grijalva introduced Jan. 9. Included in omnibus (above.)	Gives NLCS official designation by Congress.
<b>Grand Canyon withdrawal</b> HR 644 (Grijalva)	Grijalva introduced Jan 22.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
<b>Surface Transportation</b> HR 1329 (Blumenauer) S 575 (Carper) S 1036 (Rockefeller)	Blumenauer introduced March 5. Carper introduced March 11. Rockefeller introduced May 12	Blumenauer would establish a piece of a surface transportation law with climate change money. Rockefeller would establish broad goals for law.
<b>FLREA (rec fee law) repeal</b> S 868 (Baucus)	Baucus introduced April 22.	Would repeal the comprehensive federal rec fee law.
<b>Fire suppression</b> HR 1404 (Rahall) S 561 (Bingaman)	House approved March 24. Bingaman introduced March 10.	Would establish an emergency fire-fighting fund to limit borrowing from line programs.
<b>Ski area uses</b> S 607 (M. Udall)	Udall introduced March 17.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.