

# Federal Parks & Recreation

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## House begins to move approps bills; Senate does not

While the Senate is still stalled on both a fiscal year 2012 budget resolution and on fiscal 2012 appropriations bills, the House Appropriations Committee has begun to move spending bills

On June 2 the House Appropriations subcommittee on Energy and Water approved a bill that would provide fiscal 2012 money for the Corps of Engineers and the Bureau of Reclamation. Of note the subcommittee included in the bill a provision that would block the Obama administration's proposed new wetlands permit guidance. (See separate article page 5.)

On May 31 the full House Appropriations Committee approved a separate fiscal 2012 Department of Agriculture money bill (HR 2112) that conservationists say would cut \$1 billion from conservation programs compared to fiscal 2011. (See separate article page 7.)

An Interior and related agencies spending bill is scheduled for mark-up in subcommittee July 6. The subcommittee will have \$2.1 billion less to spend than this year, a decrease to \$27.5 billion from a \$29.6 billion allocation in fiscal 2011. The cap is \$3.8 billion less than the administration's fiscal 2012 request.

Subcommittee Chairman Mike Simpson (R-Idaho) has repeatedly said he will attempt to maintain federal land management agency spending allocations as a first priority. His subcommittee has thus far this year largely targeted EPA programs for the lion's share of reductions. The subcommittee also provides money for EPA. If and when a subcommittee bill is completed, it is

tentatively scheduled for the full House Appropriations Committee on July 11.

Meanwhile, Senate leaders are still withholding action on a Congressional budget that would guide spending caps for its appropriations bills. The Senate leaders are waiting to hear the results of macro-budget negotiations between Vice President Biden and Congressional bosses.

Senate Budget Committee Chairman Kent Conrad (D-N.D.) has drafted a fiscal 2012 Congressional budget, but he has postponed consideration of the draft in his committee until the Biden talks reach fruition.

Those talks have reportedly made some progress, such as a tacit agreement to reduce spending by \$1 trillion over ten years. In addition the parties have agreed in general to \$200 million of the \$1 billion in cuts. Those areas are federal pensions and farm subsidies, but no specifics have been released.

Complicating the appropriations/budget procedure this year is an overarching Republican demand that Democrats agree to enormous future year spending reductions in exchange for an increase in the federal debt ceiling. If an agreement on the debt ceiling is not reached by August, the government could shut down.

Unlike the Senate the House went ahead and approved its budget April 15, the deadline the House and Senate have traditionally prescribed for completing their budgets.

To emphasize its demand for a trade-off between budget cutting and increasing the federal debt, the House held a pro forma vote May 31 to reject an increase in the federal debt by itself. The House vote, by 97-to-318, sends a message to budget negotiators to get moving on spending cuts.

The Senate May 24 held two pre-ordained votes to reject the House-passed budget (40-to-57) and President Obama's budget request (97-0). But the Senate did not consider a Senate budget because there was none.

By most estimates Congress has until early August to increase the federal debt ceiling (and agree to spending cuts) to avoid a federal government shutdown.

If the debt limit is not increased, the government may be forced to shut down. In the event of a closure Interior Department contingency plans would keep going a Dingell Johnson sport fishing program and a Pittman-Robertson sport hunting program, law enforcement and fire fighting. (The Dingell-Johnson and Pittman-Robertson program derive their state grant money from fees and taxes, so do not rely on appropriations.)

But the Interior contingency plan says that to be closed are "National Parks, National Wildlife Refuges, BLM public lands including campgrounds, visitor centers, concession services."

The contingency plan reinforces the closures saying, "Visitor centers will be closed and access to park areas denied, including the State of Liberty and Ellis Island, Independence Hall, Alcatraz, and the Washington Monument."

Some employees would work. "Based on the developed plans, approximately 52,300 of the 68,900 Department of the interior employees projected to be in pay status will be furloughed at the outset of a suspension of activities," says the department contingency plan.

## **Talk now of stripped-down, two-year or less, road bill**

Although lead House and Senate committees are committed to producing six-year surface transportation bills as early as this month, there is increasing evidence that no bill will move through Congress this year.

Some senators have predicted a two-year bill would be a likely scenario, but finding money for even two years would be most difficult in the current budget climate.

Sen. James Inhofe (R-Okla.),

ranking minority member on the Senate Environment and Public Works Committee (EPW), is a leading proponent of the two-year scenario. But a spokesman for Inhofe said that doesn't mean the two-year bill will not contain substantive changes to SAFETEA-LU.

"A two-year bill can work on some policy reforms," he said. "It's not just an extension bill. But we have a long way to go."

In addition Inhofe is sympathetic to a mindset of House Transportation Committee Republicans on outdoor programs in a highway bill - No Way. Along with Sens. John McCain (R-Ariz.) and Tom Coburn (R-Okla.) he has betimes criticized the use of Highway Trust Fund money for trails and bike paths.

The Inhofe aide did not single out recreation programs for criticism, but he did say, "Let's put it this way. Perhaps the greatest challenge in getting a reauthorization bill is finding the money. You have to prioritize. The senator believes we should prioritize our spending on bridges and highways."

Here's where things stand: Congress in March extended the current transportation law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) - until the end of September to provide time to write a new six-year law.

Senate EPW Chairman Barbara Boxer (D-Calif.) said last month she hopes to have a bill before her committee by the end of this month (June). On May 25 Boxer, Inhofe and other Senate leaders announced they have agreed to the general shape of a new multi-year surface transportation bill.

Above all the four senators said their draft legislation would maintain current spending levels, or \$339 billion over six years.

The senators have not agreed to details of a bill. That is what Boxer hopes to accomplish by the end of the month.

By contrast the House Transportation Committee is expected to produce a bill by the end of June that would slash spending severely. Whereas the Senate agreement calls for about \$57 billion per year, House Transportation Committee Chairman John Mica (R-Fla.) is talking about \$36 billion per year, or one-third less.

Mica has also talked of eliminating "fluff" programs as recipients of Highway Trust Fund money. Said one outdoor lobbyist of the expected House bill, "I'm pessimistic about the continuation of Transportation Enhancements, Scenic Byways and the Recreational Trails Program being included as anything like they are now authorized. I'm conditioned to little or no reference to them in the House bill."

In its fiscal year 2012 budget request in February the Obama administration laid out a request for a six-year, \$556 billion surface transportation program, but with no way to pay for it. The current source of surface transportation money - motor fuel taxes - would only provide a fraction of the \$93 billion per year recommended.

However, the House has already put a damper on that recommendation by setting a Transportation appropriations spending cap for fiscal 2012 of half the administration recommendation, \$47.7 billion. That's \$7.7 billion less than the fiscal 2011 appropriation of \$55.4 billion.

Because of the overarching problem of money, Inhofe flatly predicted, "It is going to end up a two-year bill." That's according to the *Tulsa World* newspaper. But numerous insiders say even a new two-year bill may be a stretch. "I don't see where they are going to come up with money for a (six-year) Boxer bill, or even for a two-year bill," said one. "I'm not hearing any serious conversations."

So that could leave another extension of SAFETEA through the 2012 elections, leaving a multi-year bill for the 113<sup>th</sup> Congress in 2013.

## Courts back NPS controls over free speech activities

Backed by a federal appeals court, National Park Service police June 4 removed about 75 dancers who were demonstrating inside the Thomas Jefferson National Memorial without a permit. However, the Park Service did not arrest the demonstrators, nor did it charge them with criminal violations.

The June 4 demonstration was the latest in a series of conflicts between free-speech advocates and the Park Service. Park police did arrest demonstrators at two previous "dances" within the memorial. The courts have subsequently upheld the NPS action.

Most recently, a three-judge panel of the U.S. District Court of Appeals for the District of Columbia ruled May 17 that Park Service police could bar demonstrations in the memorial without violating the First Amendment guarantee of free speech.

The court reasoned that the Jefferson Memorial on the National Mall in Washington, D.C., was not a public place where free speech was guaranteed. "That the Memorial is open to the public does not alter its status as a nonpublic forum. Visitors are not invited for expressive purposes, but are free to enter only if they abide by the rules that preserve the Memorial's solemn atmosphere," said the court decision written by Judge Thomas B. Griffith.

He added, "In creating and maintaining the Jefferson Memorial in particular, the government has dedicated a space with a solemn commemorative purpose that is incompatible with the full range of free expression that is permitted in public forums."

The protestors, who include anti-war activists, objected that the Park Service holds events within the memorial that include political speeches. But the court said, "It would be strange indeed to hold that the government may not favor its own expression inside the Jefferson Memorial, which was built by the government for the precise purpose

of promoting a particular viewpoint about Jefferson."

Said the Park Service in a statement on the June 4 "Dance Party @ TJ", as it was billed, "Visitors come from all over the globe to pay respect to, and read the words of Thomas Jefferson. These words, placed on the inner walls of the Thomas Jefferson Memorial chamber, are a moving testament of the good in humankind. We believe our visitors should be able to enjoy this experience without distractions."

NPS also said it welcomed demonstrations on the 2.4 acres of grounds that surround the memorial. And it noted that the national parks of Washington, D.C., have hosted "marches, protests, rallies and other events" attended by hundreds of thousands of visitors.

Craig Obey, senior vice president for Government Affairs for the National Parks Conservation Association, said the Park Service is doing the best it can. "The Park Service is handling this in as responsible a way as it can," he said. "It's their job to protect these places and to make sure the places are not disrupted for visitors."

The Thomas Jefferson dispute began on April 12, 2008, when Mary Brooke Oberwetter and 17 friends conducted a silent dance within the memorial to honor Thomas Jefferson on his birthday. Oberwetter was arrested by Officer Kenneth Hilliard of the United States Park Police.

Oberwetter appealed to the U.S. District Court for the District of Columbia claiming that the arrest interfered with her First Amendment right to free speech. But U.S. District Court Judge John D. Bates rejected the appeal because the memorial is not a public place.

Subsequently on May 28, despite the appeals court decision, protesters held another silent dance at the memorial and five people were arrested.

On June 4 more than 200 people showed up for the latest demonstration

and 75 of them entered the memorial to dance. After about 90 minutes park police officers ushered the crowd outside to the steps of the memorial, where demonstrations are allowed.

## Appropriators say no to Obama wetlands permit guidance

There is a long way to go, but a House appropriations subcommittee June 2 moved to block a proposed new Obama administration wetlands permit policy.

As part of a fiscal year 2012 Energy and Water appropriations bill the subcommittee said no appropriated money, whether fiscal 2012 or prior, could be used to redefine navigable waters. That definition helps EPA and the Corps of Engineers decide whether a Section 404 wetlands permit is required for projects that affect the nation's waters.

The subcommittee bill is scheduled for full committee mark-up on Wednesday, June 15.

As for money the subcommittee actually approved \$195,406,000 more for the Corps of Engineers than the Obama administration requested - \$4.768 billion in fiscal 2012 compared to a request of \$4.573 billion. The subcommittee recommendation is \$89 million less than a fiscal 2011 appropriation.

For the Bureau of Reclamation the subcommittee would provide \$47 million less than the administration requested and \$91 million less than a fiscal 2011 appropriation. The subcommittee recommendation is \$971 million.

An alliance of sportsmen objected to the wetlands provision because of its possible negative impact on habitat for hunting and fishing.

"While sportsmen understand the need for fiscal conservatism, this rash decision by Congress leaves vulnerable waters that provide critical habitat to fish and wildlife, flood control, drinking water and a range of other benefits," said Steve Kline, director of the Theodore Roosevelt Conservation

Partnership Center for Agricultural and Private Lands.

Rep. Ed Pastor (D-Ariz.), ranking minority member on the subcommittee, said he was "troubled" by the prohibition of funds to "develop, adopt, implement, administer, or enforce a change or supplement to rules related to Clean Water Act regulatory guidelines."

When the Obama administration proposed the new guidance April 27, it aroused the ire of 170 House members from both parties. Besides the substance of the draft, the critics argued that EPA and the Corps don't have authority to interpret a Supreme Court decision on navigable waters in guidance. They said the agencies must use formal rule-making procedures. The House members were led by Reps. Bob Gibbs (R-Ohio) and Tim Holden (D-Pa.) They worry the guidance would limit commercial activities in wetlands.

The proposed Obama administration guidance attempts to interpret a confusing U.S. Supreme Court decision that appeared to limit Section 404 permitting authority to navigable waters. That is the famous *Rapanos* decision.

In their draft guidance EPA and the Corps would include under the navigable waters rubric:

- \* navigable waters (of course);
- \* interstate waters;
- \* wetlands adjacent to navigable waters or interstate waters; and
- \* semi-permanent nonnavigable tributaries to navigable waters.

The definition in the 38-page draft guidance appears to stretch to the maximum the meaning of navigable waters as allowed by the *Rapanos* decision.

EPA and the Corps are taking public comments on the proposed guidance until June 28. To bring attention to the proposal EPA hosted a press availability in Elk Grove, Calif., June 2.

The Supreme Court was evenly divided in its June 19, 2006, decision,

*Rapanos v. U.S. Nos. 04-1034 and 04-1384*, which muddied the regulatory waters. On the one hand the court did uphold the authority of the Corps and EPA to regulate water bodies. But crucially it also limited the definition of a water body to navigable waters, without clearly defining navigable waters.

Congress last year had before it Democratic legislation (HR 5088) that would have asserted that almost all wetlands must receive Clean Water Act permits. Former House Transportation Committee Chairman James Oberstar (D-Minn.) introduced a bill in April 2010 that went nowhere. The Senate Environment and Public Works Committee June 18, 2009, approved a counterpart bill (S 787), but the measure went no further.

Both bills said 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.

### **Competing House members differ on FS planning regulations**

Fifty-nine House members asked Secretary of Agriculture Tom Vilsack May 31 to direct the Forest Service to rewrite a draft national forest planning rule of February 14.

The House members said the draft was excessively complex and expensive. "We urge you to direct the U.S. Forest Service to redraft the proposed rule to make it simpler and less encumbered with process, and to eliminate provisions like the 'species viability' clause that surpass Congress' statutory direction," the members said. They were led by Reps. Greg Walden (R-Ore.) and Mike Ross (D-Ark.)

The letter follows on the heels of a competing letter from 67 House members who asked the Forest Service to be more protective of the environment. Among other things, the mostly-Democratic members, led by Rep. Ron Kind (D-N.J.), said May 16 in a letter to Vilsack, "(T)he wildlife standard suffers from

excessive discretion; forest managers could selectively determine which species deserve protecting on our national forests."

The two House letters, coupled with 150,000 comments and considerable unrest among user groups, raise the question: Will the Forest Service be able to complete a new planning rule by its end-of-the-year deadline?

The Forest Service believes so. "From the beginning of the effort to develop a new rule, the Forest Service has shared a clear timeline with the public, including our intent to publish the final rule by the end of 2011," said Forest Service spokesperson Joe Walsh. "It remains our intent to publish the final rule on schedule."

Some leaders in the recreation industry are not so sure the agency can meet that deadline. "The Forest Service hopes to publish a final rule by the end of 2011. That's going to be very hard to do," said Derrick Crandall, president of the American Recreation Coalition. "I don't see an agreement by the principals."

Larry Smith, executive director of Americans for Responsible Recreational Access, said, "I haven't heard any rumors that it might not happen, but there is a lot of angst out there and a lot of angst on the Hill."

Fundamentally from the perspective of the powered recreation industry, said Smith, "The big problem for everyone is that the draft rule is bent so much toward protection without a consideration of the economic impacts and the adjustment communities dependent on recreation would have to make."

The non-powered recreation industry is not as critical of the Forest Service's proposed rule. Craig Mackey, director of government affairs for the Outdoor Industry Association, told *FPR*, "We support the basic approach of the rule. It puts in place a workable framework in three phases – assessment, development and maintenance." He said his organization asked the Forest Service to strengthen

the rule in places, if anything

On May 16, a coalition of industry and user groups laid out their substantive complaints about the proposed rule, particularly a proposal to make recreation environmentally and fiscally sustainable. The Coalition for Recreation in the National Forests argued that the proposal infers that recreation use in an undefined way (1) must not degrade the environment and/or (2) must pay its own way.

"While laudable, perhaps, as a reflection of a philosophically supportive policy toward the environment, this term puzzles those of us in the recreation arena – since it is not a term commonly used," said the coalition. "In fact, the term raises a real risk of mischievous efforts to measure environmental – or perhaps economic – consequences of recreational activities in an imbalanced way."

Signing the comments were, among others, the American Motorcyclist Association, the American Sportfishing Association, Americans for responsible Recreational Access, the BlueRibbon Coalition, the National Forest Recreation Association, the National Rifle Association and the Western States Tourism Policy Council.

But the Outdoor Industry Association backs in general the sustainability concept in the rule. "We really support the extent the agency has emphasized sustainability, particularly in recreation uses," said the association's Mackey.

The pro-development House members said of such things as species viability, "These controversial proposed changes not only will add to the gridlock currently faced by the agency, but also will force significant costs onto already burdened taxpayers as the federal government is required to pay for agencies' legal fees. . ."

By contrast anti-development House members argued for tougher wildlife standards because national forests "serve as economic engines for local

communities by providing wildlife-based recreation opportunities such as hunting, fishing, and bird watching. It is vital that the final rule include a strong standard for wildlife conservation that is meaningful, measurable, and non-discretionary."

But the die may already be cast, said one lobbyist, "I'm not optimistic that if they move forward they are going to moderate the rule much," he said. "They have their marching orders. We have had several meetings with them where they appeared to listen to us but I've heard it on the QT internally it's not going to change much."

The proposed rule and comments on it are available at [www.fs.usda.gov/planningrule](http://www.fs.usda.gov/planningrule).

## **Appropriators target farm bill for conservation cuts**

A broad spectrum of conservation groups is protesting reductions in conservation spending contained in a House version of a fiscal year 2012 Department of Agriculture appropriations bill. The reductions include the elimination of all spending for an "Open Fields" grants program.

The House Appropriations Committee approved the bill (HR 2112) May 31 with reductions of \$1 billion in conservation spending. And the \$1 billion comes on top of a \$500 million reduction in fiscal 2011.

An alliance of farm groups, sportsmen and environmentalists wrote House Appropriations Committee members shortly before the committee vote, asking them to reject the proposed committee cuts.

"Failure to support our farmers, ranchers, foresters, and natural resource base today will jeopardize our agricultural industry, drive up long term costs for environmental mitigation, and threaten our nation's food security," the alliance said. "We ask the House Appropriations Committee to recognize the importance of agricultural conservation programs and ensure that reasonable funding levels are

continued." The committee then approved the cuts by a voice vote.

Signing the letter were such varied groups as the American Farmland Trust, the National Association of Conservation Districts, the Theodore Roosevelt Conservation Partnership, the National Wildlife Federation, the Environmental Defense Fund, and the Trust for Public Lands.

The House was not in session this week but is due back Monday. The agriculture appropriations bill should be high on the House agenda then.

According to the Theodore Roosevelt Conservation Partnership HR 2112 would:

- \* Reduce the Department of Agriculture conservation operations budget by \$128 million.
- \* Reduce the Wildlife Habitat Incentive Program by \$35 million.
- \* Reduce the Wetlands Reserve Program by 64,200 acres.
- \* Reduce the Grasslands Reserve Program by 96,000 acres.
- \* Reduce the Environmental Quality Incentives Program by \$350 million.
- \* Eliminate funding for the Voluntary Public Access and Habitat Incentive Program, also known as Open Fields.

Said Dave Nomsen, vice president of government affairs for Pheasants Forever and Quail Forever, "Increasingly, sportsmen cite the inability to access lands and waters as an obstacle to hunting and fishing. (Open Fields) addresses this problem by encouraging owners of privately held farm, ranch and forest lands to enable public access to their properties for wildlife-dependent recreation."

On January 21 the Department of Agriculture awarded \$8 million in fiscal year 2011 Open Fields grants. The fiscal 2011 round of grants was the second under the 2008 Farm Bill. The Farm bill allocated \$50 million to the start-up program. The department awarded \$11.75 million in fiscal 2010.

States and tribes are authorized to use the money for programs that

provide landowners with financial incentives to open their lands, such as rental payments.

The total House Appropriations Committee allocation to the Agriculture appropriations bill was \$17.25 billion, or \$2.9 billion less than the fiscal 2011 level and \$5 billion below the President's request.

## **Rec planners favor more fed, local cooperation on LWCF**

The Obama administration took its campaign to implement the America's Great Outdoors (AGO) initiative to a meeting of recreation planners last week, and the planners laid out key implementation steps.

At a meeting of the National Association of Recreation Resource Planners (NARRP) in Breckenridge, Colo., the planners highlighted the use of statewide comprehensive outdoor recreation plans (SCORPs) in recreation. A meeting summary said SCORPS, required by the Land and Water Conservation Fund (LWCF), "are the only required interagency planning efforts that can get to the community level of planning."

The summary said SCORPS "can be the horizontal bridge and connector across the many local, state and federal outdoor recreation providers, and as such can be a valuable tool" for the AGO implementation.

Dr. Glenn Haas, cochair of NARRP and a professor at Colorado State University, said after the meeting those recommendations track closely the recommendations of the AGO report, published February 16.

"One of the key points of the AGO is the need for increased coordination to do away with agency silos, whether at the federal, state or local levels," he told *FPR*. "The SCORPS are the only planning effort to get people to sit down at the same table."

Council on Environmental Quality Chair Nancy Sutley, who is tasked with leading the implementation of the AGO recommendations, heard the planners call

for a greater reliance on SCORPs.

The May 23-26 NARRP meeting in Breckenridge, Colo., with Sutley follows up on a May 10 rally hosted by Secretary of Interior Ken Salazar to pump up enthusiasm for the AGO recommendations, including full funding for LWCF.

At another juncture the NARRP summary said the state and federal sides of LWCF were not coordinating well.

"There is a major disconnect between the federal and state sides of LWCF - these LWCF programs need to be better connected and complementary of the vision of LWCF," the summary said. "Federal land acquisition priorities should not be random top-down political decisions but rather should be systematic bottom-up decisions reflecting community and state priorities."

Again, Haas explained, the feds should coordinate with state and local governments before establishing acquisition priorities. "Absolutely," he said. "If we're going to follow the AGO initiative, consultation needs to come up from the community level, if we're going to connect federal, state and local lands."

At some point, he said, Secretary of Interior Salazar should produce guidance to insure such consultation. "We had a lot of discussion about that. The secretary could put out guidance that wouldn't require any new regulations or laws," said Haas.

Salazar is reportedly concerned that support for his agenda - and for the agenda of AGO - may be crushed by the national drive to reduce federal spending. That frugality drive is being mounted by both Congress and the Obama administration.

The AGO did not anticipate that the Interior Department alone would take the lead in implementing its report. Indeed the report recommended the establishment of a Federal Interagency Council on Recreation chaired CEQ's Sutley.

The council is trying to focus

on overlapping jurisdictions among the Interior Department, the Forest Service, Department of Health and Human Services and the Department of Housing and Urban Development.

To that end Sutley met with recreation planners at the NARRP meeting in Colorado.

Meanwhile, the Obama administration, particularly the Interior Department, is tying AGO to any and all announcements. For instance on June 2 Deputy Secretary of Interior David Hayes announced the designation of 41 trails as National Recreation Trails, adding 650 miles to the system.

"From coast to coast, National Recreation Trails help connect Americans with the wonders of America's Great Outdoors," said Hayes at an event in Chicago with Sen. Dick Durbin (D-Ill.) "Today's new National Recreation Trails, built through partnerships with local communities and stakeholders, provide great opportunities for people to get outside, get active and have fun."

## **Salazar attempts to make peace over 'wild lands'**

Secretary of Interior Ken Salazar moved June 1 to defuse the ongoing controversy over his 'wild lands' policy by directing BLM to effectively not designate any wild lands.

That comports with a Congressional edict in a new appropriations law (PL 112-10 of April 15) that forbids the spending of any money to carry out Salazar's wild lands policy of Dec. 22, 2010. It was laid out in Secretarial Order 3310.

However, Salazar's new June 1 memo to Bureau of Land Management (BLM) Director Bob Abbey directs the bureau to continue to protect lands with wilderness potential. "Also, consistent with FLPMA and other applicable authorities, the BLM will consider the wilderness characteristics of public lands when undertaking its multiple use land use planning and when making project-level decisions," Salazar

wrote. "In that regard, I am directing Deputy Secretary David Hayes to work with the BLM and interested parties to develop recommendations regarding the management of BLM lands with wilderness characteristics."

Western Republicans have repeatedly attacked Salazar's wild lands policy, but one of their number, Sen. Lisa Murkowski (R-Alaska), read the memo as a truce. "I appreciate Secretary Salazar's commitment to me that the BLM will not pursue wild lands designations in Alaska," Murkowski said. "Both the Senate and the House have been clear that Congress retains sole authority and responsibility to designate lands for inclusion in the National Wilderness System." Murkowski is ranking Republican on the Senate Energy Committee.

In addition to the wild lands policy western Republicans have demanded release of BLM and Forest Service wilderness study areas to multiple uses, repeal of a Clinton administration national forest roadless rule and repeal of the wild lands policy. Their most recent attack came last week when five senators, led by Sen. John Barrasso (R-Wyo.), introduced legislation (S 1087) to accomplish those four goals. (See following article.)

The wild lands policy, which applies just to BLM-managed lands, is also being fought over in courts. Backed by the State of Alaska, the State of Utah filed a lawsuit April 29 to block it. The states argued, just as Utah counties did in a previous lawsuit, that only Congress has the authority to designate wilderness, and the Interior Department policy usurps that authority.

In a press release Salazar promised to work with members of Congress to identify potential wilderness areas, and to allow Congress to designate them. "We will focus our effort on building consensus around locally-supported initiatives and working with Members to advance their priorities for wilderness designations in their states and districts," he said. "Together, we can advance America's

proud wilderness legacy for future generations."

Environmentalists said they were betrayed. "Today, the Obama administration capitulated to a handful of western anti-wilderness politicians by abandoning its 5-month-old Wild Lands policy," said Scott Groene, executive director to the Southern Utah Wilderness Alliance (SUWA) in a bulletin to alliance members. "This surrender could seriously harm our efforts to protect Utah's red rock wilderness."

SUWA has waged a two-decade war over protecting wild lands in southern Utah, culminating in the introduction of the Red Rock wilderness bill (HR 1916, S 979) that would protect more than 9 million acres of public land.

Echoed William H. Meadows, president of The Wilderness Society, "Today's memorandum ignores the BLM's obligation to protect wilderness values and effectively lets stand former Secretary Gale Norton's deeply flawed decision to prohibit the BLM from properly managing those public lands that harbor wilderness values. Without strong and decisive action from the Department of Interior, wilderness will not be given the protection it is due, putting millions of acres of public lands at risk."

But Salazar's leading nemesis, House Natural Resources Committee Chairman Doc Hastings (R-Wash.), was more laudatory. "It's welcome news that the Interior Department will follow the law. After this positive initial step of halting the 'Wild Lands' order, we'll be taking a close look at how the Administration proceeds," he said.

And Wyoming Gov. Matt Mead (R) said, "The decision to reverse course on the Wild Lands Order is in the best interest of Wyoming and the entire West."

## **Vilsack extends 'interim' roadless policy a third year**

Secretary of Agriculture Tom Vilsack May 31 renewed for the third

year an "interim" directive that gives him authority to approve activities in national forest roadless areas, just as a previous directive expired.

Vilsack said there is nothing new in this year's directive to expand his authority to approve new activities. In the last two years he has given the go-ahead to 38 projects, including such things as moving trailheads and campgrounds.

Vilsack issued the original order two years ago to provide interim guidance because two federal courts issued contrasting decisions on the validity of a 2001 Clinton administration roadless area rule. The rule largely banned road construction and timber sales in 58 million acres of national forest.

The Ninth Circuit Court of Appeals upheld the rule Aug. 5, 2009, but U.S. District Court Judge Clarence Brimmer in Wyoming on June 16, 2009 said the rule was illegal. The Brimmer decision has been before the 10<sup>th</sup> Circuit Court ever since.

Vilsack said he expected the Tenth Circuit to rule "soon." But Mike Anderson of The Wilderness Society said that since the Tenth Circuit's last hearing on the issue in March 2010, "There has been no request for more information. We're just clueless about what is going on. It's been almost 15 months."

Meanwhile, a couple of major events. In one U.S. District Court Judge John W. Sedwick in Alaska March 4 ordered the Tongass National Forest to be included in the national rule. The Bush administration had issued a special rule exempting the Tongass, but Sedwick disagreed.

However, on May 26 Sedwick accepted an agreement between the administration and environmentalists who brought the Tongass lawsuit allowing a dozen projects to proceed, ranging from hard rock mining to a road extension to hydroelectric power.

In the second development the

Clinton roadless rule and three other pillars of federal roadless area protection policy came under attack a fortnight ago, this time from five western Republican senators.

The five, led by Sen. John Barrasso (R-Wyo.), introduced legislation (S 1087) that would release BLM and Forest Service wilderness study areas to multiple uses, repeal the Clinton administration national forest roadless rule and repeal an Obama administration "wild lands" policy permanently. It follows closely a House bill (HR 1581).

The Wilderness Society called Barrasso's S 1087 "the biggest attack on wilderness" in the history of the society. "These proposals fly in the face of values Americans hold dear with respect to the stewardship of our American lands," said Paul Spitler of the society. "It also flies in the face of nearly fifty years of legislation designating new wilderness areas."

Although the bill would release roadless lands to multiple uses, it would not reverse any wilderness designations.

Here's what Barrasso's Senate bill would do:

\* BLM WILDERNESS STUDY AREAS (WSAs): release 6.74 million acres of WSAs for multiple use. The land is part of the 12.27 million acres that BLM has studied in 546 WSAs and recommended as not suitable for wilderness. The released 6.74 million acres would be managed under a Section 202 Land Use Planning provision of the Federal Land Policy and Management Act of 1976, which would protect some lands.

\* FS INVENTORIED ROADLESS AREAS (IRAs): release 36.1 million acres studied by the Forest Service for possible wilderness designation in IRAs and recommended as not suitable for wilderness. The land was studied under a 1979 Roadless Area Review Evaluation. The released land would be managed under the Multiple-Use Sustained-Yield Act of 1960, which would protect some lands.

\* CLINTON FS ROADLESS AREA RULE: revoke the 2001 Clinton administration roadless area rule that limits road

construction and timber sales on 58 million acres of national forest (many of them Forest Service IRAs.) It would also revoke a Bush administration roadless rule that allows states to petition for a state-specific rule to manage roadless areas in national forests.

\* OBAMA WILD LANDS ORDER:  
 Terminate Secretary of Interior Ken Salazar's Secretarial Order 3310.

## Notes

### **Wodder chosen for high parks post.**

President Obama said June 8 he intended to nominate Rebecca Wodder, president of the American Rivers environmental group, as assistant secretary of Interior for Fish and Wildlife and Parks. In that post she would set park and wildlife refuge policy for the department. She would replace Tom Strickland, a close associate of Secretary of Interior Ken Salazar. Strickland resigned in February. Most of Wodder's career has been in the environmental community. She has been president of American Rivers since 1995 and between 1981 and 1994 she worked in several jobs at The Wilderness Society. She also worked for Sen. Gaylord Nelson (D-Wis.) as a legislative assistant on environment and energy matters.

### **New Calif. parks dispute erupts.**

The Public Employees for Environmental Responsibility (PEER) environmental group said June 6 that off-highway vehicle (OHV) users are trying to persuade the State of California to open to OHV use a state park that is targeted for closure. The state does not currently allow OHV use in Henry W. Coe State Park, the second largest park in the California system at 87,000 acres. It is located near San Jose. PEER contends that at a state-hosted meeting of an OHV group OHV lobbyists petitioned for motorized uses in Henry Coe in order to keep the park open. OHV users are influential in the state because they contribute \$100 million per year to the system from fuel taxes, about the same amount the state provides in general revenues. Presumably, some of that fuel tax money would be redirected to Henry Coe. California PEER Director Karen Schambach said the state is supposed to

share some of that OHV money with non-OHV use, but isn't. "California state parks are on the chopping block solely due to the failure to equitably share revenue," said Schambach. "Rather than allow the takeover and inevitable destruction of these beautiful lands by off-roaders, the OHV Division should be required to ante up the fuel tax revenues that come from non-OHV (sic) recreation, thereby helping keep these beleaguered parks open for the enjoyment of all Californians." As we reported in the last issue of *FPR*, Gov. Jerry Brown (D-Calif.) has proposed closure of 70 of the state's 278 parks, with a heavy emphasis on small-visitation sites. And with a state operating budget deficit greater than \$10 billion the state legislature this year will almost certainly go along with cutbacks. Even after imposing massive, across-the-board spending reductions. However, the California State Parks Foundation promises to lean on the legislature to restore a proposed \$11 million reduction.

**Judge rejects RS 2477 in park.** A federal judge ruled May 27 that a 10-mile way in Canyonlands National Park in Utah does not constitute an RS 2477 right-of-way that should be open to off-highway-vehicle (OHV) use. U.S. District Court Judge Bruce S. Jenkins in Utah in an 81-page decision said plaintiff San Juan County did not prove that the 10-mile way had been used as a public road for 10 years before the park was established. In order to prove the existence of an RS 2477 right-of-way the law requires a claimant to prove a route was used by the public and was maintained by local governments prior to 1976. If an RS 2477 ROW across federal land is proved, a community, county or state may manage it. But Judge Jenkins held that San Juan County did not prove the way at issue, Salt Creek Road, constituted an RS 2477 ROW. He said that "for purposes of R.S. 2477, at least absent proof of continuous public use as a public thoroughfare for the requisite amount of time, a jeep trail on a creek bed with its shifting sands and intermittent floods is a by-way, but not a highway." After the Park Service opened the way in 1989 to allow OHV jeep use, the Southern Utah Wilderness

Alliance sued and NPS reversed its decision. Then San Juan County and the State of Utah sued, claiming the way was an RS 2477 ROW and should be opened to OHV jeep use.

**Yellowstone visitation dips.** It's very early in the season but Yellowstone National Park has recorded a significant dip in visitation through May of this year. The decrease follows two consecutive record visitation years, 3.3 million in 2009 and over 3.6 million in 2010. However, through May visitation was down 11.4 percent, admittedly on a small base for judgment. Some 317,882 people had visited the park in the first five months of this year, compared to 358,939 at this time in 2010. The park notes that as many people usually visit the park in the first two weeks of July as in the first five months of the year combined. In addition much of Yellowstone is inaccessible by car in the early months.

**FS identifies watersheds.** The Forest Service June 3 published a first-of-its-kind map of the health of more than 15,000 watersheds in the National Forest System. Secretary of Agriculture Tom Vilsack made the announcement at an event highlighting the United Nation's International Year of Forests. The map will help the Forest Service prioritize restoration activities. "Watershed restoration is not new to the Forest Service, but we now have new capabilities to assess and prioritize where resources are most needed," said Forest Service Chief Tom Tidwell. "For the first time, we are laying out a process to allow data from local assessments to be collected, analyzed and evaluated to better understand existing conditions and the specific needs for restoration and maintenance at the national level." The Watershed Condition Framework establishes three classifications for the health of watersheds: Class 1 watersheds are considered healthy. Class 2 watersheds are relatively healthy, but may require restoration work. And Class 3 watersheds are those that are impaired, degraded or damaged. The Wilderness Society President William H. Meadows said, "While there have been a number of successful watershed restoration

projects across the country that have led us in the right direction – from Forest Service road decommissioning to rehabilitation of streams and wetlands – a national initiative that places watershed health as a top priority will ensure that the people and animals that rely on our nation's forests and water resources get the protection they deserve." The 193 million-acre National Forest System, the agency said, contains "nearly 400,000 miles of streams, 3 million acres of lakes, and many aquifer systems, provides drinking water for more U.S. residents than any other entity." The agency hosts more than 130 million visitors per year for water-based recreation.

**Overflights delay bill signed.** President Obama signed into law May 31 (PL 112-16) legislation that extends existing air tour policy through the end of the month (June). It is either the 18<sup>th</sup> or 19<sup>th</sup> time the existing law was extended while the House and Senate argues about a new multi-year law governing the Federal Aviation Administration (FAA). The House approved a multi-year FAA bill (HR 658) April 1. It would establish new aviation policy in general and overflight policy in particular for the next four years. Among other things the bill would exempt parks with 50 or fewer air tours per year from preparation of an air tour management plan. It would also allow FAA and NPS to develop "voluntary agreements" with air tour operators to allow overflights without a management plan. The Senate approved its multi-year FAA bill (S 223) February 17. It would establish new aviation and air tour policy for just two years. It would tighten regulations governing overflights. Among other things the Senate bill would attempt to clarify the air tour responsibilities of the Federal Aviation Administration and the Park Service. While the House and Senate do differ significantly on overflight policy, the overarching non-outdoor issues before a House-Senate conference committee are the price of a bill (House, \$59.7 billion; Senate, \$34.6 billion), the length of a bill (House, four years; Senate, two years) and airline workers election rules.

**House faults border agencies.** The House June 2 approved legislation (HR 2017) that would forbid the Department of Homeland Security from providing environmental protection grants to federal land management agencies along the nation's borders. The Republican House members who sponsored the amendment to a Homeland Security appropriations bill said it was needed because land managers won't provide access to Border Patrol officers unless they receive the grant money first. The existing law is designed to help land managers repair lands after border patrol activities. But, said Rep. Cynthia Lummis (R-Wyo.), sponsor of the rider, "(W)hen the Department of Homeland Security, our Border Patrol, is given access, federal land managers force the Border Patrol to fork over money for environmental projects that may or may not have anything to do with the constitutional obligations of our Border Patrol."

**OHVers claim Eldorado win.** Off-highway vehicle (OHV) advocates are claiming a win in a federal judge's May 26 ruling that upholds in large part an Eldorado National Forest travel management plan. Paul Turcke, an attorney representing powered recreation interests, said the court upheld most recreationists' claims in a lawsuit brought by the Center for Sierra Nevada Conservation. U.S. District Court Judge Lawrence Carton in the Eastern District of California endorsed the OHV routes within the 1,200-mile road/trail network in the forest. He did rule that the Forest Service didn't adequately protect the red-legged frog habitat on 10 miles of road.

**IBLA remands BLM outfitter decision.** The Interior Board of Land Appeals (IBLA) held in an order last month that the Bureau of Land Management (BLM) did not justify a decision rejecting an outfitter's application for a special use permit. The applicant, Backcountry Experience, Inc., applied for a multi-year permit on approximately 13,000 acres of public lands in the Bitterroot Range in Idaho to extend an existing operation. Instead, BLM approved a one-year permit on just 3,200

acres. Under its old permit the company ferried skiers and snowboarders on snowcats to as high as 6,000 feet. The outfitter then gathered up its customers at pick-up points. Although IBLA Deputy Chief Administrative Judge Bruce R. Harris said BLM did not explain in its decision why it approved a reduced-operations permits, he did surmise it was because a resource management plan for the area prohibited actions near wolverine denning habitat. But Harris said BLM did not say that in its decision, so he remanded the case to BLM. The order is cited as *Backcountry Experience, Inc., IBLA 2011-79 of May 12, 2011*. The order covers 16 pages.

## Conference calendar

### JUNE

17-21. **U.S. Conference of Mayors** annual meeting in Baltimore. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

29-July 1. **Western Governors' Association** annual meeting in Coeur d'Alene, Idaho. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

### JULY

13-15. **The International Convention of Allied Sportfishing Trades** in Las Vegas. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

15-19. **National Association of Counties** annual conference in Portland, Ore. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.

18-22. **National Speleological Society** annual meeting in Glenwood Springs, Colo. Contact: National Speleological Society, 2813 Cave Ave., Huntsville, AL 35810-4331. (256) 852-1300. <http://www.caves.org>.