

Federal Parks & Recreation

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NPS boss says NPS welcomes non-appropriated assistance

In a major speech to leading partners of the National Park Service June 9, agency director Jonathan B. Jarvis said he would seek out any and all sources of new revenues for the parks, in addition to appropriations, in anticipation of an NPS Centennial in 2016.

Addressing a Partners Outdoors 2014 conference in Washington, D.C., Jarvis said he would consider assistance from such varied sources as an endowment, bonds, destination marketing and a revised fee structure.

Jarvis said the Park Service as it approaches its Centennial is talking to all comers about assistance - including a possible Congressional endowment, direct philanthropic contributions and partnerships with business.

"We have basically lived on appropriations, both in your state parks from state appropriations and federal agencies from general appropriations, and we have seen that go flat or in decline," he said at the conference. "So we have to create a new construct of how these places will be maintained in perpetuity."

Partners Outdoors 2014 is a coalition of federal land managers, state officials and nonprofit group representatives that meets each year in June in Washington, D.C. to discuss a national recreation agenda.

Although Jarvis's thoughts are not necessarily new, he raised all the alarms in one place. He also suggested that in that old tension between increased visitation and protection he for the time being is campaigning for greater visitation.

Time and again in his talk Jarvis said the National Park System is increasingly irrelevant to the Millennial Generation and to school kids. And that the Park Service and its friends need to use the Centennial as a springboard to attract the Millennials and the young to the parks.

"Our young people are immersed in technology and unfortunately have little interaction with the natural world, and increasingly they don't even own automobiles," said Jarvis.

So, he said, "We need to bring the parks to the people to where they live, and that means partnerships in a very large way. It means a more robust way than we have ever done it."

And how do NPS and its partners do that? "My approach to that is to launch a multi-platform, complicated-partnership, industry-backed, philanthropic centennial initiative that will really build this relationship with the next generation." Jarvis said the campaign, which is already partially formulated, would launch in the first quarter of 2015.

Minority Millennials: At the Partnership conference Carlos Alcazar, founder of Culture ONE World that works with minorities, said that outdoor leaders had better pay attention to Hispanics and other minorities in any attempt to attract Millennials to the outdoors.

That's because minorities already make up 40 percent of the Millennial population, and half of that 40 percent are Hispanics, he said. By the year 2040 demographers predict minorities will make up more than 50 percent of young people.

Alcazar said considerable research has been done on the interest of Hispanics in the outdoors. For instance the Outdoor Foundation found that the Hispanic population at large loved to camp, but had little interest in roughing it in the backcountry. So he had three logical recommendations:

One, Adapt Your Program. "If they

don't want to rough it, then don't force them to go to the North Face and climb 11,000 feet. They're not going to do it," he said.

Two, Hire Staff and Leadership. He said leaders must reflect the community. "If you want them to come to you, you have to put the welcome mat out. One of the key ways to do that is making sure you hire front-line people who reflect the community you want to serve," he said.

Three, Communicate Culturally Competent Way. Again, Alcazar stated the logical. "You have to be linguistically relevant, so that when people see the content, it is going to connect with them," he said.

Other federal land management agencies can benefit from better communications with Hispanics, said Alcazar, referring to Go Get Green program his organization put together with the Forest Service outside of Los Angeles.

Under it the service and his organization reached out to young Hispanics in the L.A. area through social media and invited the visitors to post pictures and videos of their experiences in national forests. Alcazar said the kids posted "hundreds of videos."

Jarvis repeated and reinforced the need for outside help. "We want to increase our philanthropy by an order of magnitude," he said, "and that is not only from out (National Park) Foundation, but our friends groups. We need philanthropic support." He added that American philanthropists are generous but "they don't give much to our work. All we need to do is ask."

The Park Service's own Centennial agenda, *A Call to Action* of Aug. 25, 2011, recommends a \$1 billion endowment program. As a follow-up to *A Call to Action*, major organizations backing NPS are attempting to identify unconventional revenues for the parks, including an endowment.

The National Park Foundation, the

National Parks Conservation Association and the National Park Hospitality Association have come up with some 16 recommendations that Jarvis indicated NPS is evaluating.

Congress is working on Centennial legislation, at least Sen. Ron Wyden (D-Ore.) and his staff were when he chaired the Senate Energy Committee earlier this year. While they had not identified specific pieces of the proposal, logical candidates are a large endowment and, perhaps, a penny-in-the-parks gasoline tax. Sens. Rob Portman (R-Ohio) and Mark Udall (D-Colo.) have also from time-to-time showed interest in such legislation.

Wyden has moved on from the chairmanship of the Senate Energy Committee to chairman of the Senate Finance Committee. That may be even more propitious for the Centennial because Wyden is working on a comprehensive tax reform package with ranking committee Republican Orrin Hatch (R-Utah). Such a package would be a logical place for an endowment provision and a gas tax provision.

In one less grand piece of Centennial legislation the House April 29 approved a bill (HR 627) from 308 cosponsors that would authorize the Treasury Department to mint \$5 gold coins, \$1 silver coins and half-dollar coins during calendar year 2016 for the Centennial.

The bill would also assess a huge surcharge on each minting - \$35 for each dollar coin, \$10 for each silver coin and \$5 for each half-dollar coin. By our math if all coins were sold, the program would bring in \$13,625,000. The money would be used by the National Park Foundation to preserve the parks and enhance the enjoyment of visitors.

In his talk Jarvis described factors that make more difficult the work of federal land managers, such as the Park Service. They include partisan fighting in Congress, denial of climate change, demands by states for control over federal lands in order to authorize development on them, citizens rights' advocates such as rancher Cliven Bundy

in Nevada, and the "collapse" of the California State Parks system.

To view Jarvis's talk go to: <http://new.livestream.com/usinterior/events/3059213>. To view other sessions of the partners' conference go to <http://new.livestream.com/usinterior>.

House rejects TIGER grants for trails and recreation

The House approved June 10 a fiscal year 2015 transportation appropriations bill (HR 4745) that would bar the use of regional grant money called TIGER for recreation and trails.

That, despite objections from several Congressmen that recreation and trails grants make more money for communities than they cost.

Said Rep. Earl Blumenauer (D-Ore.), "The irony is that the resources that are used for bike and pedestrian programs actually create more jobs than simply road construction. Talk to people around the country, as I have, about the ability to invest in making their children safer for cycling and pedestrian. It is not incidental. It is not something that should be just simply brushed aside."

Rep. David Price (D-N.C.) cited Indianapolis, Ind., and its large downtown trail network as an example of the economic benefits of TIGER grants for trails. Said Price, "It is now touted as a draw to convention planners, as a central catalyst for hundreds of millions of dollars in new commercial and residential development, and it is the linchpin of a vibrant community. It simply could not have been funded if these restrictions which the majority has included in this bill had been in place."

As *FPR* reported in the April 4 issue Indianapolis Mayor Greg Ballard (R) told the Senate Environment and Public Works Committee March 27 that he was particularly proud of the 82 miles of bike trails his city has built recently. He said the trails network had drawn national and international

investment to his city.

But the House Appropriations Committee said of the \$100 million TIGER appropriation in HR 4745, down from \$600 million in fiscal 2014, "The legislation does not allow these funds to be used for non-essential purposes, such as street-scaping, or bike and pedestrian paths."

The Obama administration in a June 9 Statement of Administration Policy complained about the House's proposed \$500 million reduction in TIGER grants, but it did not specifically object to the exclusion of trails and recreation spending. The administration requested \$1.2 billion for TIGER grants

The Rails-to-Trails Conservancy did object and urged its member to ask Congress to let trails share in TIGER money. In a bulletin to members last week the conservancy said, "Make no mistake; eliminating trails, biking and walking projects and facilities from TIGER grants would have a devastating impact on communities across the country."

The Senate, working on transportation legislation on two fronts, has not yet opened an attack on trails. In fact the Senate Appropriations Committee June 5 approved \$550 million for TIGER grants for fiscal 2015, and did not mention restrictions on bike and pedestrian path use. That bill is now on the Senate floor.

However, on the second Senate front the Senate Environment and Public Works (EPW) Committee in approving a six-year highway authorization bill May 15 would not renew TIGER grants.

Instead, the panel would authorize \$400 million per year for a Projects of National or Regional Significance Program to sort of replace TIGER. But recreation advocates such as streetsblog.org say the grant criteria in the bill are too stiff for most bikeway projects, such as a \$350 million project minimum.

Again, Congress is working on two fronts to prop up surface transportation

programs. The Senate EPW committee has written a six-year authorization bill (S 2322) that is now waiting floor action. The House Transportation Committee has not begun to write its bill yet. (See *related article page 9.*)

Theoretically, appropriators can't complete fiscal 2015 money bills until the authorizing committees move a reauthorization bill through Congress to replace the existing law. It is called Moving Ahead for Progress in the 21st Century (PL 112-141 of July 6), or MAP-21.

But House and Senate appropriators are going ahead and writing spending bills in anticipation of a new MAP-21 law. The House approved its bill June 10 and the Senate committee June 5.

Ozark Riverways battle heats; Smith would shift to state

As expected, the Obama administration June 10 rejected a proposal to transfer the Ozark National Scenic Riverways from the Park Service to the State of Missouri.

The local Congressman, Rep. Jason Smith (R-Mo.), has introduced bills (HR 4029, HR 4182) to transfer the park unit to the state and, failing that, to forbid any change in management. He hopes to head off a proposed Park Service management plan to limit some uses.

At a hearing on the bills before the House subcommittee on Public Lands June 10, NPS Associate Director for Park Planning Victor Knox said the administration opposed both bills. At the same hearing Missouri Rep. Robert Ross (R) vigorously defended the legislation.

Knox first on the proposal to transfer the park unit to Missouri: "Our fundamental concern is that the bill would erode the idea of a Federal system of public lands, and the system of laws, regulations, and policies that govern the management of those lands . . ."

"State governments have very

different responsibilities for the management of State lands than the Federal government, and are accountable only to residents within their particular States," Knox added. "Accordingly, each State would be under strong pressure to manage according to local rather than national interests."

But Missourian Ross said, "These are Missouri lands and Missouri rivers, and (I) can confidently say that Missourians (as we have for generations) know best how to preserve and protect these resources both today and moving forward."

The Park Service's Knox said the other bill that would not allow NPS to change existing management policy would shut out the public. "HR 4182 would undermine a public planning process that has been underway since 2005, and deny the opportunity for all Americans, including Missourians, to have a voice in the future management of their national park," he said.

To which Missourian Ross said his constituents "have camped, boated, hunted, fished and, in general enjoyed the abundance of activities available along these waterways."

"However," he added, given the latest actions of the National Park Service, it has become quite clear that the goal is to limit access to these natural treasures, which is a decision that will have catastrophic effects on the lives of my constituents, as well as on our local economies."

He said the Missouri General Assembly and the Missouri Senate approved resolutions against the NPS preferred alternative and in favor of a no action alternative in the draft plan.

The Park Service does have significant firepower backing its plan, beginning with Gov. Jay Nixon (D-Mo.) He wrote Secretary of Interior Sally Jewell February 7, "Floating, fishing, hiking, camping, horseback riding, and other such recreation along the Riverways have provided visitors with enjoyable outdoor opportunities. And these activities have a significant

positive impact on Missouri's outdoor economy. But some of these activities, in the wrong location or in too heavy a concentration, can pose a threat to the Riverways. Similarly, there are acceptable levels of activity that can accommodate both enjoyment and preservation of these treasures."

Nixon added, "Alternative B strikes the most appropriate balance between these two, provided that it also contains the flexibility that is necessary and appropriate in managing a resource such as the Riverways."

Ozark Superintendent Bill Black said February 11 at the conclusion of a public comment period on the proposed plan that he anticipated the plan would be completed this summer.

The proposed plan was published Nov. 1, 2013. It contained five alternatives ranging from no action to "restrictive environmental".

Annual visitation in the riverways ranges from 1.3 million to 1.5 million per year with visitors spending an estimated \$55 million.

The preferred Alternative B would restore 55 miles of roads to a natural or primitive state; designate 35 miles of new horse trails while closing 65 miles of undesignated trails; establish motor-free zones in the upper reaches of the Current and Jacks Fork Rivers that make up the Riverways; and more.

A broad coalition of conservation groups called the Friends of Ozark Riverways (FOR) in general endorsed the preferred alternative, but FOR said some coalition members prefer the environmental protection alternative.

Smith has already persuaded the House to approve February 4 a third legislative proposal that would direct NPS to manage the riverways "to allow the use of motorized vessels in a manner that is less restrictive" than the proposed NPS plan. The House approved that as an amendment to a comprehensive sportsmen's bill (HR 3590).

Smith's bill to turn the Park

Service unit over to the State of Missouri is more complex. It would give the Interior Department one year to transfer the riverways to the State of Missouri lock, stock and bottle "for no consideration," i.e. for free.

Bill would give NPS say in managing forests near L.A.

Rep. Judy Chu (D-Calif.) introduced legislation (HR 4858) June 12 that would have the Forest Service and the Park Service cooperate in the management of a new 615,245-acre San Gabriel Valley National Recreation Area (NRA) in California.

The site would be based largely on national forest land in the Angeles National Forest that frames the eastern side of Los Angeles County. The Forest Service would continue to manage the forest but it would consult with the Park Service.

Supporters believe the Park Service involvement will lead to better signage, greater safety on trails and an infusion of \$2 million to \$4 million per year. That's because under appropriations laws each park unit has its own appropriation but Forest Service money is lumped together regionally, and can be diverted to other uses, such as fire fighting.

Chu said the recreation area would have synergistic impacts on the communities that back up to the San Gabriel Mountains in the forest. "The Los Angeles region is one of the most park poor regions of the country. We face two challenges as a result: there are very few options for Angelenos to enjoy the outdoors, and the options we do have are under immense stress from overuse," said Chu.

The legislation would complement an ongoing Park Service study of a possible Rim of the Valley National Recreation Area on nearby mountains that circle Los Angeles Valley.

NPS is currently writing a draft report and environmental analysis on the Rim of the Valley. In a preliminary

finding in the fall of 2012 NPS said nationally significant resources exist in some new portions of the area, which some citizens say should lead to a new 400,000-acre national recreation area.

That is, in addition to the Santa Monica Mountains National Recreation Area, and the San Gabriel Mountains.

Environmental groups endorsed Chu's San Gabriel legislation. Said Dennis Arguelles, Los Angeles program manager for the National Parks Conservation Association, "Creating a new national park site will also ensure that funding will be provided to enhance the visitor's experience, and will better protect this region's natural and cultural heritage. The National Park Service has a proven track record of fostering positive partnerships with state, county, and local agencies; including in the nearby Santa Monica Mountains National Recreation Area."

But again the Forest Service would be responsible for managing most of the land. NPS would have a consulting role.

The legislation is complex, running 45 pages. Among other things it would transfer 2,987 acres of Bureau of Land Management land to NPS for use as an administrative site, would forbid eminent domain but allow voluntary land acquisitions, and would establish a 17-member partnership to oversee the recreation area. The partnership would be composed of federal, state, local, water management agency officials and others.

A summary of the bill from Rep. Chu's office described the NPS role this way: "The NRA will allow the National Park Service to contribute to community-based, community-driven projects. It can help cities create more pocket parks and walking paths among their communities, as well as access points to existing trails and bike paths. It can help improve signage, and increase education about the environment, fire safety, the special history of the region, and more."

More information including a copy of the bill, a summary of the bill and

maps is available at: <http://chu.house.gov/press-releases>.

FS acting to add snowmobiles to ORV access travel rule

The Forest Service said June 18 that it will amend its regulations governing off-road vehicle (ORV) access to national forests to include oversnow vehicles, i.e. snowmobiles.

In 2005 the service published a regulation that led to the designation of roads, trails and other areas that were either available to "off-road vehicles (ORVs)" or off limits to ORVs. However, that rule exempted snowmobiles and other oversnow vehicles.

Winter Wildlands Alliance, which represents backcountry winter recreationists, sued. On March 29, 2013, U.S. Magistrate Judge Ronald E. Bush ruled for the recreationists that the Forest Service could not exclude oversnow vehicles from the rule. Now the Forest Service has until September 9 to write a new rule.

As the judge told the Forest Service to in his June 13 action it proposed a rule June 18 to amend the existing travel management rule to include snowmobiles. Once the overarching amendment is completed individual forests would then amend their individual travel management plans to specify where snowmobiles may or may not go.

"Over-the-snow access and recreation is an appropriate use of public lands, and we strive to offer a variety of opportunities for that," said Forest Service Chief Tom Tidwell.

The Forest Service says that it manages more than 200,000 miles of roads and 47,000 miles of trails that are open to motorized vehicles. The agency says the "roads and trails vary greatly, from single-track trails used by motorcycles to roads designed for high-clearance vehicles such as logging trucks."

Judge Bush held in his decision last year that a 1972 Executive Order

11644 from President Carter included oversnow vehicles in a mandate to regulate access to federal lands by ORV vehicles. Indeed the executive order does says that ORV "means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain." Emphasis ours.

Judge Bush concluded, "In sum, the Court finds the (oversnow vehicle) exemption is contrary to law, specifically Executive Order 11644, as amended by Executive Order 11989, because Executive Order 11644 requires an agency to promulgate regulations that provide for designation of areas of use and non-use by off-road vehicles, including over-snow vehicles, on all public lands. By exempting OSVs from the 2005 Rule and purporting to make discretionary the threshold question of whether to designate the areas of use or non-use by OSVs, the Forest Service has not reasonably applied Executive Order 11644 in its promulgation of the 2005 Rule, or in its denial of WWA's Petition to Amend." WWA is the Winter Wildlands Alliance.

When judge Bush handed down his decision the alliance praised it. "We're pleased with the ruling and we look forward to working with the Forest Service and other winter stakeholders to establish management plans for winter motorized use that are consistent with vehicle use in all other seasons." said Winter Wildlands Alliance Executive Director Mark Menlove. "Our only regret is that it took a Federal lawsuit to bring the Forest Service to meet their legal obligation to manage motorized use in all seasons."

WRDA bill with Everglades help, and more, becomes law

President Obama signed into law June 10 (PL 113-121) a comprehensive Water Resources Development Act (WRDA) that authorizes almost \$1.9 billion to restore the Everglades ecosystem, among other things.

Obama did not mention the

Everglades on signing the bill. The White House simply said he signed the measure.

However, major bill authors Sens. Barbara Boxer (D-Calif.) and David Vitter (R-La.) lavished praise on the law. Said Boxer, chair of the Senate Environment and Public Works Committee, "The President has signed into law a strong, bipartisan bill which invests in vital water infrastructure that protects communities in California and across the nation from flooding, maintains navigation routes for commerce and the movement of goods, restores vital ecosystems and boosts our economy by creating jobs."

The Senate May 22 gave final Congressional approval to the comprehensive WRDA that authorizes almost \$1.9 billion to restore the Everglades ecosystem, among other things. The vote was 91-to-7. The House approved the conference committee bill the day before by a 412-to-4 vote.

The final bill (HR 3080) includes other initiatives affecting park and rec areas, such as one to include the Corps as a participating agency in an America the Beautiful National Parks and Federal Recreational Lands Pass Program.

Although limited government advocates criticized the measure, it sailed through the House and Senate because it would provide so much assistance to so many Congressional districts.

The Heritage Foundation objected to the bill and said Congress should have limited new Corps projects, such as in the Everglades. "Instead, the conference report lists 34 newly authorized projects while failing to set in place a satisfactory means of prioritizing future projects," said Heritage Action.

Despite the Congressional passage of the WRDA bill, authorized projects are not home free. Congress must still come along later and appropriate the money for them.

A House-Senate conference

committee reached agreement on the WRDA bill May 8 and published the results of its agreement May 15. The House approved the conference bill May 21 and the Senate the next day on May 22.

Sen. Marco Rubio (R-Fla.) voted for the bill, but complained that the Corps of Engineers did not approve a crucial restoration project in time to be included in the bill. That project, the Central Everglades Planning Process (CEPP) would allow waters from the huge Lake Okeechobee to flow south into the Everglades again and not east and west.

Rubio wrote Assistant Secretary of the Army Jo-Ellen Darcy just before the Senate vote, "It is unfortunate that the agency could not move forward at a pace that would allow for CEPP's inclusion in the final enactment of WRRDA." He urged the Corps to complete paperwork on CEPP "expeditiously."

In total an earlier House-passed bill would have authorized \$8 billion in expenditures and the Senate \$12 billion. The conferees settled on \$12 billion. However, the House-Senate conference committee said its bill would deauthorize \$18 billion in old projects, effectively paying for itself.

"All authorizations in WRRDA are more than fully offset by deauthorizations. Specifically, WRRDA deauthorizes approximately \$6 billion more than it authorizes," said the conferees.

The conferees took great pride in including no earmarks in the bill, but the Everglades projects made it in as part of Corps-approved projects.

Here are the four Everglades projects:

* Caloosahatchee River West Basin Storage Reservoir, \$626.6 million (\$313 million federal, \$313 million state),

* Biscayne Bay coastal wetland, \$192 million (\$96 million each),

* Broward County water preserve area, \$896 million (\$448 million each), and

* C-111 Spreader Canal, \$175 million (\$87.5 million each).

Back-up information on the House-Senate WRDA conference report is available at: <http://transportation.house.gov/wrrda/conference.htm>.

Senate Finance may take lead in finding MAP-21 money

There is no shortage of ideas for making up a looming deficit in the Highway Trust Fund, a deficit that threatens recreation and trails projects around the country. But there may not be the political will to adopt those ideas.

One thing is certain, without quick action by Congress the existing Highway Trust Fund will fall below a balance of \$4 billion by mid-July, triggering a Department of Transportation slowdown order on projects. And that slowdown would prevent states from beginning any new projects.

There is possible action in the works in the Senate. First, the Senate Environment and Public Works (EPW) Committee approved legislation (S 2322) May 15 to extend for two years the existing surface transportation law called Moving Ahead for Progress in the 21st Century (PL 112-141 of July 6), or MAP-21.

But EPW doesn't pay the bills. The Senate Finance Committee does. So, second, finance committee chairman Ron Wyden (D-Ore.) and ranking committee Republican Orrin Hatch (R-Utah) have begun searching for money not only to pay for MAP-21, but also to reform comprehensively federal tax law.

Said Wyden and Hatch in a joint statement earlier this month, "We will also continue to look for innovative ways to fix the depleted Highway Trust Fund and keep hard-working Americans on the job without diverting revenues from repatriation needed for tax reform."

The line about repatriation is widely believed to be a Wyden shot

across the bow of Senate Majority Leader Harry Reid (D-Nev.), who has been quietly championing a federal tax forgiveness strategy as a supplement to the Highway Trust Fund to pay for an extended MAP-21. However, Wyden wants those revenues for overall tax reform.

Separately in the Senate, Sens. Chris Murphy (D-Conn.) and Bob Corker (R-Tenn.) undertook what may be a suicide mission June 18 and introduced legislation to increase the gasoline tax. Murphy and Corker would increase the tax by six cents per gallon next year and six cents the year after, for a total of 12 cents. The tax is now 18.5 cents per gallon.

Corker and Murphy would pay for the gas tax increase by offsetting it with other tax reductions.

Meanwhile, on June 11 Rep. Tom Petri (R-Wis.) at the Obama administration's request introduced the administration's recommended legislation (HR 4834) to replace MAP-21.

The Obama administration has asked Congress for significantly more transportation spending for fiscal 2015 (and beyond) than the Senate EPW committee and the House Appropriations Committee, having proposed April 29 significant increases in most programs. On the bottom line the administration would spend \$75 billion per year compared to the Senate committee's \$44 billion.

S 2322, the Senate EPW Committee six-year authorization bill, would extend an overarching Transportation Alternatives Program that feeds specific outdoor programs with money, to wit Recreational Trails, Transportation Enhancements, Scenic Byways, Safe Routes to School.

In fiscal years 2013 and 2014 MAP-21 allocated about \$720 million per year to Transportation Alternatives. S 2322 would retain the existing formula, adjusted for inflation.

In addition the bill would extend an existing federal lands roads program at \$300 million per year (with \$240

million set aside for the Park Service) and an additional \$250 million to maintain roads through and near federal lands.

In a related development the House June 10 approved a fiscal year 2015 transportation appropriations bill (HR 4745) that would bar the use of regional grant money called TIGER for recreation and trails.

That, despite objections from several Congressmen that recreation and trails grants make more money for communities than they cost. (*See related article page 3*).

As for the House Transportation Committee under Chairman Bill Shuster (R-Ohio) it is expected to begin writing a multi-year surface transportation bill when primary elections have been completed.

On May 30 House Republican leaders offered a new proposal - elimination of Saturday postal delivery, with the savings passed on to highway programs. Speaker of the House John Boehner (R-Ohio), House Majority Leader Eric Cantor (R-Va.) and Majority Whip Kevin McCarthy (R-Calif.) said the proposal was "the best way to ensure continued funding of highway projects in a fiscally responsible manner" in a memo to Republican members.

The leaders estimated the proposal would produce \$14 billion to \$15 billion, to make up one year's Highway Trust Fund deficit.

Senate EPW committee Chair Barbara Boxer (D-Calif.) criticized the proposal. "Instead of working with Democrats to come up with a sensible user fee which has been the foundation of the Highway Trust Fund, House Republican Leadership proposes cutting back mail deliveries to American households," she said.

"This idea is a jobs killer which does not even fund the Highway Trust Fund for a long enough period of time to provide the certainty that states, cities, and businesses need," Boxer added.

Big court case in Utah takes on Obama wild lands policy

A federal judge heard oral arguments June 6 on lawsuits from the State of Utah and Uintah County that object to Bureau of Land Management (BLM) oversight of almost 4 million acres of Red Rock Country as wilderness.

The county and state contend that BLM is violating its own resource management plans in Utah that opened the 4 million acres to oil and gas leasing in 2008. Judge Dee Benson is hearing the case.

BLM is circumventing the plans, the plaintiffs argue, via new instruction manuals posted in May 2010. Those manuals require master lease planning that allows BLM offices to exempt broad tracts from leasing that were explicitly set aside for leasing in the resource management plans.

However, environmentalist intervenors contend the lawsuit is a political document designed to open potential wilderness to development. "In an effort to transform this political dispute into a legal claim, the State claims that the BLM may no longer manage some of Utah's spectacular public lands to protect their renowned wilderness characteristics no matter how compelling the case for conservation," said the intervenors just before the June 6 hearing.

"Instead, the State seeks to force the BLM to adopt its vision for the future of these special places, which favors mineral leasing and development and excludes wilderness protection."

The environmentalist intervenors include the Earthjustice law firm, the Southern Utah Wilderness Alliance, the Sierra Club, The Wilderness Society and the Biodiversity Conservation Alliance.

As a good lawyer should, Heidi McIntosh, an attorney for Earthjustice, said her side has a solid case. "I think there is a very strong argument that BLM has authority to manage public lands for wilderness," she told us. "I

think it is clear that Congress gave BLM authority to manage lands in their natural condition as wilderness."

The hearing lasted for three-and-one-half hours. Connie Brooks, an attorney for Uintah County, said Benson took the oral arguments under advisement. He is expected to take some time to ferret out the rights and wrongs in the complex case.

This lawsuit touches on a number of old disputes that pit two different philosophies of public land management, not only in Utah but throughout the West.

On one side Uintah County and the State of Utah say the lands in the Red Rock Country of Utah should be managed aggressively for commercial uses, particularly energy development.

But the environmentalists argue that the lands should be managed passively to protect the wild country. To that end environmentalist allies' Sen. Richard Durbin (D-Ill.) and Rep. Rush Holt (D-N.J.) have introduced legislation (HR 1630, S 769) to designate 9.1 million acres of wilderness in southern Utah.

The case before judge Benson also involves an Obama administration wild lands policy Executive Order 3310 that Congress has subsequently blocked. The order, posted by the Interior Department, is viewed by critics as an attempt by the department to designate wilderness areas administratively; Congress supposedly has the sole authority to designate wilderness.

Finally, the case involves a number of attempts by the State of Utah and local governments to gain direct control over all federal lands within Utah. In the most significant initiative Utah Gov. Gary Herbert (R-Utah) on March 23, 2012, signed legislation that would require the government to turn all federal lands in Utah over to Utah. That includes national parks, BLM-managed lands, national forests, wilderness areas and the Grand Staircase Escalante National Monument.

Environmentalists view the state legislation as a follow-on to several other Herbert initiatives to gain control over public lands. They include a number of state lawsuits against the Interior Department that claim nearly 20,000 RS 2477 rights-of-way across federal lands.

Here is a brief history of the wild lands/oil and gas development confrontation in Utah (and elsewhere):

Clinton wilderness review policy:

Then Secretary of Interior Bruce Babbitt in July 1996 ordered a reinventory of millions of acres of public lands in southern Utah for wilderness characteristics, on the grounds that a previous inventory was flawed.

Bush wilderness review policy:

Then Secretary of Interior Gale Norton in the Bush administration in 2003 and again in 2005 held that BLM's wilderness inventory authority expired in 1993 and cancelled Babbitt's reinventory.

Bush management plans: In 2008 BLM published new resource management plans for six field offices in Utah: Vernal, Richfield, Moab, Kanab, Monticello and Price. Those plans broadly described lands that could be leased for oil and gas development.

Obama management policy: Under then Secretary of Interior Ken Salazar the Obama administration adopted in May 2010 a new oil and gas leasing and permitting policy. Among other things the policy added an additional layer of environmental review prior to leasing.

Salazar wild lands policy:

Salazar himself on Dec. 22, 2010, issued Executive Order 3310 directing BLM to identify and protect wild lands. However, Congress on April 15, 2011, defunded the program and Salazar subsequently promised not to implement it. But Executive Order 3310 is still on the books.

Utah land claims: Gov. Herbert on March 23, 2012, signed legislation that would require the government to turn all federal lands in Utah over to Utah.

However, the Utah Office of Legislative Research and General Counsel cast doubt on the legality of the law. "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain," said the office in an analysis of the bill. "Under the Gibson case, that requirement would interfere with Congress' power to dispose of public lands," the office continued. "Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

The Gibson Supreme Court decision is cited as *Gibson v. Chouteau*, 80 U.S. 92 (1872).

Two lawsuits are before judge Benson - one from Uintah County and one from the State of Utah. Both plaintiffs are asking him to declare Executive Order 3310 invalid, declare the Obama lease management policy invalid and declare illegal any BLM management efforts to protect lands recommended for wilderness in the Red Rock Country by environmentalists.

Notes

Obama designates big Pacific monument. President Obama June 17 expanded an existing 87,000 square-mile Pacific Remote Islands Marine National Monument by almost ten times to 782,000 square miles. The ocean monument is adjacent to seven islands and atolls controlled by the United States. "I'm going to use my authority to protect some of our nation's most precious marine landscapes," Obama said in a video at a State Department oceans conference. He added that oceans are being degraded, and said, "We cannot afford to let that happen. That's why the United States is leading the fight to protect our oceans." The designation of the monument land represents a new White House emphasis on ocean policy, one that was not welcomed by House Republicans. Led by House Natural Resources Committee Chairman Doc Hastings (R-Wash.), they have been attacking for four years an administration National Oceans

Policy as ocean "zoning." Hastings said of the Pacific monument, in a written statement, "For years the Obama Administration has threatened to impose ocean zoning to shut down our oceans, and today the President is making good on that threat." President Obama signed Executive Order 13547 on July 19, 2010, approving the policy. Hastings and his Republican allies have been attempting to cut off money to implement the policy. The administration says the policy will benefit coastal communities and coastal businesses, in part through voluntary regional planning bodies. But Hastings said the planning bodies constitute zoning of the ocean to block commercial uses. As for the ocean monuments, when President Bush designated a Papahānaumokuākea Marine National Monument in 2006 it was considered by many conservationists as the high-water environmental mark of his presidency. The Bush monument protects a 1,200-mile long string of islands and adjacent waters. It is jointly managed by the National Oceanographic and Atmospheric Administration, the U.S. Fish and Wildlife Service, and the State of Hawaii. The Obama expansion complements that designation of lands bordered by the Hawaiian Islands on the east, Australia on the southwest, and the Marianas Islands on the west.

House panel acts on cabin fees. The House Natural Resources Committee yesterday (June 19) joined the Senate Energy Committee in approving legislation (HR 4873) that would establish a new formula for assessing fees on private cabins within the National Forest System. The House committee approved a Cabin Fee Act of 2014 drafted by chairman Doc Hastings (R-Wash.) that would establish several tiers of fees beginning at \$500 per year and increasing by \$500 increments to a top fee of \$5,600 in the House bill and \$5,500 per year in the Senate bill. The Senate Energy Committee sent to the full Senate late last month a counterpart bill (S 1341) to Hastings's bills that might be the engine to pull an omnibus lands bill later this year. The cabin fee legislation stands a chance of inclusion in an omnibus lands bill, indeed it may move to the head of the pack, because of its popularity.

The Senate committee approved its bill by voice vote and the House committee by unanimous consent. It's early in the political season to talk about an omnibus lands bill, particularly with a national election coming up November 4. But now is the time for legislation get in line. Once the election is over, a lame-duck session may be tempted to move an omnibus lands bill. The Cabin Fee Act would replace an existing law - the Cabin User Fee Fairness Act of 2000 that bases fees on Forest Service appraisals, at five percent of the market value. In 2007 the Forest Service began reappraising cabins, and, because some cabins had not been appraised for as much as 30 years, the appraisals went through the roof. So Congress is trying to move legislation that would reduce fees and allow renters to retain their cabins. Sen. Jon Tester (D-Mont.) introduced the Senate bill.

FS would modify ski area water.

The Forest Service today (June 20) will publish a proposal in the *Federal Register* that would allow ski resorts to own water rights to sustain their operations. The rights would remain with a resort even if the resort were sold. Under existing policy the public holds the rights to the water. "This proposal balances the interests of the public, the ski areas and our natural resources by ensuring the necessary water is provided for winter recreation through our special-use permit process," said Forest Service Chief Tom Tidwell. "This proposed change will provide assurances to the public that they will continue to enjoy winter recreation at ski areas on national forests." The service has been under siege by the ski resort industry because of an attempt to gain federal rights to ski resort water. The Forest Service crafted the disputed policy in 2011 and 2012 ostensibly to clarify the rights of the federal government vis-à-vis ski permit operators under the Ski Area Permit Act of 1986. The implication was that the ski operators on federal land were gaining equity in the form of water rights without compensating the taxpayer, i.e. the federal government. But the National Ski Areas Association (NSAA), which represents 121 ski areas from New Hampshire to California, said

the policy could prevent the resorts from selling water rights they paid good money for to outside interests, other than to a successor permit holder. NSAA also said the precedent set by the policy could affect other water rights holders. U.S. District Court Judge William J. Martinez in U.S. District Court in Colorado on Dec. 19, 2012, threw out the policy on procedural grounds. He said the Forest Service failed to give notice and take comments before inserting the policy in ski resort permits. A lot of money would be involved if resorts could not sell water rights. Vail Resorts alone says it holds water rights valued at \$18.3 million.

Senate may halt wetlands rule.

The Senate Appropriations Committee next week may take up a fiscal year 2015 Energy and Water Appropriations bill that may include a rider to block a proposed Obama administration rule on what waters should be subject to Section 404 wetland permits. Sen. John Hoeven (R-N.D.) has said he would offer such an amendment in committee. On June 17 the House Appropriations Committee approved a counterpart spending bill with the rider in it. Republican and Democratic legislators alike have criticized the June 2 administration proposal that would expand the definition of navigable water requiring a permit for seasonal streams, wetlands near navigable waters and, other waters. But sportsmen led by the Theodore Roosevelt Conservation Partnership held a press conference June 18 to attempt to head off the provision. The groups said, "Undermining the clean water rule, which currently is open to public comment, would negatively impact the nation's hunting and fishing economy, which generates \$200 billion in economic activity and 1.5 million jobs each year." The Supreme Court was evenly divided in a June 19, 2006, decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, which muddled the regulatory waters. On the one hand the court did uphold the authority of the Corps and EPA to regulate water bodies. But crucially it also limited the definition of a water body to navigable waters without clearly defining navigable waters. The Bush administration relied on the court decision to limit

permitting to navigable bodies. The Obama proposal would expand that.

Generals back Organ Mountains.

Sixty-eight retired generals June 18 praised President Obama for designating a 496,000-acre Organ Mountains-Desert Peaks National Monument in New Mexico on May 21. The generals said the monument preserves the area as a place for combat soldiers to recuperate and recreate after combat. Retired Brigadier General Steven M. Anderson said, "The Organ Mountains-Desert Peaks National Monument will benefit the communities of southern New Mexico by boosting economic activity, providing a place for service men and women to recreate and recuperate, preserving important pieces of United States history, and ensuring that the beautiful landscape of the region will not be harmed." Over the objections of the local Congressman, President Obama May 21 established the 500,000-acre Organ Mountains-Desert Peaks National Monument in New Mexico. New Mexico's two senators do endorse the protection of BLM-managed land in Doña Ana County. The local House member, Rep. Stevan Pearce (R.N.M.), said the designation interferes with his legislation to protect the area. He has introduced a bill (HR 995) that would create a smaller, 54,800-acre monument. The House subcommittee on Public Lands held a hearing on the Pearce bill on May 9, 2013. The Organ Mountains surround the Mesilla Valley and provide a backdrop for the state's second largest city, Las Cruces. The area includes thousands of Native American cultural artifacts.

WGA reaffirms tourism interest.

The Western Governors' Association (WGA) a fortnight ago formalized an agreement with Secretary of Interior Sally Jewell that calls on federal and state officials to work together to promote tourism on state and federal lands. The western officials, operating under the umbrella Western States Tourism Policy Council, set a goal of attracting 100 million *international* visitors by the end of 2021. The council is made up of 13 states and six federal agencies. The WGA action under chair Colorado Gov. John Hickenlooper (Colo.) was not as aggressive as a policy promoted

by former Washington Gov. Christine Gregoire (D) when she chaired WGA in 2012. Gregoire made outdoor visitation a top western governors' priority in a signature program called Get Out West!

NPS begins LGBT study. Secretary of Interior Sally Jewell joined NPS Director Jonathan B. Jarvis June 10 in a roundtable discussion of lesbian, gay, bisexual and transgender (LGBT) Americans. The discussion, with House Minority Leader Nancy Pelosi (D-Calif.) in attendance, will help lay the groundwork for a study of LGBT Americans and the role of the Park Service in telling their story. Eighteen scholars attended the meeting. Said Jarvis, "As the National Park Service moves toward its centennial in 2016, we want to be sure that the sites we recognize and the stories we tell represent the stories of all Americans, and theme studies help us elevate the stories of groups that have not always been heard in our history books. We look forward to engaging with scholars, experts, and others interested in LGBT history to develop a theme study that will help us tell a more complete story of American history."

NPS codifies cemetery activities. The Park Service June 11 issued final regulations that govern demonstrations and special events in the country's 14 national cemeteries. NPS acknowledges the rule treads a fine line between maintaining a peaceful atmosphere in the cemeteries while allowing freedom of speech. The tipping factor appears to be whether a demonstration or event is "reasonably likely to attract a crowd of onlookers." NPS wants to avoid any event or demonstration that might arouse the masses. NPS said one commenter said NPS should allow peaceful demonstrations or vigils so long as they don't interfere with a solemn atmosphere in the cemeteries. However, NPS said even peaceful demonstration and vigils "would have a negative impact on the cemeteries' atmosphere of peace, calm, tranquility, and reverence, and should be prohibited." The rule went into effect the day it was published in the *Federal Register* on June 11.

Twenty-one rec trails recognized. The Park Service June 6 approved the

designation of 19 hiking and biking trails and two water trails in 11 states as part of the National Trails System. Unlike national trails, which require Congressional approval, the community trails designated by NPS are managed by a large variety of interests. The Park Service and the Forest Service have authority to approve the designations. There are now more than 16,000 miles of trails in the system. Added to the system on June 6 - the day before National Trails Day - were 451 miles of trails.

USDA pressures Hill on fire. The Department of Agriculture put pressure on Congress June 9 to accept its proposal to move emergency fire-fighting money out of an annual appropriations bill, and into a disaster assistance account. That could bring to an end the old practice of borrowing from agency line programs and fire prevention to fight fires when regular appropriations run out. And it might avoid a mammoth hole in the fiscal year 2015 appropriations bill for the Interior Department and the Forest Service. In its latest move the department published a report detailing the state-by-state reductions in spending over the last two fiscal years for fire prevention and other purposes. The report breaks down the amount of borrowing in fiscal 2012 (\$440 million) and in fiscal 2013 (\$505 million). While Congress usually pays the agency back the following fiscal year, the damage has usually already been done in the form of lost fire prevention work and delays in other activities. "With longer and more severe wildfire seasons, the current way that the U.S. Forest Service and the Department of Interior budget for wildland fire is unsustainable," said Agriculture Secretary Tom Vilsack on releasing the report, *Fire Transfer Impact by State*, is available at: <http://www.fs.fed.us/publications/forest-service-fire-transfer-state-impacts.pdf>. In a previous May 1 report the Forest Service and the Interior Department said they anticipate spending \$470 million more on fire fighting this fiscal year 2014 than Congress has appropriated. Bipartisan bills to establish the emergency accounts have been introduced in the Senate and the

House (S 1875, HR 3992). Sen. Ron Wyden (D-Ore.) is the chief sponsor of S 1875 (with 23 cosponsors). Rep. Michael Simpson (R-Idaho) is the chief sponsor of HR 3992 (with 76 cosponsors).

Conference Calendar

JUNE

20-23. **U.S. Conference of Mayors Annual Meeting** in Dallas, Texas. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

JULY

11-14. **National Association of Counties Annual Conference** in New Orleans, Louisiana. 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>.

20-24. **Sustainable Summits Conference** in Golden, Colo. Contact: American Alpine Club, 710 10th St. - Suite 100, Golden, CO 80401. (303) 384-0110. http://americanalpineclub.org/p/sustainable_summits.

AUGUST

6-9. **Outdoor Retailer Summer Market 2013**. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

9-13. **Council of State Governments National Conference** in Anchorage, Alaska. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. <http://www.csg.org/>.

14-18. **National Speleological Society Convention** in Huntsville, Alabama. Contact: National Speleological Society, 2813 Cave Ave., Huntsville, AL 35810-4331. (256) 852-1300. <http://www.cave>

SEPTEMBER

17-21. **American Fisheries Society Annual Meeting** in Quebec City, Canada. Contact: American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, MD 20814-2199. (301) 897-8616. <http://www.fisheries.org>.