

Federal Parks & Recreation

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Volume 32 Number 11, June 6, 2014

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House vote due on TIGER trails grants; Senate acting

The House is expected to approve next week a fiscal year 2015 transportation appropriations bill that would bar the use of regional grant money called TIGER for recreation and trails.

Said the House Appropriations Committee of the \$100 million TIGER appropriation, 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 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, and did not mention restrictions on bike and pedestrian path use.

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

Instead, the panel authorized \$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.

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 the full House and the Senate Appropriations Committee are going ahead and writing spending bills in anticipation of a new MAP-21 law. The House committee approved its bill May 21 and the Senate committee June 5.

Central to the reauthorization of MAP-21 is money. The Highway Trust Fund that has traditionally footed the bill is running out of money, collected from gasoline taxes. Based on an 18.5 cents per gallon gasoline tax, the fund now puts up only \$34 billion per year for surface transportation.

The Obama administration has recommended 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 transportation programs. On the bottom line the administration would spend \$75 billion per year compared to the Senate committee's \$44 billion.

The House Appropriations Committee approved just over \$40 billion for fiscal 2015, again contingent on Congress approving a new or extended MAP-21. The Senate Appropriations Committee June 5 approved about the same amount, \$40.3 billion for fiscal 2015.

Lots of ideas have been floated to come up with the extra money based on revisions to the tax code. And that is the responsibility of the Senate Finance Committee and the House Ways and Means Committee.

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."

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.

House revives Manhattan Project Park in Defense bill

The House May 22 resuscitated a proposal to designate a Manhattan Project National Park to commemorate the development of the Atomic Bomb by including it in a must-pass, fiscal year 2015 Defense authorization bill (HR 4435).

But we went down this road last

year when the House included the Manhattan Project park in a fiscal year 2014 Defense authorization bill, only to see the provision dropped in a House-Senate conference committee.

Still, the provision in the Defense authorization bill keeps the somewhat controversial legislation alive.

(A stand-alone bill failed in 2013 when supporters were unable to gain sufficient support for House passage. Although the measure received a majority of votes (237-to-180), it required a two-thirds majority for passage.)

The sponsor of a new stand-alone bill (HR 1208), House Natural Resources Committee Chairman Doc Hastings (R-Wash.), said of the inclusion of his bill in the Defense bill, "There is strong, bipartisan support for this measure and it enjoys broad support from local communities and national advocates for historic preservation and parks. The goal is to enact this into law before the end of this year and today's action demonstrates real progress towards achieving it."

Said Rob Smith, northwest regional director of the National Parks Conservation Association, "The complex story of the Manhattan Project, including the veil of secrecy under which employees worked; the way it helped empower women into the workplace; and the resulting impacts of atomic power and nuclear technology are ideal topics for the National Park Service to interpret."

Sen. Maria Cantwell (D-Wash.) has introduced a counterpart stand-alone bill (S 507), along with senators from Tennessee and New Mexico, which would also be affected by the new park.

Meanwhile, the Senate Armed Services Committee approved its version of a fiscal 2015 Defense authorization bill (S 2410) May 29 without the Manhattan park provision.

Last year Cantwell prepared a Senate Amendment to the fiscal 2014 Defense authorization bill that included

the Manhattan Project park, but the Senate did not take it up. In that the Senate Energy Committee approved her stand-alone bill on June 27, 2013, she may be in position to offer the amendment again to the Defense bill.

Legislation to commemorate the Atomic Bomb is not without controversy. Some liberal Democrats object to memorializing weapons of mass destruction. And some conservative Republicans are leery of spending the \$21 million the Congressional Budget Office estimates it would cost the Park Service to manage the site over the next 15 years. The legislation reached the House floor last year but did not have the two-thirds vote needed to pass.

There are important differences between the Senate bill/amendment and the House bill/amendment. The Senate would delay the establishment of the park until enough sites were accumulated to make "a manageable park unit." The House bill simply directs the Park Service within a year to designate boundaries for the historical site from the locales in Los Alamos, N.M.; Oak Ridge, Tenn.; and Hanford, Wash.

In a separate area, reflecting western Republican concerns about an expanded federal land base, the House bill would not allow land purchases. It would also forbid the use of condemnation to obtain land and would bar federal agencies from establishing a "buffer zone" around the park properties.

The counterpart Senate bill specifically authorizes land acquisition, does not mention condemnation and does not mention buffer zones.

Cosponsoring Cantwell's amendment were Sens. Martin Heinrich (D-N.M.), Patty Murray (D-Wash.) and Tom Udall (D-N.M.) and Lamar Alexander (R-Tenn.)

Fees charged by concessioners spark FLREA renewal battle

National forest concessioners and national forest visitors are squaring off over concessioners' authority to

charge fees at federal facilities, usually campgrounds.

The concessioners recommend that Congress extend existing law that allows them to charge fees without the restrictions placed on facilities managed by the Forest Service itself. But an organization representing forest visitors is demanding that Congress impose the same fee restrictions on concessioners as on land managers.

In testimony submitted to the House subcommittee on Public Lands, which is attempting to write a new fee law, the concessioners made their case recently.

"Nearly all of the fees paid by concessionaires go directly back into improvements at the sites through a 'fee offset program,'" said Marily Reese, executive director of the National Forest Recreation Association (NFRA).

"This program has invested literally millions of dollars over the past 30 years, and has included investments in the infrastructure of water systems, sewer systems, restrooms, showers, picnic tables, fire rings, paving, signing, fish cleaning stations, RV dump sites, bear-proof garbage and recycling containers and more," she said.

After noting that fees charged by concessioners are governed by a separate Granger-Thye Act, and not by the federal land recreation fee program, Reese said, "This provision is critical to the continued success of the concession program, and it must be included in new legislation."

Reese said the concessioners do the public and the Forest Service good. "Concessionaires provide a high level of customer service and compliance with all associated laws and regulations," she said. "The private sector is able to provide greater field presence as they are not subject to hiring limitations, freezes, or other complications that exist in the federal agencies."

A federal court March 28 made clear that national forest concessioners

are indeed governed by the Granger-Thye Act and not by the Federal Lands Recreation Enhancements Act of 2004 (FLREA) that governs the Forest Service.

U.S. District Court Judge Rudolph Contreras in the District of Columbia District said, "(T)he Court finds that the (FLREA's) requirements and restrictions do not extend to third-party concessioners."

He explained, "Under (FLREA), the Forest Service would not be permitted to charge a fee for an undeveloped campsite that provided only tent spaces, drinking water, toilet facilities, and refuse containers. But if a third party managed the same campsite, it would indeed be providing 'services' to visitors under any reasonable interpretation of the word."

And that concessioner right to charge fees is what upsets the Western-Slope No Fee Coalition, which represents backcountry forest visitors. It is asking the House subcommittee on Public Lands to specifically include concessioners within the scope of FLREA.

"That legislation *must* include provisions that apply consistent rules and restrictions on all public lands, regardless of whether they are agency managed or operated under permit by private entities," said the coalition.

The backcountry coalition recognizes it lost in the lawsuit before judge Contreras. "The ruling essentially means that private companies operating under permit on National Forest land can require everyone to pay a fee for doing anything, anywhere within their permit area," said the coalition in a recent bulletin to members.

Then the coalition said in the bulletin: "The Forest Service has already turned over half of all its campgrounds, including more than 80% of the most highly-developed ones, to private operation - typically at much higher rates than agency-managed campgrounds. But this decision is not limited to campgrounds. It will allow the Forest Service to stop providing any

recreation at all. They can turn it all over: picnic areas, trailheads, scenic roads and overlooks - everything - to private companies to operate for profit."

The concessioners are also asking Congress for help in a different area - compensation for discount passes, such as the America the Beautiful pass to enter federal lands.

NFRA said Congress should: "Provide for compensation when concessionaires are required to honor any discount passes for overnight camping or day use. This includes all passes that are in the program initially, and those added in subsequent years. Compensation could come from the fees the government collects in the sale of the passes, or through a fee credit. This would also apply to regional and forest-specific passes."

Led by the House subcommittee on Public Lands and its chair Rob Bishop (R-Utah), Congress is beginning to revise and/or extend FLREA, which expires on Dec. 8, 2015. Recreation visitors, championed by the Western Slope No-Fee Coalition, would like to see FLREA eliminated.

The House subcommittee has produced a draft measure similar to FLREA and held a hearing on it April 4. It is understood Bishop is now preparing a bill for formal introduction.

The counterpart Senate subcommittee on National Parks and subcommittee on Public Lands have been less active. The former chairman of the Senate Energy Committee Ron Wyden (D-Ore.) had been committed to acting this year but he has ceded the chairmanship to Sen. Mary Landrieu (D-La.) who has expressed little interest in the subject.

Thus far, the major players in the game, except for forest recreation users, have generally supported Bishop's initiative. The players include the Obama administration, industry, outfitters and environmentalists. The basics include entrance fees, return of fee revenues to agencies and inclusion of the Corps of Engineers.

Although FLREA does not expire until late in 2015 the Interior Department and the Forest Service told the Bishop subcommittee that it takes a year to plan projects that are financed by fee revenues, so passage of a bill this year is crucial.

Bishop and ranking full committee Democrat Peter DeFazio (D-Ore.) put out a joint statement that indicated renewal of FLREA will not be a partisan issue.

The draft committee bill is available at: http://naturalresources.house.gov/uploadedfiles/3-04-14_firea_discussion_draft.pdf.

Ski resort takes on O&G industry in western Colorado

The future of 65 oil and gas leases in the Thompson Divide area of the White River National Forest in Colorado is pitting a very wealthy oil and gas industry against the very wealthy owner of the Aspen Ski Resort.

The owner of the Aspen resort - the Crown family of Chicago - has invested at least \$70,000 in the last year in an environmental group called the Thompson Divide Coalition. And the family has invested tens of thousands of dollars more in anti-development interests.

But the holders of the 65 leases are not exactly in the poor house. The lessees include OXY USA and EnCana Oil & Gas Inc. And they are supported by the Western Energy Alliance and the West Slope Colorado Oil and Gas Association (WSCOGA).

In the middle is the Bureau of Land Management (BLM). On April 2 it took a tentative step toward resolving a stalemate over the leases, saying it will prepare a new EIS on the advisability of developing the area. While that project is underway, it is extending 25 existing leases for two years. The comment period on its intent to prepare the EIS ended earlier this month.

On May 16 the Western Energy

Alliance and WSCOGA objected to BLM's plan to write a new EIS and plan on the 65 leases. "These leases were purchased in good faith after the completion of forest planning and National Environmental Policy Act (NEPA) analysis, but BLM failed to perform one technical step," the groups said in a press release. "Rather than simply correcting that technicality, BLM is going back to the drawing board and potentially changing the rules several years after the leases were sold and issued."

The "technicality" industry referred to, according to the Interior Board of Land Appeals, was a failure by BLM and the Forest Service to prepare new environmental documentation before issuing the 65 leases. BLM relied on a 1993 White River National Forest Oil and Gas Leasing EIS and a 2002 White River National Forest Plan as documentation.

So BLM April 2 said it has begun a scoping procedure in anticipation of issuing a draft EIS on the 65 leases "in early 2015." At the same time the White River National Forest is to prepare an EIS to replace the 1993 EIS on future leasing. However, BLM said that even though the Forest Service EIS is anticipatory the bureau may use it in analyzing the disposition of the 65 existing leases.

The Western Energy Alliance and WSCOGA also criticized the Crown family, led by Lester Crown, for opposing energy development that is not near Aspen. Lester Crown is reputedly worth \$5 billion or more, according to *Forbes* magazine.

Said the association in a press release, "Environmental groups such as the Thompson Divide Coalition, which is funded by the Aspen Skiing Company, owned by the multi-millionaire Crown family of Chicago, have opposed the leases. Their zero tolerance for energy development, even many miles away from Aspen in lands properly designated as available for environmentally responsible oil and natural gas development, puts middle-class jobs and economic development on the West Slope at risk."

Although the Crown family has put up significant money for the Thompson Divide Coalition, the group's 12-member board does include at least four ranchers and other citizens. In the spring of this year Crown gave \$20,000 to the coalition. In the spring of 2013 it contributed \$50,000.

Thompson Divide is a 220,000-acre parcel of national forest in five counties in western Colorado that is prized both for its natural gas potential and for hunting, fishing, ranching and recreation.

Says the environmental coalition, "Our rural economies in and around the Roaring Fork Valley rely, in part, upon existing uses in the Thompson Divide area. Collectively, hunting, fishing, ranching, and recreation in the Thompson Divide area support nearly 300 jobs and \$30 million in annual economic output for our local communities."

Sens. Michael Bennet (D-Colo.) and Mark Udall (D-Colo.) and Gov. John Hickenlooper (D-Colo.) oppose development in the Thompson Divide on both the 105,000 acres of leased land and the rest of the area. To that end Bennet introduced legislation (S 651) last year to forbid future leasing and to establish a process for exterminating existing leases by "donation, voluntary exchange, or other relinquishment of those rights for retirement."

Enviros: EPA climate change proposal may help parks

EPA proposed June 2 an ambitious plan to reduce carbon emissions from existing power plants, a plan that environmentalists say would be a boon to the national parks.

The plan announced by EPA Administrator Gina McCarthy would have states choose from a menu of options - new limits on coal emissions, an increase in renewable energy, etc. - to reduce carbon pollutants and to slow global warming.

The National Parks Conservation Association (NPCA) gave this

perspective. "The Clean Power Plan is set to dramatically reduce carbon pollution from coal-fired power plants," said Stephanie Kodish, clean air program director for NPCA. "These same smokestacks also emit other dangerous pollution that contributes to the ozone and smog that reduces visibility at national parks and wilderness areas. Thanks in part to today's landmark plan, Americans will be able to see our landmarks again."

Secretary of the Interior Sally Jewell said her department has a major stake in slowing the increase global warming. "From standing up homegrown renewable energy and transmission infrastructure, to reducing methane emissions while supporting safe and responsible energy development, to making lands and waters more resilient in the face of climate change, the Interior Department is committed to being a strong partner in cutting carbon pollution and creating American jobs," she said.

But this is far from a done deal. EPA will take public comments on its proposal for four months. Even after a rule is completed EPA said it would give states until 2016 to just propose plans, with options for delays, let alone begin implementing the plan.

Congress may intervene. Powerful Democrats such as Senate Energy Committee Chair Mary Landrieu (D-La.) said EPA should defer to the Hill. "While it is important to reduce carbon in the atmosphere, this should not be achieved by EPA regulations," she said. "Congress should set the terms, goals and timeframe."

On June 3 Senate Minority Leader Mitch McConnell (R-Ky.) introduced a bill (S 2414) to prohibit any new regulations. On June 2 Rep. Pete Olson (R-Texas) introduced a similar bill (HR 4799) in the House. Although some Democrats have criticized the EPA proposal none cosponsored the bills.

State leaders such as Wyoming Gov. Matt Mead (R-Wyo.) said EPA should follow the states' lead, not dictate to them. "Coal, clean air, water,

and a robust economy are all parts of our future, as they are parts of our present. Wyoming is proof that this balance is achievable," he said. "The federal government does not have the same track record and should follow Wyoming's success and leadership on energy in all ways, but especially when proposing rules and regulations."

As important, the National Mining Association or its members or its allies will almost certainly file a lawsuit.

The EPA rule would reduce carbon emissions by 30 percent by 2030, compared to 2005. It would do that by having states choose "the right mix of generation using diverse fuels, energy efficiency and demand-side management," said EPA.

NPCA noted these impacts of global warming on the national parks - the disappearance of glaciers from Glacier National Park, the disappearance of Joshua trees from Joshua Tree National Park, dying coral reefs in Biscayne and Virgin Islands National Parks, devastation of forests from insects from Great Smoky Mountains to Yellowstone National Park, and rising sea levels in park units next to Atlantic and Gulf coasts.

Cabin fee bill among measures moving into position for fall

The Senate Energy Committee sent to the full Senate late last month a popular cabin fee bill that might be the engine to pull an omnibus lands bill later this year.

The Senate Energy Committee originally approved the bill on Dec. 19, 2013, but did not report it to the Senate until May 22. Also reported that day by the committee were measures to expand the boundaries of Gettysburg National Military Park (S 782) and to protect conservation lands in national forests in Montana (S 37).

The delays may have been caused by the transfer of the committee chairmanship from Sen. Ron Wyden (D-Ore.) to Sen. Mary Landrieu (D-La.)

More than a year ago the House Natural Resources Committee on March 20, 2013, approved a counterpart cabin fee bill (HR 1159). However, the House panel has not reported the bill to the full House yet.

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 measures would establish several tiers of fees beginning at \$500 per year and increasing by \$500 increments to a top fee of \$5,500 per year in the Senate bill and \$5,000 in the House bill.

The Senate committee would have the Forest Service complete appraisals in two years and the House committee in three years. Both bills would adjust fees annually based on the same inflation factor and both would assess a cabin transfer fee of \$1,200.

The legislation 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.) and House Natural Resources Committee Chairman Doc Hastings (R-Wash.) are the lead sponsors.

Here are three other popular bills that began to move last month:

Manhattan: The House May 22 revived a proposal to designate a Manhattan Project National Park to commemorate the development of the Atomic Bomb by including it in a must-pass Defense authorization bill (HR 4435). *(See related article page 2.)*

Last year the House included the Manhattan Project park in a fiscal year 2014 Defense authorization bill, only to see the provision dropped in a House-Senate conference committee. Still, the provision in the Defense authorization bill keeps the somewhat controversial legislation alive.

Sen. Maria Cantwell (D-Wash.) has introduced a counterpart stand-alone bill (S 507), along with senators from Tennessee and New Mexico, which would also be affected by the new park.

Gettysburg expansion bill back. The Senate Energy Committee filed a report on this bill (S 782) May 22 to add two important tracts to Gettysburg National Military Park. The bill, which has been around for several Congresses, would add to the park the Gettysburg Railroad Station and a 45-acre tract at the south end of the battlefield that hosted cavalry battles. The House approved a counterpart bill (HR 1513) January 13 by a 396-to-0 margin.

The sponsor of the House bill, Rep. Scott Perry (R-Pa.), said the legislation would not require any land acquisition because the Gettysburg Foundation already owns the land and will donate it to the federal government. The National Trust for Historic Gettysburg currently operates the station and until recently had used it as an information center. Supporters anticipate the Park Service will again use the station as a visitors center.

The 45-acre tract along Plumb Run was the site of a cavalry encounter during the battle of Big Round Top. Sen. Robert P. Casey, Jr., introduced the counterpart Senate bill that the Senate Energy Committee approved Nov. 21, 2013.

Montana forests: The Senate Energy Committee reported legislation May 22

that would set up a pilot timber sale program in two forests in Montana, and designate a million acres of conservation land. The Senate Energy Committee approved the bill (S 37) from Sen. Jon Tester (D-Mont.) Dec. 19, 2013.

Of note eight (out of ten) committee Republicans opposed the measure. Ranking committee minority member Sen. Lisa Murkowski (R-Alaska) said the million acres of protected land (including 667,000 acres of wilderness) was out of balance with the timber harvest on 100,000 acres.

But Tester said his bill would not only create jobs for the timber industry but would also benefit the state's \$6 billion outdoor economy.

Some Democrats join GOP in criticizing wetland proposal

The news media may be preoccupied by EPA's proposed June 2 rule on global warming but House Democrats joined Republicans May 29 in objecting to a separate proposed EPA rule. It would determine what waters should be subject to Section 404 wetland permits. (See *related article on climate change on page 6.*)

The Democrats and the Republicans said at a hearing of the House Small Business Committee that EPA failed to consider the impact of new wetland definitions on small businesses.

The 14 Republican members of the committee asked EPA Administrator Gina McCarthy to pull the regulations and perform an economic impact analysis before proceeding with the March 25 proposal.

"We believe the agencies should withdraw the proposed rule and conduct the required small business outreach and analysis before proceeding with the rulemaking," said the committee Republicans, led by chairman Sam Graves (R-Mo.)

The Republicans complained that the proposed rule was fuzzy about what would and would not be subject to a new

definition. "The proposed definition includes a number of imprecise and broadly-defined terms such as 'adjacent,' 'riparian area' and 'floodplain' that do not clearly delineate which waters are covered," said the Republicans. "For the first time, 'tributary' is defined and includes bodies of water such as manmade and natural ditches."

The Republicans were not alone in their complaints. Ranking committee Democrat Nydia Velazquez (D-N.Y.) also agreed that EPA did not document the impact of the rule on small businesses, and should. "Small businesses need a rule that works for everyone and not just a few," she said, noting the recreation businesses would gain. "With this in mind it is concerning that no regulatory flexibility analysis was performed. While the agency certified this rule would not have a significant economic impact on a substantial number of small entities it provided no justification for this finding."

Her fellow Democrat Kurt Schrader (D-Ore.) was more cryptic. "This is an abomination," he said.

As mentioned Velazquez did document benefits to recreation companies. "These include companies engaged in recreation, tourism, hunting, fishing and boating," she said. "For those companies their livelihoods are often tied to clean water."

When EPA first proposed the rule, bird hunters and fishermen were particularly enthusiastic about it. Said Trout Unlimited CEO Chris Wood, "Many of these small waters provide vital spawning and rearing habitat for trout and salmon. Simply stated, the proposal will make fishing better. Restoring protections to these waters ensures healthy habitat for fish and a bright future for anglers."

EPA and the Corps of Engineers in their proposal said that the rule would go beyond the existing regulation that only requires a Section 404 Clean Water Act permit for navigable waters. The new proposal would also require permits for seasonal streams, wetlands near navigable waters and, other waters.

EPA said it hadn't made up its mind about regulating prairie potholes that provide crucial breeding grounds for ducks. EPA and the Corps said the jury is still out. "The agencies are considering whether to determine by rule that prairie potholes, Carolina and Delmarva bays, pocosins, Texas coastal prairie wetlands, western vernal pools, and perhaps other categories of waters, either alone or in combination with 'other waters' of the same type in a single point of entry watershed have a significant nexus and are jurisdictional," said the draft rule.

However, threaded through the 371-page proposed rule are statements about the science of potholes that suggest the agencies are leaning towards including them in a final rule.

The Supreme Court was evenly divided in a 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.

The Bush administration relied on the court decision to limit permitting to navigable bodies. The Obama proposal would expand the permitting.

There is a long way to go. The agencies are now holding a 90-day comment period. More information: www.epa.gov/uswaters.

Wyden sticking with bill with conservation easements

Senate Finance Committee Chairman Ron Wyden (D-Ore.) has not given up yet on legislation to extend for two years tax incentives for conservation easements, even though the legislation was pulled from the Senate floor May 15.

He said he continues to consult with Republican and Democratic senators about a possible strategy to revive the underlying bill (S 2260). The measure

would extend dozens of popular tax breaks.

Democratic and Republican senators quarreled so fiercely about possible amendments to the bill - germane and non-germane - that the Republicans blocked further consideration.

In recent comments Wyden held out the possibility Republicans could offer non-germane amendments. "We had encouraging calls over the weekend (before last) indicating that both sides of the aisle wanted to work together to make progress," he said. "We had additional conversations about this through the week."

He added, "I am open to hearing from colleagues on both sides of the aisle about their amendments. I can keep repeating it again and again, but I hope the point is getting through."

The conservation easements provision is not the problem. It is widely supported by both political parties.

For land trusts the bill and the provision are crucial. The Land Trust Alliance said that when the provision was in effect from 2006 through December 2013, farmers and other landowners protected as much as 1 million acres per year. The provision allowed landowners to deduct up to 50 percent of their adjusted gross income from taxes each year if they donated a conservation easement.

The new provision would do the same for calendar years 2014 and 2015. The alliance says the previous law (and the new provision):

- "* Raises the maximum deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income (AGI) in any year to 50%;

- "* Allows qualified farmers and ranchers to deduct up to 100% of their AGI; and

- "* Increases the number of years over which a donor can take deductions from 6 years to 16 years."

Still in place is an even older law that allows donations of up to 30 percent of adjusted gross income.

Wyden introduced the tax extenders bill (S 2260) that the Senate Finance Committee approved April 28 by a voice vote. Democrats and Republicans alike supported the measure.

But when S 2260 hit the Senate floor May 15 the trouble began. More than 120 amendments were introduced that day. But Reid would allow no amendments. Republicans objected to being shut out of the process, but Wyden said speed was of the essence.

Said ranking Senate Finance Committee Republican Orrin Hatch (R-Utah), "When we held a markup (in committee), all Senators were allowed to offer amendments and receive votes on those amendments. Why not continue that process, as we have in the past, on the almighty floor of the Senate."

Among the amendments introduced May 15 was one (SA 3108) from Sen. Richard Blumenthal (D-Conn.) that would authorize a tax credit for the fair market value of land contributed to a National Scenic Trail.

Much of the land along National Scenic Trails is privately owned and thus is not barred from development. There are more than 18,000 miles of National Scenic Trails in the country managed by the Forest Service and Interior Department agencies.

Blumenthal has introduced his amendment as a stand-alone bill (S 1160) and Rep. Gerald Connolly (D-Va.) has introduced a counterpart House bill (HR 474)

More information on the easements provision is available at: <http://www.landtrustalliance.org/policy/tax-matters/campaigns/the-enhanced-easement-incentive>.

USDA now taking applications for regional conservation

As directed by Congress in a new

Farm Bill the Department of Agriculture May 27 began a major new conservation program to protect broad landscapes, mostly water bodies such as the Great Lakes.

The Regional Conservation Partnership Program (RCPP) combines five old conservation programs into one jumbo RCPP, with \$1.2 billion available over the next five years. Matching money would bring the total to \$2.4 billion.

The money is to be used by nonfederal partners on conservation projects on private land, the Department says, "to improve soil health, water quality and water use efficiency, wildlife habitat, and other related natural resources on private lands."

Local entities that may apply for grants include private businesses, local governments, nonprofits, universities and others. To learn about applying go to www.nrcs.usda.gov/GetStarted.

Eight conservation areas are included in the RCPP - the Chesapeake Bay Watershed, Mississippi River Basin, Great Lakes Region, California Bay Delta, Prairie Grasslands, Colorado River Basin, Columbia River Basin, and Longleaf Pine Range in South Atlantic states.

Secretary of Agriculture Tom Vilsack and Senate Agriculture Committee Chair Debbie Stabenow (D-Mich.) announced the launch of the program at an event in Bay City, Mich. Stabenow was one of the principal architects of the new five-year Farm Bill (PL 113-79 of February 7).

"This is an entirely new approach to conservation," said Vilsack. "We're giving private companies, local communities, and other nongovernment partners a way to invest in what are essentially clean water start-up operations. By establishing new public-private partnerships, we can have an impact that's well beyond what the Federal government could accomplish on its own. These efforts keep our land resilient and water clean, and promote tremendous economic growth in agriculture, construction, tourism

and outdoor recreation, and other industries.”

Leaders of the Colorado Congressional delegation welcomed the beginning of the RCPP. Said Sen. Michael Bennet (D-Colo.), “Colorado is the headwaters state and the Colorado River is a precious source of water for not only our state, but also 19 other states downstream. With persistent drought conditions and a growing population across the West, the demands on the river are greater than ever.”

He added, “This designation is crucial to moving forward with projects that will help sustain the river for all of its uses into the future.”

Sportsmen also welcomed the announcement. Said Theodore Roosevelt Conservation Partnership President Whit Fosburgh, “The RCPP program, combined with the Conservation Reserve Program, will produce huge benefits throughout the agricultural landscape. It is a chance for sportsmen to step up and engage effectively in the new Farm Bill – and in conservation efforts that will directly benefit important fish and wildlife habitat.”

The RCPP combines four old conservation programs into one – the Agricultural Water Enhancement Program, Cooperative Conservation Partnership Initiative, Chesapeake Bay Watershed Initiative and Great Lakes Basin Program for Soil Erosion.

According to the Congressional Budget Office the Farm Bill will distribute \$28.2 billion to conservation programs over the five years, beginning with \$5.4 billion in this fiscal year 2014 and increasing to \$5.8 billion in fiscal 2018.

For an Agricultural conservation easement program the bill sets aside \$400 million in fiscal 2014, \$425 million in fiscal 2015, \$450 million in fiscal 2016, \$500 million in fiscal 2017 and \$250 million in fiscal 2018.

For an Open Fields program, also known as the Voluntary Public Access and Habitat Incentive Program (VPA-HIP), the

law authorizes \$20 million for fiscal 2014. VPA-HIP allocates money to states for projects that make private lands available to hunters and anglers.

Conservationists fault House panel’s ocean fishing bill

The House Natural Resources Committee May 29 approved legislation (HR 4742) that would loosen up commercial ocean fishing limits, to the dismay of recreation fishermen and conservationists.

In extending the current law, the Magnuson-Stevens Act, the committee said it would give the fishing industry itself a greater say in establishing catch limits, thereby reducing the say of the National Oceanic and Atmospheric Administration (NOAA).

For committee chairman and bill sponsor Doc Hastings (R-Wash.), the legislation would provide “flexibility” to fishing communities hard hit by depleted stocks of fish.

“The goal of HR 4742 is to strengthen and improve the Act through common sense reforms that increase management flexibility based on science, ensure greater government transparency, promote responsible fishing and prevent overfishing, improve fish data collection, and provide predictability and certainty for American jobs and local communities whose economic livelihoods depend on fishing,” said Hastings.

But Beckie Zisser of the Oceana environmental group said the bill would disrupt the progress in restoring fish stocks made since the Magnuson-Stevens Act was signed into law in 2006. Zisser said the law established crucial catch limits and other restrictions that have helped restore ocean fisheries.

“The bill would unnecessarily expand the exemptions for rebuilding timelines and annual catch limits already built into the law,” she said. “In fact, HR 4742 allows so many exceptions that it provides little to no practical value for protecting our fisheries. These changes would undermine

the effort to restore certain fish populations to healthy levels just as we are starting to see success."

Recreational fishermen also objected. "The TRCP (Theodore Roosevelt Conservation Partnership) and its sportfishing partners are advocating for some flexibility in rebuilding timeframes of fish stocks where appropriate and based on sound science," said TRCP Center for Marine Fisheries Director Chris Macaluso. "But this bill goes too far in rolling back vital conservation measures necessary for healthy and sustainable fisheries."

In committee Rep. Rush Holt (D-N.J.) offered an amendment that would eliminate a provision of the bill that authorizes Fishery Management Councils to exempt a number of fish species from annual catch limits, such as "an ecosystem component species." The amendment was narrowly defeated in an 18-to-20 vote. The committee approved the bill itself in a 24-to-17 vote.

The Fishery Management Councils, working with scientists at the National Oceanic and Atmospheric Administration (NOAA), have over the last decade set tough catch limits from the Atlantic Ocean to the Pacific Ocean. The limits are designed to allow depleted stocks of fish to recover. However, conservationists charge that industry is overrepresented on the councils.

At the same time the limits have had devastating impacts on fishing communities around the country. Hastings cited a NOAA report that said that in New Bedford, Mass., the groundfish harvest dropped from \$31 million in 2011 to \$199 million in 2013. And the number of fishing boats decreased from 916 in 2009 to 764 in 2012.

Notes

Senate begins on sportsmen's bill.

The Senate has begun consideration of an omnibus sportsmen's bill (S 2363) that would among other things allocate at least 1.5 percent of Land and Water Conservation Fund money to acquiring access to public lands for hunting and fishing. The measure also includes a

package of hunting and fishing bills that have been around for the last two Congresses, such as declaring public lands open to hunting and fishing unless specifically closed. Often Democrats and Republicans have introduced competing bills, but this time around chief sponsor Sen. Kay Hagan (D-N.C.) has 38 cosponsors from both political parties. However, this is the Senate and Senate rules allow just one senator to hold up, perhaps for good, such legislation. The lead House sportsmen's bill (HR 3197), introduced Sept. 26, 2013, includes nine separate hunting and fishing bills that had been introduced separately. Most of the provisions are in Hagan's Senate bill. The Senate measure also includes provisions to reauthorize the land sale/acquisition law called the Federal Land Transaction Facilitation Act; reauthorize the North American Wetlands Conservation Act; exempt lead ammunition and fishing tackle from the Toxic Substance Control Act; and limit fees for filming crews of five persons or more to \$200 per year.

NPS to review LGBTs in society.

The Park Service will give new emphasis to sites and events that tell the story of lesbian, gay, bisexual and transgender (LGBT) Americans. Secretary of Interior Sally Jewell, in an announcement in New York City, said NPS would conduct a "review study" of the history of LGBTs in the country, and sites associated with that history. Whether NPS will recommend that Congress designate any such sites as units of the National Park System remains to be seen. Jewell said that the Stonewall Inn in New York City, the site of a pivotal riot in 1969, is the only LGBT-associated site that is a national historic landmark. Said NPS Director Jon Jarvis, "As we prepare to celebrate the National Park Service's Centennial in 2016, we have rededicated ourselves to sharing more diverse stories of our nation's history, particularly the struggles for civil rights. By telling these stories, we are inviting new audiences to visit their national parks and historic sites and to discover a personal connection in these special places."

AASHTO wants road money, now. The

American Association of State Highway and Transportation Officials (AASHTO) May 30 asked Congress to pony up money this summer to insure the immediate solvency of the Highway Trust Fund. AASHTO said it supports the ongoing efforts by Congress to write a multi-year surface transportation bill and to resolve the Highway Trust Fund's long-term problems (see *related article page one*). The fund is based on gasoline taxes that don't put up nearly enough money to pay for roads and mass transit. AASHTO approved a resolution that says, in part, "That Congress must act to ensure the solvency of the Highway Trust Fund prior to FHWA delaying reimbursements to State DOTs for costs already incurred on federally funded highway projects." The Senate Environment and Public Works (EPW) Committee did its part May 15 in approving a six-year extension of surface transportation law. The EPW committee sets out the details of federal surface transportation policy but the Senate Finance Committee must finance it. The EPW committee under chair Barbara Boxer (D-Calif.) approved a bill (S 2322) that more or less extends the existing Moving Ahead for Progress in the 21st Century (PL 112-141 of July 6), also known as MAP-21. The counterpart House Transportation Committee under Chairman Bill Shuster (R-Ohio) also intends to begin work on a bill in "late spring or early summer," he has said, presumably when primary elections have been completed.

Udall takes ski area bow. Sen. Mark Udall (D-Ariz.), principal author of a law to authorize year-round recreation at ski resorts on federal land, was accepting applause last month. He said ski resorts are warming to the opportunity to authorize such summer activities as zip lines, mountain bike parks, Frisbee golf courses and rope courses. "Ski areas across the country and especially in my home State of Colorado have embraced the new flexibility provided by the Ski Area Recreational Opportunities Enhancement Act," he said. "Since its passage, they have been proposing projects to create activities for all seasons." He urged the Forest Service to quickly process the applications. The Forest Service said the year-round activities will

have a significant impact on visitation and local economies. "Early estimates by the agency indicate that expanding ski area recreation activities will increase by 600,000 the number of summer visits on national forests; ski areas now average 23 million visits annually," said the service in a press release. "Also expected are an additional 600 full- or part-time jobs and almost \$40 million infused in local mountain communities." The service announced April 17 the completion of directives to carry out the law. While the law authorizes new uses it also forbids other activities in the 122 ski resorts operating on 180,000 acres of national forest lands. The forbidden uses include tennis courts, water slides and water parks, swimming pools, golf courses, and amusement parks.

American Discovery Trail back.

The proposal for a Congressionally-designated, coast-to-coast American Trail, first aired in 1989, took a modest step forward last month when two senators introduced legislation to formally designate the trail. However, the Senate three times has approved predecessor bills to formally designate the American Discovery Trail, only to die in the House. Despite Congressional inaction the 6,800-mile American Discovery Trail is in place because of the support of the American Discovery Trail Society, the American Hiking Society, corporations, land management agencies and local and regional trail organizations. Sens. Chris Coons (D-Del.) and Mark Kirk (R-Ill.) introduced the most recent version of a bill (S 2346) May 15. The bill would (1) establish a national system of discovery trails under the National Trails Act and (2) designate the American Discovery Trail the first unit of the discovery trails. Said Coons, "The American Discovery Trail connects trails in state parks and federal lands with county roads in rural areas and sidewalks in towns and communities from coast to coast." The trail extends from Cape Henlopen State Park in Delaware to Pont Reyes National Seashore in California. Rep. Jeff Fortenberry (R-Neb.) and 19 cosponsors last year introduced a House bill (HR 3022).

FS readies fire tankers. The Forest Service said a fortnight ago it will have at least 21 large air tankers ready to go this summer as the fire-fighting season heats up, particularly in the Southwest. Chief Tom Tidwell said eight additional C130s are being certified and undergoing training and may be ready to help. Finally, in what federal agencies anticipate will be a "catastrophic" fire season, the feds say they may also borrow air tankers from Canada. Newly added to the mix are a giant DC 10 and three smaller BAe-146s. Said Tidwell, "These new planes will combine with our existing fleet to support to our heroes on the ground fighting wildfires to keep our resources and communities safe." Said Sen. Michael Bennet (D-Colo.), "These new tankers will be crucial to fighting wildfires and protecting our communities, critical infrastructure, and natural resources." As we have reported the Forest Service and Interior Department said May 1 they anticipate a particularly dangerous fire season this summer that will require spending \$470 million more on fire fighting than Congress has appropriated. The agency report, prepared at the request of Congress, projects fire-fighting costs of more than \$1.8 billion in this fiscal year and fire-fighting appropriations of \$1.4 billion. The agencies said the higher cost projections result in part from several years of drought, particularly in California. The report puts pressure on Congress to act on an administration proposal - backed by bipartisan House and Senate bills - to pay for expensive emergency fires out of a disaster account. The disaster account could free up hundreds of millions of dollars per year for fire suppression and other appropriations bill needs.

China Lake withdrawal through House. Rep. Kevin McCarthy (D-Calif.), unable to persuade Congress last year to transfer permanently 1 million acres of public land in California to the U.S. Navy, gained a little traction May 22. He persuaded the House to pass a bill (HR 4458) to withdraw the land permanently and to withdraw additional acreage. Portions of the one million acres are home to the desert

tortoise. HR 4458 was attached to a Defense Authorization Act (HR 4435). The Obama administration opposed the provision in an Office of Management and Budget Statement of Administration Policy, "While the current system of periodic legislative re-withdrawals is not particularly efficient and does not provide for the optimum land management regime, the Administration is not prepared to support transfers of such lands without careful consideration of the supporting legislative provisions." But McCarthy said at a recent House Natural Resources Committee hearing, "I have no doubt China Lake will manage its existing and newly acquired land under this bill consistent with its proven record of environmental stewardship." Last year McCarthy unsuccessfully pursued legislation (HR 1673) to transfer - not withdraw - the land to the Navy Department permanently. Congress did eventually approve legislation to withdraw the million acres of the Naval Air Weapons Station at China Lake through March 31, 2039 (PL 113-66 of Dec. 26, 2013), but Congress rebelled at the outright transfer. In PL 113-66 Congress also approved extended withdrawals for the Limestone Hills Training Area in Montana; the Marine Corps Air Ground Combat Center in Twentynine Palms, Calif.; the White Sand Missile Range in New Mexico and Texas; and the Chocolate Mountain Aerial Gunnery Range in California.

Assistant AG Dreher moves to FWS post. The Fish and Wildlife Service (FWS) said May 23 that it has named former Justice Department Acting Assistant Attorney General Robert G. Dreher as its new associate director. Dreher will serve as the principal policy advisor to director Dan Ashe. At Justice Dreher supervised 450 attorneys who enforce environmental laws and who defend federal agencies in managing those laws.

Jim Coffin Note: Be careful. Fair warning to bicyclists on public trails: you are never safe. Three weeks ago I was biking on a trail that parallels MacArthur Boulevard in Montgomery County, Md., when I tangled with a car. I discovered that even after more than 100,000 miles of biking I'm not immune

from an accident. And I discovered once again that a 35-pound bike doesn't stand much of a chance against a 4,000-pound car. I'm a bit beat up but the docs say there are no serious injuries.

Boxscore of Legislation

Appropriations fiscal 2015

No bill yet. House and Senate appropriations have set strict spending caps. President Obama submitted a budget request to Congress March 4 that would in general increase natural resources spending. For NPS Centennial it proposes more than \$600 million in increases.

Congressional Budget Fiscal 2015

H Con Res 96 (Ryan). House approved April 10. Would stick with December budget agreement. Opposes LWCF guarantee. Opposes emergency fire-fighting account.

Appropriations fiscal 2014 (All agencies)

HR 3547 (Lamar Smith). President Obama signed into law January 17 as PL 113-76. Law appropriates modest across-the-board increases for park and rec programs.

Federal land recreation fees

No bill yet (Bishop). Bishop draft now circulating that would continue entrance fees, user fees and passes. Obama budget asks Congress to approve permanent law.

Land and Water Conservation Fund

S 338 (Baucus), HR 2727 (McKinley). Baucus introduced Feb. 14, 2013. McKinley introduced July 18, 2013. Baucus would guarantee \$900 million per year to program in perpetuity. McKinley would guarantee state grants received at least 40 percent of annual appropriations.

Urban park fund

HR 2424 (Sires). Sires introduced June 18, 2013. Would authorize HUD grants and HUD loans to provide assistance to urban parks.

National recreation commission.

HR 1834 (Grijalva). Grijalva introduced May 6, 2013. Would establish a national rec commission with members appointed by

Congress and the White House.

National monuments

HR 250 (Chaffetz), HR 382 (Foxx), HR 432 (Amodei), HR 1434 (Daines), HR 1439 (Labrador), HR 151 (Pearce), HR 757 (Stewart), HR 1459 (Bishop), HR 1495 (Gosar), HR 2192 (Nunes), S 104 (Vitter), S 472 (Heller). House hearing April 16, 2013. Would require Congressional approval or state approval of national monuments under the Antiquities Act.

National heritage areas

HR 445 (Dent). Dent introduced Feb. 1, 2013. Would establish national policy and national standards for heritage areas.

Montana wilderness/recreation areas

S 37 (Tester). Senate committee approved Dec. 19, 2013. Would designate 666,260 acres of wilderness, six recreation areas totaling 288,780 acres and special management areas totaling 80,720 acres.

Farm bill

S 954 (Stabenow), HR 2642 (Lucas). President Obama signed into law (PL 113-79) February 7. Establishes new farm policy for five years and finances conservation programs.

Sportsmen's packages

HR 3590 (Latta), S 1996 (Hagan), S 2363 (Hagan). House approved February 5. Hagan introduced February 4. S 2363 now on Senate floor. Measures include numerous individual bills, including designation of public lands as open-unless-closed to hunting and fishing, use of LWCF for sportsmen's access.

Hunting federal lands

S 170 (Murkowski), HR 1825 (Benishak). Murkowski introduced Jan. 23, 2013. Included in sportsmen's packages above. House approved February 4. Would declare BLM and FS lands open to hunting and fishing unless specifically closed.

WRDA (Everglades)

S 601 (Boxer), HR 3080 (Shuster). Senate gave final Hill approval May 22. Both would authorize new projects, including Everglades restoration.