

Federal Parks & Recreation

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California legislature may use OHV money to run parks

Facing overwhelming budget problems, a California Assembly subcommittee May 31 voted to take \$31 million from a user-paid off-highway vehicle (OHV) trust fund to help keep California state parks open.

A week earlier a Senate subcommittee also voted to transfer \$21 million out of the fund for non-ORV park and recreation purposes. The State of California of course is facing an enormous budget problem and is about to close 70 park units July 1.

But OHV users say they pay fees into the trust fund and the money is supposed to be spent for operating and maintaining OHV trails in the state. And not for park operations.

Don Amador, western representative of the BlueRibbon Coalition, a pro-OHV group, said the day of the House subcommittee vote, "After witnessing today's vote, it is clear to me that urban legislators have made the conscious decision to engage in political warfare against rural interests, economies, and local elected officials. It also daylights the false promises made to special 'user fee' programs (e.g. OHV, boating and waterways, special license plates, etc.) that their dedicated funds are protected."

OHV groups are mounting a campaign to reverse the votes of the Assembly and Senate subcommittees in full committee. And if that doesn't work, they will take their fight to the full state Assembly and state Senate.

Said the California Off-Road Vehicle Association in a recent posting to its members: "Now, here is where you

come in. . . We need you to contact *all the members* of the Assembly Budget Committee and tell them that they should respect the collaborative efforts of SB742 in establishing expense priorities for the OHV Gas Tax and they should overturn the Senate Budget Committee OHV Gas Tax grab from the May 23rd meeting."

State Sen. Jean Fuller (R) was the single Senate subcommittee member (of three) to vote against the transfer of OHV money. "These funds are specifically designated for the OHV program, reflecting years of negotiated formulas and fees between lawmakers and the OHV community," she said after the vote. "But now, OHV funds are being used to cover budget shortfalls in other areas."

However, the Assembly budget committee staff in its comments before the subcommittee vote said the OHV program would still remain alive, even with a loss of \$32 million.

"Concerns were raised regarding the idea of requiring the Department to reprioritize local assistance funding (including funding directed to local off-highway vehicle recreation areas) to maximize re-opening of all state parks," the staff said.

The budget panel aides added, "However, the Senate Subcommittee was also provided with multiple reports citing the loss of local funding and local business dollars should any one state park close. In addition, the Department has requested re-appropriation of funding for multiple state and local off-highway vehicle park projects that is not subject to reprioritization, and would keep the program moving for several years."

OHVers are facing an uphill battle because of the enormity of the California debt, a debt so large that the state is in the process of shuttering a quarter of its parks.

When California Gov. Jerry Brown (D) initially proposed a fiscal year 2012-2013 budget in January he anticipated a deficit government-wide of \$9.2 billion, before cuts. But last

month he said the deficit would be \$16 billion.

Among other things Brown proposed a reduction in operations spending in the state's once-vaunted parks system by more than 60 percent. The state said it would, among other things, eliminate lifeguards on its formerly incomparable system of state beaches.

The state said it would be forced to reduce spending for park operations from \$117,840,100 in fiscal 2011-12 to \$43,662,600 in the fiscal year beginning July 1.

California's problems contrast with gradually improving economic pictures for state and local governments elsewhere. As we reported in the April 13 issue of *FPR* the Government Accountability Office, the National Governors Association, the National League of Cities, and the National Association of Counties all said that states, cities and counties are gradually crawling out of the recession.

But not California. There the fiscal 2011-12 California state budget already mandates the closure of 70 of the state's 278 parks by July 1. That will save \$11 million. In addition, the original fiscal 2012-13 budget of January would eliminate 20 percent of ranger positions in the state park system and all lifeguard positions. That would save another \$22 million.

Now Brown has raised the ante with a proposal to eliminate lifeguards on beaches, to eliminate grants to local law enforcement agencies for water safety patrols and to reduce fire-fighting capabilities, among other things.

Private interests and nonprofit groups are trying to help. The California State Parks Foundation said May 17 it will provide 13 grants for a total of \$328,586 to keep state parks open.

The parks foundation has established a website in support of the parks with background info on the crisis. It is at <http://www.savestateparks.org/>.

NPCA asks Senate to delete parks from fed hunting bill

National parks advocates are mounting a campaign in the Senate to exempt the parks from a House-passed bill (HR 4089) that would declare all public lands open to hunting and fishing, unless specifically closed.

In one objection the National Parks Conservation Association (NPCA) May 29 said that even though the bill does not "require" national parks and monuments to be opened for hunting, they still may be opened.

In a second objection contained in a legal study, NPCA said that park units that are neither national parks nor national monuments would be open for hunting, fishing and recreational shooting.

"Today, hunting, trapping and recreational shooting are prohibited throughout the National Park System except in places where they have been specifically authorized by Congress," said Craig Obey, senior vice president for government affairs at NPCA. "Under this bill, the law regarding such uses would no longer be closed unless opened, but would instead be open unless closed."

NPCA last week began a campaign to persuade the Senate to exclude the Park Service from the bill. NPCA advised its members, "It is essential that the bill include a genuine exclusion for the National Park System that does not change current law."

The House approved HR 4089 April 17 by a strong 274-to-146 vote. Also controversial, a separate provision would declare hunting and fishing as "necessary" for the management of wilderness and potential wilderness areas. That would shield consumptive activities in those areas from environmentalist lawsuits.

House leaders also wrapped in the measure three other bills that would (1) open national monuments to recreational shooting, (2) authorize

the import of dead polar bears and (3) exempt hunting and fishing gear from the Toxic Substances Control Act. Rep. Jeff Miller (R-Fla.) is the lead sponsor.

Finally, on the floor April 17 the House accepted by a vote of 223-to-198 an amendment that would require state approval before a President could designate national monuments. Rep. Virginia Foxx (R-N.C.) introduced the monument amendment.

Sportsmen and environmentalists are divided on the bill. Hunters and fishermen as represented by the Theodore Roosevelt Conservation Partnership back it.

But The Wilderness Society objects to the monuments provision and the wilderness area exemption, among other things. And NPCA objects to broad hunting and target shooting authority in the National Park System.

The bill now goes to the Senate Energy Committee whose chairman Sen. Jeff Bingaman (D-N.M.) may have a different take on the subject. However, the committee has not begun to look at the measure yet.

Sen. Lisa Murkowski (R-Alaska) has introduced a counterpart hunting and fishing bill (S 2066) that would just declare public lands open to hunting and fishing until closed. Her bill does not address the several House amendments. She has one Democratic cosponsor, Joe Manchin III (W.Va.)

That bill could come up for consideration soon because it is reportedly on the committee's to-do list.

The impetus for the House hunting legislation comes in large part from a controversy last year over proposed target shooting restrictions on Bureau of Land Management (BLM) land. Secretary of Interior Ken Salazar on Nov. 23, 2011, put an end to such initiatives with a directive to BLM barring any new policy on recreational shooting.

BLM had more than one target hunting initiative in the works. The

main one consisted of a draft policy that, although it was not made public, was presented to the Wildlife and Hunting Heritage Conservation Council at a Nov. 15 and 16, 2011, meeting.

The draft BLM policy didn't explicitly propose the elimination of any tracts from target shooting. But it did suggest BLM planners consider eliminating areas.

Separately, BLM proposed in August 2010 a ban on target shooting on 400,000 acres of Arizona's Sonoran Desert National Monument.

But NPCA says the House drafters of the hunting and fishing bill went overboard in extending its sweep beyond the Forest Service, the Fish and Wildlife Service, and BLM. "Those who think this bill is just about hunting opportunities haven't read it," said Obey. "And if they've read it, they ought to re-read it."

The legal analysis cited by NPCA was prepared by the Arnold & Porter LLP law firm and is available at http://www.npca.org/assets/pdf/Legal_Impact_of_HR_4089.pdf.

Highways bill faces another deadline; LWCF is promoted

A House-Senate conference committee is approaching the end game for reaching agreement on a multi-year surface transportation bill with major implications for park and recreation programs.

As of today (June 8) the conferees had not reached an agreement - or even a framework of an agreement - with a June 30 deadline approaching. Further, the House will be on vacation next week, leaving only two weeks to get the job done.

Thus, it was no surprise June 1 when House Majority Leader Eric Cantor (R-Va.) talked of another temporary extension of the existing law to give the two sides time to reach an agreement. "We are prepared to make sure that there is no stoppage of

transportation programming and funding, all the while desiring a much longer term solution to the problem," he said on the House floor in a discussion of the upcoming House schedule.

While he was at it Cantor repeated a House Republican warning about a lack of federal money to pay for the bill. Responding to questions from House Minority Whip Steny Hoyer (D-Md.), he said, "I think the problem remains, as the gentleman knows, just not enough money to address all the things that the country is experiencing in terms of the needs for roads and infrastructure repair, as well as the needed expansion." Finding money to pay for the transportation legislation is the number one obstacle facing the conferees.

So the expectation now, with the Republican and Democratic conventions fast approaching followed by a major election in November, is that the conferees will punt. They will likely kick the ball down the road for a year until late next fall. However, even if the two sides agree on a framework that is something short of a done deal that could provide a valuable template for next year.

In a letter to the conferees June 5 the highway industry and highway users rang the alarm, worrying that negotiations were stalled. "We are deeply concerned about reports that suggest that progress is not being made in conference negotiations that will lead to completion of work by June 30th. We urge that serious action be taken immediately and we are prepared to work with all parties to reach a successful outcome," said the industry and user groups.

Among the signatories were the American Association of State Highway and Transportation Officials, the American Highway Users Alliance, the American Road & Transportation Builders Association, and the American Automobile Association.

The conferees met once on May 8 to discuss a Senate-passed surface transportation bill (S 1813) that is

generous to park and recreation programs and a House-passed bill (HR 4348) that would simply extend the existing law through September.

Despite the fact that the House and Senate are actually negotiating in a conference committee, the overall outlook for the legislation is not good. Above all, Tea Party Republicans have repeatedly made known to House leaders they will not accept Senate provisions for financing S 1813.

Those provisions, unrelated to park and rec policy, would provide \$12 billion per year from such things as removing a tax credit on certain biofuels in addition to gasoline taxes, the usual source of money for a highway bill. Senate Finance Committee Chairman Max Baucus (D-Mont.) developed the offsets.

After the conferees met May 8 they broke into private subgroups by major issue category, such as safety, financing, surface transportation, etc. Those subgroups are still at work. But conference chair Sen. Barbara Boxer (D-Calif.) said she was "optimistic that the conferees will reach agreement on the surface transportation bill."

However, HR 4348 is a proxy for a separate, complete House surface transportation bill (HR 7) that has not reached the House floor. HR 7, which would authorize surface transportation programs for five years, is not nearly as generous to park and recreation programs as the Senate bill.

The existing surface transportation law - Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) - authorized spending through fiscal year 2009, which ended on Sept. 30, 2009. SAFETEA has been kept alive since then through numerous temporary extensions.

In shorthand the Senate bill would roughly maintain funding for traditional recreation-related transportation programs - transportation enhancements, Recreational Trails Program, Safe Routes to School and federal land roads. The House committee bill would either

eliminate outdoor programs altogether or force them to compete with other programs for scarce allocations.

LWCF promoted: In addition the Senate would guarantee \$700 million per year for two years for the Land and Water Conservation Fund (LWCF) without requiring an appropriation. The money would come from offshore oil and gas revenues.

Secretary of Transportation Ray LaHood last month endorsed the Senate bill and praised the LWCF provision. He had nothing good to say about the two House bills.

Several sportsmen's groups June 6 held a teleconference to promote the LWCF provision in the Senate bill. Paul Schmidt, chief conservation officer for Ducks Unlimited, summarized the LWCF provision in the bill.

Then he justified the provision in S 1813: "What we are describing has no new burden on taxpayers (since the money comes from offshore oil and gas royalties and not taxes). Number two, LWCF has accomplished great things for conservation and it provides economic benefits as a cooperative venture. In short to my mind it is a winner for all."

Meanwhile, two new reports are giving sustenance to backers of recreation programs, particularly transportation enhancements (TEs). In the big report the National Transportation Enhancements Clearinghouse June 1 said every single Congressional district has received significant funding from the program over the last 20 years. TE has provided \$13 billion to the states for mostly recreation-related activities.

In the smaller report the Department of Transportation said a pilot program to persuade people to get out of their cars and use human-powered transportation has exceeded expectations. DoT said that four test communities had eliminated 16 million miles of driving over four years under the Nonmotorized Transportation Pilot Program. (See following article.)

Here's where the Senate stands compared to the House Transportation Committee bill on specific programs:

ENHANCEMENTS: The House committee bill would remove the existing \$900 million per year set-aside for transportation enhancements, but would allow the program to compete with other program for money from state highway transportation offices. The Senate bill would maintain guaranteed spending for the program at or about \$900 million for fiscal 2013 and 2014.

Said the Rails-to-Trails Conservancy in a bulletin to its members, "The bill will ensure greater local access to funds and a fair shot at approval for the most beneficial projects, and it preserves decision-making structures that enable public participation and well-balanced trail systems."

RECREATIONAL TRAILS: The House committee and the Senate committee are in rough agreement on setting aside \$85 million per year for the Recreational Trails Program.

The office of Sen. Amy Klobuchar (D-Minn.), the lead advocate for the program in the Senate, said the senator "has secured the continuation of the Recreational Trails Program as part of a larger Surface Transportation bill."

SCENIC BYWAYS: The House committee bill would eliminate the program. The House committee would also eliminate funding for the America's Byways Resource Center. That may not matter because the Obama administration is already closing the center down. The Senate bill would allow the scenic byways program to compete for money from either a Transportation Mobility Program or from transportation enhancements.

FEDERAL LANDS ROADS: The House committee bill would set aside \$535 million per year for federal land roads, 38 percent of which would go to National Park Service roads (or \$203 million), 32 percent to Forest Service roads (\$171 million) and 4.5 percent to the Fish and Wildlife Service.

The Senate bill would also keep

federal and Indian land roads alive with an annual allocation of \$1 billion. Of that \$260 million would be allocated to national park and national wildlife refuge roads.

NATIONAL PARKS OVERFLIGHTS: No comparable House provision. The Senate bill would limit environmental restrictions in an upcoming Grand Canyon National Park air tour management plan. The park tells us the final plan should be completed this spring or summer.

The bill says, "None of the environmental thresholds, analyses, impact determinations, or conditions prepared or used by the Secretary to develop recommendations regarding the substantial restoration of natural quiet and experience for the Grand Canyon National Park required under section 3(b)(1) of Public Law 100-91 shall have broader application or be given deference with respect to the Administrator's compliance with the National Environmental Policy Act for proposed aviation actions and decisions."

Public Law 100-91 is the National Parks Overflight Act of 1987, which required the air tour plan. Sen. John McCain (R-Ariz.) and Senate Majority Leader Harry Reid (D-Nev.) prepared the Senate provision.

Reports boost oft-criticized TEs, non-motorized programs

A new report provides fodder for advocates of the transportation enhancements (TEs) program, just as a House-Senate conference committee is deciding the program's fate.

The report from the National Transportation Enhancements Clearinghouse shows that states and communities have received well over \$13 billion from the program since its inception 20 years ago. And states and communities have on hand an additional \$10.51 billion.

The League of American Bicyclists said the report shows that over the last two decades "every state, every

Congressional District, seemingly every community, has benefited from enhancement projects, most of which relate to bicycling and walking."

The report, *Transportation Enhancement Spending Report (FY 1992-FY 2011)*, was published June 1 and will provide ammunition for trails advocates in the House-Senate conference committee.

A separate new report from the Federal Highway Administration (FHWA) provides support for a different, but related, human-powered transportation program. DoT said in April that four test communities had eliminated 16 million miles of driving over four years under the Nonmotorized Transportation Pilot Program.

"We have already heard overwhelming evidence of how each community's investment in bike lanes, trails and sidewalks has returned myriad benefits," said Marianne Fowler, the Rails-to-Trails Conservancy's senior vice president of federal relations. "Not just helping people get from A to B but also increasing physical activity levels and energizing downtown shopping districts."

Recreationists hope the reports will fend off critics of TEs and other outdoor programs funded by the existing Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The House-Senate conference began May 8 and must be completed by the end of June when SAFETEA-LU is scheduled to expire. However, Congress has approved numerous extensions of the law. *(See related article previous page.)*

There are serious critics of TEs in particular who argue that gasoline tax money should be used primarily for highway construction that benefits the gasoline tax payers, and not for "fluff," as House Transportation Committee Chairman John Mica (R-Fla.) refers to such programs.

Transportation enhancements report: The June 1 report from the National Transportation Enhancements

Clearinghouse provides a detailed accounting of expenditures already made and now in process under the TE program. TEs were originally authorized by the Intermodal Surface Transportation Efficiency Act in 1992 and have been extended by the Transportation Equity Act for the 21st Century in 1998 and SAFETEA-LU in 2006.

Those laws allocate 10 percent of Surface Transportation Program money - well above \$500 million per year - to a dozen uses complementary to surface transportation. The lion's share of the money has been spent on bicycle and pedestrian trails.

The report was prepared by the Rails-to-Trails Conservancy under an agreement with the FHWA. The report is available at <http://www.enhancements.org/>.

The report says that states and communities have apportioned \$13.4 billion of the money allocated to TEs in the last two decades. Another \$10.51 billion is available, says the report. The big winners thus far have been California with almost \$1.2 billion and Texas with almost as much at \$1.165 billion.

Concludes the report, "Transportation Enhancement funding continues to be in high demand. Most states report that they cannot fund all of the qualified projects and many sponsors are providing larger than the required non-federal share of project costs."

Nonmotorized Transportation Pilot Program: This 105-page report prepared by FHWA says the pilot program in two cities and two counties succeeded in persuading people to walk or bike instead of use a car.

Communities receiving \$25 million allocations each were Columbia, Mo.; Marin County, Calif.; Minneapolis, Minn.; and Sheboygan County, Wis. With the money the communities built sidewalks, bike lanes, and bike and pedestrian trails that connect transportation centers, businesses and residences.

Concluded FHWA, "Programs like NTPP reflect the ability of nonmotorized investments to transform communities, improving quality of life, by expanding safe and healthy travel options. The findings from NTPP demonstrate the importance of nonmotorized transportation and how these transportation modes can enrich communities."

The *Report to the U.S. Congress on the Outcomes of the Nonmotorized Transportation Pilot Program*, is available at:

http://www.fhwa.dot.gov/environment/bicycle_pedestrian/ntpp/2012_report/

Reyes oyster farm dispute may end up in Congress's lap

The unending national debate over an oyster farm in Point Reyes National Seashore may be decided by Congress - and not by the Park Service.

Alarmed by a possible intervention by Congress, the Coalition of National Park Service Retirees has turned to Rep. Lynn Woolsey (D) and asked her to block any bill to extend the Drake's Estero permit.

But an even more influential California Democrat - Sen. Barbara Feinstein - may be standing in the way. She strongly supports an extension for the oyster farm.

Last month Feinstein reiterated her support for the operation and her criticism of the science used by the Park Service in a letter to the California Fish and Game Commission. She serves as a senior member of the Senate Appropriations Committee and is in position to add a rider to a money bill to keep the permit in place.

Said Feinstein in her latest letter, "I became concerned about this issue when I found that the science regarding the impacts of the oyster farm had been manipulated, and that the oyster farm operator had been treated in a biased and unfair manner. The Park Service has repeatedly misrepresented the scientific record since 2006 to

portray the farm as environmentally harmful, and it is my belief that the Park Service is doing everything it can to justify ending the oyster farm's operations."

Woolsey has generally backed the oyster farm but she has also called on the parties to negotiate a settlement in peace.

Last month the Park Service retirees asked her to block any legislation to approve the project. "Because we fear that advocates for the oyster operation will look to Congress once again if DOI acts to terminate the operation, we ask for your help in fending off any further inappropriate Congressional action," wrote Maureen Finnerty, chair of the retiree council.

The great Point Reyes oyster controversy erupted last September when the Park Service completed a draft EIS on the permissibility of extending a 40 year-old special use permit. It allows the Drakes Bay Oyster Company to take oysters from the seashore.

Although the draft EIS did not pick a preferred alternative, Feinstein criticized the Park Service for excluding evidence that she says proves the operation is harmless. Feinstein and the permittee believe that the Park Service wants the area designated as wilderness.

The Drakes Bay Oyster Company has operated an oyster farm and cannery within Point Reyes for more than 60 years, providing 30 jobs to the local economy. The company's permit to operate within the park is scheduled to expire on November 30.

In 2009 Feinstein, at the time chair of the Senate subcommittee on Interior Appropriations, inserted in a fiscal year 2010 appropriations law (PL 111-88 of Oct. 30, 2009) a rider giving NPS discretion to renew the existing permit for 10 years. While the provision is discretionary, Feinstein has made it clear the permit should be issued for another 10 years. And NPS is undoubtedly hesitant to anger the influential appropriator.

The hard feelings ramped up April 24 when a critic of the draft EIS on the oyster farm filed a scientific misconduct complaint against the Park Service.

The scientist, Dr. Corey Goodman, charged the Park Service with misuse of noise data from other sites. He is a professor and biotech entrepreneur. He taught biology at Stanford University and University of California Berkeley for 25 years. He now serves on the faculty of U.C. San Francisco.

House would block wetlands policy; No DoI money bill

The full House June 6 approved a fiscal year 2013 Energy and Water appropriations bill (HR 5325) that would block an emerging Obama wetlands administration policy.

That sets up a collision with the administration and the Senate. A counterpart Senate Appropriations Committee bill does not include the provision.

The House voted to keep the wetlands provision in the bill June 4 when it defeated an amendment to strike it by a 152-to-237 vote.

The principal sponsor of the provision, Rep. Denny Rehberg (R-Mont.), defended it on the House floor. He said the proposed administration policy would go beyond the law as interpreted by the Supreme Court and extend Section 404 permit requirements to nonnavigable waters.

"The Clean Water Act gives the federal government authority to regulate navigable waters of the United States," he said. "President Obama and his allies in Congress are trying to eliminate the requirement that waterways be navigable."

But the author of the amendment to strike Rehberg's provision, Rep James Moran (D-Va.), said without the guidance the public, including businesses, would not know where permits would or wouldn't be required.

"The real consequence of this rider will be to frustrate the federal government's efforts to explain where state or federal authority under the Clean Water Act ceases to exist," he said. "If this rider prevails, more lawsuits will ensue."

The Office of Management and Budget (OMB) in a May 31 Statement of Administration Policy also said it "strongly opposes" the provision.

An alliance of sportsmen's groups that has headed off the Rehberg provision in the past, asked the House to oppose it again. "Sportsmen rely on clean water to ensure the opportunity to enjoy hunting, angling, and other outdoor-based recreation (and business) in the great outdoors," the alliance wrote all House members. "When wetlands are drained and filled and streams are polluted, sportsmen are often the first to be directly impacted. Consequently, hunters, boaters, and anglers have consistently advocated for conserving our nation's waters."

The alliance includes such groups as the American Fisheries Society, the National Wildlife Federation and Trout Unlimited.

Meanwhile, the House and Senate have made little progress in the last fortnight on three other outdoor-related appropriations bills. A lead Interior bill is one of three of 12 annual appropriations bills that has not been approved by any subcommittee or committee.

It is stymied as usual by fights over EPA provisions, and not so much by Interior and Forest Service provisions. House Republicans want to be seen as critics of EPA regulations while not being seen as anti-green, it is understood. *(See below for the status of all four rec-related money bills.)*

This is the third consecutive years the House has approved an amendment to a fiscal year 2013 Energy and Water appropriations bill to block an emerging Obama administration wetlands policy. The Senate

Appropriations Committee is mute on the subject.

Under consideration is draft guidance from EPA and the Corps of Engineers that would extend the sweep of a requirement for permits under the Clean Water Act beyond navigable waters. The draft guidance, which the agencies sent to the Office of Management and Budget in February, would also extend the permit requirement to some non-navigable waters.

The Senate Appropriations Committee approved its version of a fiscal 2013 Energy and Water appropriations bill April 26 without the wetlands provision. And the vote for the bill was 28-to-1. The wetlands issue was only tangentially involved in the Senate vote though.

House and Senate Republicans, with some support from such key Democrats as Rep. Nick Joe Rahall (W.Va.), have attacked the administration's wetlands guidance for the last year in letters, stand-alone bills and, most important, riders to appropriations bills. Rahall is the ranking Democrat on the House Transportation and Infrastructure Committee.

The draft guidance would include under the navigable waters umbrella navigable waters, of course; interstate waters; wetlands adjacent to navigable waters or interstate waters; and semi-permanent non-navigable tributaries to navigable waters.

The definitions in the 38-page draft appear to stretch the meaning of navigable waters as described in a Supreme Court *Rapanos* decision to the maximum.

The Supreme Court was evenly divided in its June 19, 2006, decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*, that 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.

In addition to Rehberg's amendment

Republicans have introduced stand-alone bills (HR 4965, S 2245) to block the guidance. House Transportation Committee Chairman John Mica (R-Fla.) is the lead Senate sponsor and Sen. John Barrasso (R-Wyo.) is the lead Senate sponsor. Democrats such as Rahall cosponsored the bill.

On the broader issue of fiscal 2013 spending in the Energy and Water appropriations bill the House and Senate are also far apart, with the Senate as usual recommending significantly more spending.

For the Corps of Engineers the Senate panel would provide just over \$5 billion, roughly the same as fiscal 2012 and \$200 million more than the House Committee's \$4.8 billion.

Similarly for the Bureau of Reclamation the Senate committee would provide \$61 million more than the House, \$1.049 billion to \$988 million. The Senate number is still \$28 million less than the fiscal 2012 number.

Altogether, said OMB in its May 31 statement on the bill, it would recommend to the President a veto of the Energy and Water bill for a host of reasons. They include differences on spending as well as riders, such as the wetlands provision.

Here is the status of three other important outdoor spending bills:

Interior: Nothing is scheduled in either the House or Senate, according to committee staff members.

Transportation: The Senate Appropriations Committee approved its bill (S 2322) April 19 with an appropriation of \$53.4 billion, or almost \$4 billion less than the fiscal 2012 appropriation of \$57.3 billion. The House subcommittee on Transportation June 7 approved its bill with a 302(b) allocation of \$51.6 billion.

Agriculture: The Senate committee approved its bill (S 2375) April 26 with a spending cap of \$20.8 billion, or \$1.4 billion more than a House cap of \$19.4 billion. The House subcommittee on

Agriculture appropriations approved its bill June 6.

National poll of voters on national parks near launch

As part of the run-up to the Park Service's 100th anniversary in 2016 backers of the agency are about to conduct an ambitious poll.

The poll, sponsored by the National Parks Conservation Association and the National Park Hospitality Association, is expected to be conducted of 1,200 voters around July 1. It will ask the public for its feelings about the National Park System and its importance to them.

The two associations then hope to use the poll results to petition Congress on behalf of the National Park Service.

Said Derrick Crandall, counselor to the National Park Hospitality Association, "The analysis will be done around July 1 and be presented to the platform committees at both nominating conventions. Then we'll have an event in July to explain why national park policy is relevant to the elections."

Conducting the poll will be Democratic pollster Peter D. Hart Research Associates and Republican pollster North Star Opinion Research, led by Whit Ayres and Dan Judy.

At press time the survey had not been fully vetted. But it will likely ask Americans such things as the proper role and/or benefits of the National Park System (fun, national symbols, economic engines, etc.), possible new initiatives in the parks (expanded youth corps), federal spending (how necessary?), why parks are important (heritage, economic engines, beauty, etc.)

The poll is one piece of a much larger campaign by the Park Service, its allies and, perhaps, Congress to prepare for the centennial of the National Park System in 2016.

The interested parties are

working off a Park Service plan for the centennial dubbed *A Call to Action*. It was published on Aug. 25, 2011.

In *A Call to Action* the Park Service played down the need for increased appropriations from Congress to upgrade the parks for the centennial, but it did call for the establishment of an endowment, with an emphasis on philanthropic contributions.

As we reported in the last issue Sen. Mark Udall (D-Colo.) is discussing with his colleagues possible endowment legislation. But his office said the senator at the moment holds limited hopes that legislation can move this year in Congress.

Working parallel with the Park Service and Congress is a summit of interest groups cochaired by the National Parks Foundation, the National Parks Hospitality Association and the National Parks Conservation Association. Here are some of the things the three groups are working on, in addition to the national survey:

* PR CAMPAIGN: NPS Director Jon Jarvis and the summit organizers are searching for a major communications firm, perhaps from Manhattan, to help spread the Park Service brand. Once the firm has done its work the Park Service partners would help publicize it.

* SUMMIT ACTION ITEMS: The three host groups of the summit of Park Service partners are beginning to implement the steps they agreed to at a January meeting.

The *America's Summit on National Parks* was convened with some 300 attendees from around the country in Washington, D.C., in January. It prepared the groundwork for a Statement of Principles and Action Items to follow up on the NPS *Call to Action*.

* SUMMIT SIGNATURES: The three host summit groups are attempting to build on a master list of partner groups from around the country. Signatures now exceed 300 and the groups hope to obtain 1,000.

Bishop ponders need for Hill role in D.C. monument rows

Mindful of the controversy over the design of a proposed Eisenhower Memorial on the Washington, D.C. mall, an influential House subcommittee chairman June 1 is considering the advisability of Congress stepping into the monument-approval process.

At a comprehensive hearing on mall policies, Rep. Rob Bishop (R-Utah) asked expert witnesses if Congress should exempt design decisions from the disciplines of the Commemorative Works Act (CWA). That law governs the selection of the nation's monuments and memorials.

The witnesses, although noting that it takes on average eight years to complete approval of monuments from the time of recommendation, advised against Congressional shortcuts.

Said Stephen Whitesell, regional director of the National Capital Region for the Park Service, "I think we would be in a position where Congress would be asked to evaluate these proposals without the benefit of the Commission of Fine Arts and the National Capital Planning Commission. So the result would be, I suggest, tying up Congress in endless numbers of hearings and comments that are currently handled through the administrative process."

Said Preston Bryant, chairman of the National Capitol Planning Commission, "We have 45 architects and planners. The risk is (Congress) would not have that level of technical support."

As chairman of the House subcommittee on National Parks, Forests and Public Lands, Bishop is overseeing an ambitious \$600 million-plus plan to rehabilitate the National Mall. He is also keeping an eye on the controversy over the design of the Eisenhower Memorial. He held a previous hearing just on the Eisenhower Memorial March 20.

This time around Bishop attempted to put the Washington Mall in

perspective, saying, "Again, it isn't to say that each of these (proposed monuments) isn't meritorious on its own, but this committee must take a broader view and consider the future generations, and their heroes, and their historic events, that they may want to commemorate, before we devour the remaining space in a zealous attempt to immortalize our generation."

As for the Eisenhower controversy he appeared to line up with the critics. "The memorial to President Eisenhower has gained significant attention and in my opinion, the process has failed to achieve a design with a consensus of support," he said.

In the March 20 hearing Susan Eisenhower, granddaughter of former President Dwight D. Eisenhower, objected to the theme of the memorial, which shows a young boy looking off into the distance. She said that was not in synch with Ike's concrete achievements.

Gen. Carl W. Reddel, executive director of the Dwight D. Eisenhower Memorial Commission, said 80 percent of the \$112.5 million in construction costs is projected to come from Congressional appropriations.

At the more recent hearing Justin Shubow, president of the National Civic Art Society, said the Eisenhower design clashed with the grand, classical design of the mall.

"Sadly, the National Park Service and other agencies charged with preserving the Mall have been neglecting their mission," he said. "If any district deserves the stringent protections of a national landmark, it is the Mall as created by the L'Enfant and McMillan Plans. Yet when giving official approval to the design of the Eisenhower Memorial — which is entirely inharmonious with our greatest presidential memorials — the Park Service did not even bother to consider its cultural and historical impact on the Mall and other protected sites in the area."

Meanwhile, the \$600 million-plus restoration of the mall is underway.

NPS's Whitesell said the repair of a reflecting pool between the Washington Monument and the Lincoln Memorial should be done in early August. But he said that no plan has been completed yet for the repair of the Washington Monument itself after it was damaged by an earthquake last summer.

In a related matter, as we reported in the May 11 issue of FPR The Trust for the National Mall has selected three architectural firms for the expensive redesign.

The three firms laid out plans for NPS to follow in the renovation of the deteriorating mall. For Constitution Gardens, Rogers Marvel Architects & Peter Walker and Partners won the competition. Their design recommends a new restaurant and a grass amphitheater, among other things.

For the Washington Monument grounds and Sylvan Theater OLIN + Weiss/Manfredi drew up a plan that calls for a reorientation of the theater to face the monument. For the Capitol Hill grounds that extend into the mall Gustafson Guthrie Nichol & Davis Brody Bond recommended new terracing. (Since the design competition began, Congress transferred the Union Square site at the foot of the Capitol from the Park Service's jurisdiction to the Architect of the Capitol for security reasons.

Notes

Rec represented in FS planning.

The Department of Agriculture June 5 named 21 citizens to advise the Forest Service in the implementation of its landmark new planning rule. Outdoor recreation has several representatives including Daniel Dessecker, Ruffed Grouse Society, Rice Lake, Wis.; Stephan Kandell, Trout Unlimited, Durango, Colo.; Russell Ehnes, National Off-Highway Vehicle Conservation Council, Great Falls, Mont.; Adam Cramer, Outdoor Alliance, Bethesda, Md.; and Candice Price, Urban American Outdoors, Kansas City, Mo. The department said it received more than 220 applications to serve on the untitled advisory committee. The service published the

115-page planning rule April 9. The American Forest Resource Council is pondering a lawsuit. It objects to a concept of ecological sustainability and the attendant requirement to protect all species, instead of just vertebrate species as in past rules.

House fighting Hatteras ORV plan.

The House Natural Resources Committee yesterday (June 7) approved legislation (HR 4094) that would revoke a Cape Hatteras National Seashore plan for managing off-road vehicles (ORVs) in the seashore. The vote on the bill from Rep. Walter Jones (R-N.C.) was 24-to-18. Jones argues that the NPS plan overly restricts access to the seashore for ORVs. After four years of controversy the Park Service January 23 issued a final rule governing ORV use in the seashore. Jones's bill, HR 4094, would restore a Bush-era management strategy for Cape Hatteras that would provide substantially greater access to the seashore for ORVs. The Bush strategy was executed on June 13, 2007. The January NPS rule would keep 28 miles of the seashore open to ORV use but designate 26 miles of vehicle-free areas. In addition to Rep. Jones's bill ORV users filed a lawsuit February 9 against the Park Service plan. However, the plaintiffs may face an uphill battle because the judge assigned the case, Emmet G. Sullivan in Washington, D.C., has ruled against powered recreation uses in national parks in other cases. For instance, Sullivan twice blocked Bush administration rules authorizing significant snowmobile use in Yellowstone National Park.

GOP faults Grand Canyon

withdrawal. Western Republicans have not cut back on their attacks against a January Obama administration withdrawal of one million acres of public lands in Arizona from uranium mining. The land is near Grand Canyon National Park. Most recently Republican leaders of the House Natural Resources Committee questioned the quality and honesty of the science used to justify the withdrawal, particularly the impact on water flowing into and through Grand Canyon. House Natural Resources Committee Chairman Doc Hastings (R-Wash.) and House subcommittee on

National Parks Forests and Public Lands Chairman Rob Bishop (R-Utah) wrote Secretary of Interior Ken Salazar May 23 demanding "all documents and correspondence" that went into the decision. At the same time they said they had obtained internal Obama administration E-mails demonstrating the science used to justify a DRAFT EIS was faulty. Hastings and Bishop quoted from an E-mail from an unidentified National Park Service hydrologist that said, "The DEIS goes to great lengths in an attempt to establish impacts to water resources from uranium mining. It fails to do so, but instead creates enough confusion and obfuscation of hydrologic principles to create the illusion that there could be adverse impacts if uranium mining occurred." But that was a draft EIS, not a final EIS nor a record of decision based on the final EIS. When we asked an aide to Hastings about the science in the final EIS, the staff member said, "The Chairman believes that neither the draft nor final EIS justify the withdrawal. They are based upon the 'precautionary principle' as opposed to sound science." On January 18 Salazar withdrew for 20 years one million acres of public lands managed by BLM and the Kaibab National Forest near Grand Canyon.

San Antonio Missions promoted.

The Interior Department June 1 took a major step toward the designation of the San Antonio Franciscan Missions in Texas as a prestigious world site. Secretary of Interior Ken Salazar said the department has authorized the site for possible nomination for the United Nations Educational, Scientific and Cultural Organization World Heritage List. This is a lengthy process: The Park Service will complete a "dossier" on the nomination by the end of 2013 and the 21-nation World Heritage Committee will consider the nomination in 2015. "San Antonio Missions National Historical Park preserves four missions that embody the cultural roots of this great city and represents the single largest concentration of Spanish Colonial resources in the United States," said Salazar. As always Salazar tied the announcement to President Obama's signature conservation

initiative, America's Great Outdoors. And he repeated the administration's mantra that parks and recreation create jobs and help the economy.

EPA haze rule upsets enviros.

EPA announced a final rule May 31 that transfers some responsibility for elimination of haze over national parks from one rule to another, much to the dismay of environmentalists. EPA said a Cross State Air Pollution Rule will govern coal plant cleanup of pollutants that contribute to haze over Class 1 federal areas. The National Parks Conservation Association (NPCA) says that responsibility should be assigned to a Best Available Retrofit Technology rule. "This new EPA policy exempts some of the oldest and highest polluting coal-fired power plants in 28 eastern states from installing the Best Available Retrofit Technology, which has been shown to cut down air pollution rates by as much as 90 percent," said Mark Wenzler, vice president of Clean Air and Climate for NPCA. The power plant rule is a separate Clean Air haze initiative from a rule that requires states to protect Class 1 areas. Thirty-five years after Congress told EPA to protect Class 1 areas, environmentalists are still trying to make EPA and the states obey that order. In their latest legal strategy in a long, long string of strategies nine environmental groups March 30 struck a deal with EPA on a compliance schedule. Under the schedule 34 states are required to complete state implementation plans at staggered dates up until November of this year. If the states don't meet the deadlines, EPA is to write federal implementation plans. However, Congress and EPA have set numerous compliance deadlines before, to no avail.

Gas pipeline in Glacier on deck.

The bark is bigger than the bite on a bill that would, on the face of it, authorize natural gas pipelines in Glacier National Park. The measure (HR 4606, S 2229) would simply allow for an extension of existing gas pipelines that run through the park and authorize maintenance on the pipelines. The House bill was scheduled for a hearing

today. Rep. Dennis Rehberg (R-Mont.) and his sworn enemy Sen. Jon Tester (D-Mont.) sponsored the bills. The two, who are running against each other for Tester's seat, rarely agree on anything. But they are in agreement on the pipeline bill. "This bill cuts through red tape to keep Kalispell homes heated while protecting one of the most beautiful places on Earth," Tester said when he introduced S 2229 in March. "Responsible maintenance of the pipeline will prevent accidents and help keep Glacier National Park the 'Crown of the Continent.'"

FS to fix Montana travel plan.

Responding to direction from a federal court the Forest Service said June 6 it will supplement a forest plan's snowmobile route analysis. The U.S. District Court for Montana held April 2 that the agency adequately applied "minimization" criteria to areas generally open to snowmobile use in the Beaverhead-Deerlodge National Forest. But the court said the agency failed to apply the criteria "at the route-specific level." So the Forest Service said it will prepare a supplementary EIS to do that. The court said the supplement must be completed before October 1 or the service must suspend the winter travel portion of the plan.

Rec trails network gets big boost.

Just before National Trails Day June 2 the Interior Department announced the expansion of the National Trails System by almost 10 percent. NPS Director Jon Jarvis said the designation of 54 recreational trails over 1,400 miles expands the national system that previously contained 1,150 trails over 13,650 miles. The new trails, in 23 states, are located on public lands and local parks across the country. The recreational trail designation is provided to trails that link communities.

Civil War land buys announced.

The Park Service last week announced the award of more than \$3.8 million in grants to acquire land at six Civil War Battlefields. Most of the money - \$3.35 million - will be used to acquire land at Buckland Mills, Va. Buckland Mills, near Warrenton, Va., was the site of a

major cavalry battle in October 1863 between forces led by Southern Gen. J.E.B. Stuart and Northern Gen. Judson Kilpatrick. Stuart's forces routed Kilpatrick's.

Conference Calendar

JUNE

10-12. **Western Governors' Association** annual meeting in Cle Elum, Wash. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202. (303) 623-9378. <http://www.westgov.org>.

13-16. **U.S. Conference of Mayors** annual meeting in Orlando. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, D.C. 20006. (202) 293-7330. <http://www.usmaors.org>.

25-29. **National Speleological Society** annual meeting in Greenbrier Valley, W.Va. Contact: National Speleological Society, 2813 Cave Ave., Huntsville, AL 35810-4331. (256) 852-1300. <http://www.caves.org>.

JULY

11-13. **The International Convention of Allied Sportfishing Trades** in Orlando. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

13-17. **National Association of Counties** annual conference in Pittsburg, Pa. 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>.

AUGUST

2-5. **Outdoor Retailer Summer Market** in Salt Lake City. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

19-23. **American Fisheries Society** annual meeting in Minneapolis. Contact: American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, MD 20814-2199. (301) 897-8616. <http://www.fisheries.org>.