

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Celina Richardson

Volume 27 Number 6, March 27, 2009

In this issue. . .

Omnibus goes to the President.

House gives final approval. Dems avoid GOP guns-in-parks amendment by allowing no amendments. Bill includes 160-plus items Page 1

Hayes nomination at DoI in limbo.

Bennett blocks confirmation to retaliate for DoI decision to block Utah energy leases ... Page 3

Senators talk to commissions.

Recreation group visits with Bingaman and Alexander. Parks group meets at Gettysburg .. Page 4

Budget, climate battles joined.

House, Senate budget committees anticipate action this year. So do Obama, line panels ... Page 5

2009 money bill out of the way.

Law enacted. Provides big hike for NPS. Mixed for rest ... Page 6

Judge blocks guns-in-parks rule.

House GOP strategy to revive rule fails. DoI ponders ... Page 7

Salazar renews pitch for LWCF.

Three times in a fortnight. Emphasis on sure money Page 9

CLEAN TEA bill opens the bidding.

First surface transportation bill big on biking and walking .. Page 10

House passes emergency fire bill.

Senate leaders also promise high priority for FLAME bill Page 11

Notes Page 13

Boxscore of Legislation Page 14

House ducks gun battle, sends omnibus bill to Obama

After months of struggle the House gave final Congressional approval March 25 to an omnibus lands bill (HR 146) that includes more than 160 individual bills. The vote was 285-to 140. President Obama is expected to sign the bill.

House Natural Resources Committee Republicans threatened to derail the bill by offering an amendment that would allow concealed weapons in national parks and national wildlife refuges. But Democratic leaders didn't allow the amendment to come to the floor.

The Senate set up the House action March 19 by approving HR 146 in a 77-to-20 vote. The Senate attached to HR 146 its original omnibus lands bill (S 22.) By itself HR 146 would protect Revolutionary War and War of 1812 battlefields.

The House had rejected a previous version of S 22 March 11 in a 282-to-144 vote, or a couple of votes short of the two-thirds margin needed to pass under the procedure the House was using to consider the bill. This time around the House took up HR 146 under regular procedures, meaning it only needed a straight majority for passage.

Referring to a court decision that blocked a rule allowing guns in parks, ranking House Natural Resources Committee Republican Doc Hastings (Wash.) said, "Following this display of judicial activism, Democrats must stop their blockage and allow a vote to restore and protect Second Amendment rights on federal lands." (See separate article page 7.)

The Senate had made one related, important change to S 22 designed to garner more House support: It made clear the bill would not hinder hunting, fish-

ing or other recreational activities on public lands.

Said Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), "I understand that some members in the House of Representatives expressed concern that the portion of the bill pertaining to Wild and Scenic Rivers and National Trails and National Heritage Areas might somehow be construed to limit access for authorized hunting, fishing, and trapping activities."

So the Senate adopted this language, "Nothing in this title shall be construed as affecting access for recreational activities otherwise allowed by law or regulation, including hunting, fishing, or trapping."

Under a Senate floor arrangement Majority Leader Harry Reid (D-Nev.) allowed chief bill critic Sen. Tom Coburn (R-Okla.) to offer six amendments. These five were defeated decisively in the Senate:

- * Prohibit the use of eminent domain to acquire land.
- * Require an annual report detailing total size and cost of federal property.
- * Remove provisions restricting renewable energy development on public lands.
- * Bar new construction in general.
- * Strike out "frivolous waste" in the bill (five bills.)

The Senate did accept one Coburn amendment that would eliminate criminal penalties under a paleontological resources bill "for taking stones that may contain insignificant fossils" from federal lands.

Led by Coburn Senate critics hammered at the bill. He first focused on the impacts of the bill on energy development and secondarily on private property rights.

As to property rights he said, "The other thing we should be aware of is that throughout this omnibus lands bill there are 150 different individual bills, 50 of which never had a hearing

in the House - they were voted on in the Senate in committee but most had never had a hearing - and we are going to step all over private property rights in this Nation. We are not going to do it directly, we are going to do it through laws that we refer to in this omnibus package that allows the bureaucracy - the faceless bureaucracy - to now utilize portions of preexisting acts to take land by eminent domain."

But House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) had a different take on the bill. "This is what our great land is all about," he said. "This is what we, who have a responsibility to steward and guard our public resources, have a responsibility as well to pass on to generations to come after us. My colleagues, in these trying economic times, let us today give assurances to the American people that this Nation does remain great and that we have something to celebrate, a heritage of which we can all be proud."

The House took up S 22 the first time March 11 under a Suspension of the Rules procedure that required a three-fifths majority to pass. The Senate had first passed the bill January 15. Senate leaders told the House it had to pass S 22 without modification, further limiting flexibility in the House.

House critics of S 22, particularly western Republicans, objected most vociferously to a provision that would certify a 27 million-acre National Landscape Conservation System (NLCS) managed by BLM.

But Rep. Rep. Raúl M Grijalva (Ariz.), chairman of the House subcommittee on National Parks, Forests and Public Lands, defended the provision. "I am particularly proud of the inclusion of my legislation, the National Landscape Conservation System within the Bureau of Land Management," he said.

In approving S 22 the first time (and again March 19) the Senate clarified that all conservation areas within the California Desert Conservation Area (CDCA) would be considered part of the

NLCS. Sen. Dianne Feinstein (D-Calif.) had said last year she would offer an amendment to ensure the entire 10 million-acre CDCA was in the system.

The bill language says that the NLCS includes "Any area designated by Congress to be administered for conservation purposes, including. . . public land within the California Desert Conservation Area administered by BLM for conservation purposes."

According to BLM the NLCS contains 27 million acres, including 4.8 million acres of national monuments, 14 million acres of conservation areas, 1.4 million acres of "similar designations," 7.7 million acres of wilderness areas, 13.8 million acres of wilderness study areas, and one million acres of wild and scenic rivers.

Among many other things HR 146 would authorize permanently both a Preserve America program founded by First Lady Laura Bush and a Save America's Treasures program established by then-First Lady Hillary Clinton.

In addition the measure would establish new national park units, including a Paterson Great Falls National Historical Park in New Jersey, a William Jefferson Clinton Birthplace Home National Historic Site in Arkansas, and a River Raisin National Battlefield Park in Michigan.

The Senate Energy Committee developed the omnibus lands package based on committee-passed bills. Not all committee-passed bills made the cut because both Democratic and Republican committee leaders enjoyed a veto. The idea was to produce a bill that provides something for everyone on both sides of the aisle. Bingaman said Republicans and Democrats sponsored almost equal numbers of bills in the package.

DoI nomination in limbo; oil and gas lease sales at issue

Sen. Bob Bennett (R-Utah) is blocking Senate confirmation of the Obama administration's number two official for the Interior Department because

of a disagreement over oil and gas leasing in Utah.

Bennett will not let the Senate vote on the nomination of David Hayes as deputy secretary of Interior. Bennett is retaliating against an Obama administration decision to pull 77 Utah oil and gas leases sold in December. The Obama administration said the Bureau of Land Management (BLM) failed to consult with the Park Service before the sale.

Said Bennett, "The department said that the BLM did not coordinate with the Park Service in these leases and that is simply not true."

He said that "both the BLM and the Park Service are on record, on their own website, lauding the degree of cooperation that took place with respect to these leases, and the sensitivity with respect to the Park Service values regarding these leases; and yet the answer I got from the department said that no such consultation took place."

Both Bennett and the Obama administration have a point. On Bennett's behalf BLM did consult with the Park Service on land management plans that laid the groundwork for the lease sales. On Obama's behalf the Park Service did say in November it was not consulted on the sale of individual tracts. Again on Bennett's behalf after NPS complained BLM did agree to remove almost 47,000 acres of contested land from the sale.

On the bottom line Bennett now intends to hold up the Hayes. At a March 17 committee hearing Secretary of Interior Salazar promised to answer Bennett's questions and asked the committee to set Hayes free.

"I would ask the members of the Senate and the members of the committee to help us get people into place so that we can get the government doing the job it has to do," he said. "In the Interior Department with 67,000 employees. . . I am today the only person who has been confirmed by the U.S. Senate."

BLM held the controversial oil and gas lease sale in Utah on Dec. 19, 2008.

Critics charged the Bush administration was rushing to get the sales out the door before the Obama administration took over. After dozens of protests BLM pulled more than 110 tracts and offered 131 parcels extending over 163,714 acres. BLM sold 116 of the 131 parcels covering 148,598 acres and received \$7,473,768.50 in bids, rental and administrative fees.

On February 4 Salazar put a hold on issuance of 77 of the parcels near Arches National Park, Dinosaur National Monument, Canyonlands National Park, Nine Mile Canyon and Desolate Canyon. BLM manages the latter two areas. The leases will not be issued until BLM studies in depth the environmental consequences of oil and gas development, if then, Salazar said.

Salazar told Bennett at a March 17 hearing on energy policy, "It was my view of the 77 parcels that some were just too close to very, very important ecological values for Utah and the nation, including parts of national parks. As we move forward and take a review of those 77 parcels I look forward to working with you."

Despite Bennett's criticism the Senate Energy Committee March 18 approved Hayes's nomination by a 17-to-5 vote. Bennett immediately announced he was placing a "hold" on the nomination, preventing it from coming to the Senate floor.

It is Senate policy that a hold will block nominations below the level of department secretary or Supreme Court justice. Only for major nominations does the Senate hold a vote to block a hold/filibuster. So until Bennett and Salazar reach some sort of agreement the Hayes nomination may have to sit for a while.

In a related matter the Senate Energy Committee held a hearing March 24 on the nomination of Thomas Strickland as assistant secretary of Interior for Fish, Wildlife and Parks. If confirmed Strickland would be Salazar's chief policy aide for the Park Service and the Fish and Wildlife Service. In addition

Strickland would serve as Salazar's chief of staff. Bennett didn't mention a possible hold on Strickland's nomination.

Meanwhile, Salazar announced March 10 that he has named Will Shafroth, a land conservationist from Colorado, as deputy assistant secretary of Interior for Fish, Wildlife and Parks. Thus, he would serve as Ted Strickland's lead aide. The appointment does not require Senate confirmation.

Shafroth served from 2000 to 2008 as executive director of the nonprofit Colorado Conservation Trust. It works to preserve habitat in Colorado. The group increased the pace and effectiveness of land and wildlife habitat conservation in Colorado, Salazar said.

Senators meet with recreation and NPS commission members

A blue ribbon commission on outdoor recreation met with honorary Senate chairmen earlier this month and began to draw up recommendations for a final report.

"We're in the process of drafting a report and hope to have a report in late spring or early summer," said a spokeswoman for the Outdoor Resources Review Group (ORRG.) A commission member said, "We have a green light on preparing recommendations" from honorary chairs Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.)

While the development of a report is still in the works, we are hearing that the commission may extend its focus beyond the traditional open space concerns of most such commissions. To that end the panel may recommend new attention to old block grants from the Department of Housing and Urban Development. Those grants can influence how people configure their communities, i.e. whether development includes trails and recreation areas or not.

An aide to Bingaman who sat in on the briefing said the commission did not suggest specific policy changes to the

senator but went over its work generally. The aide did say, "Sen. Bingaman urged them to work with the Interior Department so they can coordinate a recommendation and get something done."

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

PARKS COMMISSION: Meanwhile, a related commission on national parks called the National Parks Second Century Commission met March 19-20 at Gettysburg National Military Park with its chairmen - former Sens. J. Bennett Johnston, Jr. (D-La.) and Howard H. Baker, Jr. (R-Tenn.)

The parks commission has also begun drafting recommendations to present to the Obama administration and Congress in the fall, which may represent a bit of a delay. While the panel had not set any specific deadline for completing a report, it had been talking about drafting a document this spring.

The parks commission is considering a broad range of recommendations, including (1) a greater emphasis on education in the parks with, perhaps, a proposal to amend the Park Service Organic Act to include education in the agency's mission; (2) options for providing money and resources for the parks; (3) guarantees that park policy would be based on independent science; (4) a greater emphasis on cultural resources to the level of 10-to-12 years ago. We are cautioned that those recommendations haven't been voted on by the commissioners yet.

The 30-member commission includes such national figures as former Supreme Court member Susan Day O'Connor and such national parks advocates as former deputy director Denis Galvin. The National Parks Conservation Association is paying the estimated \$1 million cost for the commission.

The titles of the parks commission's subcommittees indicate

where members' interests lie: Natural Resources and Science; Cultural Resources and Heritage Preservation; Education and Interpretation; Visitation and Public Engagement; Future Shape of the National Park System; and Funding and Budget.

The parks commission website is at: <http://www.visionfortheparks.org/>.

Climate change major issue in annual Hill budget battle

House and Senate Budget Committees this week approved versions of a Congressional budget that anticipate President Obama's climate change legislation will be enacted this year. But the committees set tough conditions.

The House Budget Committee March 25 and the Senate Budget Committee March 26 approved fiscal 2010 budgets that include direction to line agencies to write the legislation that would collect pollution "allowances" over the next ten years. Some of that money could be diverted to park and rec programs.

However, the committees didn't set aside money to pay for the program, which the Obama administration estimates at \$646 billion. Instead, the budgeteers said authorizing committees must offset the costs with tax increases or program spending reductions.

The budget resolutions, which do not go to the President, are expected to reach the House and Senate floors next week.

(In approving its budget the House committee recommended a modest \$1.3 billion increase in natural resources spending, rising from \$33.8 billion in fiscal 2009 (before emergency money was added) to \$35.1 billion in fiscal 2010. The Senate committee was expected to include a similar increase.)

Completing a budget won't be easy for the Democrats who are not only fighting among themselves but are also meeting stiff resistance from the Republican Party. Congressional Republicans are criticizing, for now, a procedural

issue that would have Congress pass a budget reconciliation bill later this year that includes climate legislation.

If the Democrats do write a budget reconciliation bill, they could pass it with a simple 50-vote majority in the Senate, rather than the 60 votes needed to overcome a filibuster. However, the budget reconciliation process would by definition shut Republicans out of the legislation-writing process, and touch off a national political war.

Under the reconciliation procedure Congress first would write the Congressional budget, as it is supposed to do each spring. The budget does not go to the President. Then later in the year Congress would follow up with detailed reconciliation legislation to flesh out the budget's recommendations.

Senate Environment and Public Works (EPW) Committee Republicans are in revolt. They sent a "Dear Colleague" letter to all senators March 19 objecting to using the budget to write climate change legislation. They say any such bill should be written in line committees, such as EPW.

"The budget resolution is not the right place for the careful bipartisan dialogue we need to get these issues straight, or to fully account for the legitimate concerns of energy consumers, economists, and industry," said the Republicans, led by ranking committee minority member Sen. James Inhofe (Okla.) "While the budget resolution the Senate will debate is not yet available, we will offer an amendment to strip any climate revenue provision it contains."

Meanwhile, House and Senate line committees are setting out their priorities for fiscal 2010 that, not surprisingly, follow closely President Obama's budget recommendations.

For instance, the House Natural Resources Committee endorsed Obama's proposal for a \$100 million increase in operations money for the Park Service and \$25 million in matching funds for to prepare the Park Service for its centen-

nial in 2016. However, the committee did not commit itself to writing legislation that would establish a \$100 million per year federal contribution to the Centennial, to be matched by \$100 million per year in nonfederal contributions.

The committee in undated "Views and Estimates" submitted to the House Budget Committee did praise Obama for recommending a \$420 million appropriation for the Land and Water Conservation Fund (LWCF,) calling it a "dramatic and welcome policy change." Again the committee does not commit itself to writing legislation to guarantee allocations to LWCF each year. In fact for both LWCF and the Park Service most of the heavy lifting will be done by appropriations committees, not line committees.

Senate EPW Chairman Barbara Boxer gave a State of the Climate Change Legislation address March 19 and said that Congress should act. But she didn't say when. She did endorse a cap-and-trade system that would sell allowances to producers of carbon.

Boxer's counterpart, House Energy and Commerce Chairman Henry Waxman (D-Calif.), said earlier this year he would attempt to begin moving climate change legislation through his committee in May.

FY 2009 appropriations bill provides outdoors a boost

President Obama signed into law March 11 a fiscal year 2009 appropriations bill (PL 111-8) that provides across-the-board spending increases for park and rec programs.

The die was cast on bill passage March 10 when the Senate overcame a fierce Republican counterattack and defeated a filibuster by a 62-to-35 vote. The bill was then cleared for Obama because the House had approved an identical version of the bill February 26.

HR 1105 is a giant omnibus measure that included nine remaining unpassed

appropriations bills, increasing the pressure on the Senate to pass the bill.

Sen. John McCain (R-Ariz.) led the Republican critics. He was particularly incensed about earmarks in HR 1105. He said that in Presidential debates last year President Obama promised to eliminate them. He said the administration was trying to justify the earmarks in the fiscal 2009 bill because it was old business.

This last Congress (the 110th) put off consideration of fiscal 2009 money bills in late September by approving an extension of fiscal 2008 bills until March 6 (PL 110-329 of September 30.) Congress approved another extension to make way the final law.

Here is some of what the fiscal 2009 law does, compared to fiscal 2008 appropriations:

* STATE LWCF: provides \$4.6 million less, \$20 million compared to a fiscal 2008 appropriation of \$24.6 million;

* FEDERAL LWCF: provides \$22.6 million more, \$152.3 million compared to a fiscal 2008 appropriation of \$129.7 million;

* URBAN PARKS AND RECREATION RECOVERY: provides no money, the same as fiscal 2008;

* FOREST LEGACY: provides \$5.1 million more, \$57.4 million compared to \$52.3 million in fiscal 2008;

* FOREST SERVICE RECREATION: provides \$15 million more, \$277.6 million compared to \$262.6 million in fiscal 2008;

* FOREST TRAILS: provides \$4.6 million more, \$81 million compared to \$76.4 million in fiscal 2008;

* HISTORIC PRESERVATION STATE GRANTS: provides \$3.1 million more, \$42.5 million compared to \$39.4 million in fiscal 2008;

* SAVE AMERICA'S TREASURES: provides \$4.6 million less, \$20 million compared to \$24.6 million in fiscal 2008;

* PRESERVE AMERICA: provides \$2.6 million more, \$10 million compared to \$7.4 million in fiscal 2008;

* NPS OPERATIONS: provides \$150

million more, \$1.895 billion compared to a fiscal 2008 appropriation of \$1.745 billion;

* NPS CONSTRUCTION: provides \$14 million more, \$232.5 million compared to \$218.5 million in fiscal 2008;

* NPS RECREATION AND PRESERVATION: provides \$7.7 million less, \$59.7 million compared to \$67.4 million in fiscal 2008;

* NPS CENTENNIAL INITIATIVE: provides no set-aside, compared to \$25 million in fiscal 2008;

* BLM RECREATION MANAGEMENT: provides \$4.2 million less, \$63.7 million compared to \$67 million in fiscal 2008; and

* FWS REFUGE MANAGEMENT: provides \$28.7 million more, \$462.9 million compared to a fiscal 2008 appropriation of \$434.1 million.

Judge stops guns-in-parks rule; House GOP counter fails

House Natural Resources Committee Republicans tried unsuccessfully March 25 to force the House to vote on an amendment that would allow concealed weapons in national parks and national wildlife refuges.

Majority Democrats avoided the ticklish amendment by not allowing any amendments to legislation that was before them, an omnibus Senate-passed lands bill (HR 146.)

The Republicans were reacting in part to a federal judge who last week blocked implementation of a controversial regulation that would allow concealed weapons in national parks and national wildlife refuges. The National Rifle Association immediately filed an appeal.

Said Rep. Doc Hastings (R-Wash.), ranking minority member of the House Natural Resources Committee, "Congress must not allow one federal judge to single-handedly deny Americans' their Second Amendment rights on federal lands."

In the court decision U.S. District Court Judge Colleen Kollar-Kotelly

in the District of Columbia said simply that the government must conduct an environmental impact review before publishing any regulation that might have an environmental impact. The Interior Department did not write an environmental analysis or an EIS because it said flat-out the rule would have no impact on the environment.

Kollar-Kotelly said in a decision styled as *Brady Campaign to Prevent Gun Violence v. Salazar, Case 1:08-cv-02243 (CKK)*, "Defendants reached their determination that the Final Rule was strictly a legal amendment with no environmental impacts only after failing to adequately evaluate all reasonably foreseeable environmental impacts, and ignoring (without sufficient explanation) substantial information in the administrative record concerning environmental impacts."

She added, "In this case, the information in the administrative record makes clear that a substantial dispute exists with respect to the environmental effects of the Final Rule, and that such effects may have a significant impact on public health or safety."

The judge did, however, offer no opinion on the underlying validity of the rule. "The Court is bound to consider only whether Defendants have complied with Congress' statutes and regulations, and not whether Defendants have made wise judgments in any normative sense," she said. "Accordingly, the Court expresses no view as to the merits of any laws or regulations related to concealed weapons or firearms generally."

The lead plaintiff in one of the two cases before the judge, the Brady Campaign to Prevent Gun Violence, did render an opinion on the merits. "Concealed weapons have no place in our national parks, which have always been safe places to enjoy our nation's magnificent natural and historical treasures," said Brady Campaign President Paul Helmke. The judge's order also applied to a second lawsuit filed by the National Parks Conservation Association, the Coalition of National Park Services

Retirees, and the Association of National Park Rangers.

On the pro-gun side National Rifle Association (NRA) Executive Director Chris W. Cox, said, "NRA is moving aggressively to protect this common sense rule and that's why we filed this notice of appeal today. Just as we did not give up the fight to change the old, outdated rule, we will not give up our fight in the courts to defend the rule change. We will pursue every legal avenue to defend the American people's right of self-defense."

The Brady Campaign filed suit on Dec. 30, 2008, to block the rule. The Bush rule went into effect on January 9. Kollar-Kotelly's injunction reinstates rules that restrict concealed weapons in parks and refuges. The judge gave the government until April 20 to indicate what action it will take.

That puts Secretary of Interior Ken Salazar and the Obama administration on the hot seat. Salazar and the administration have been ambivalent about guns in parks and wildlife refuges. At the same time that Salazar says the administration is still developing a position on the Bush rule, the Justice Department has supported the rule in court. On February 13 the Obama Justice Department filed a response to the lawsuit that defended the rule.

Salazar's chief of staff, Thomas Strickland, said the administration has made no decision yet in response to the judge's ruling. Appearing before the Senate Energy Committee March 24 at his confirmation hearing for assistant secretary of Interior for Fish and Wildlife and Parks, Strickland said, "Now that the court has ruled preliminarily in the case, with respect to putting an injunction in place, the court has directed the department to get back by April 20. The judge has concluded that an environmental review needs to be done to uphold the rule."

Strickland added, "The decision facing the department and the secretary right now is whether to do a review, whether to appeal, whether to withdraw

the regulation or whether to do an EIS or an (environmental assessment.) Those are all matters that are under consideration right now and no decision has been made."

The Dec. 10, 2008, Bush administration rule limits concealed weapons to parks and refuges where state laws allows guns in state parks and refuges. According to the Coalition of National Park Service Retirees the rule will allow guns in 388 of 391 park sites.

Salazar renews pitch for energy money for state LWCF

Secretary of Interior Ken Salazar continues to assert a national need to use offshore oil and gas revenues to beef up the Land and Water Conservation Fund (LWCF.)

At least three times in the last fortnight the secretary has publicly promoted the establishment of a "dedicated fund" (his words) to guarantee money for the program each year.

On March 19 Salazar took his message to the American Petroleum Institute. "I believe we can also find common purpose in a vision for land conservation that President Kennedy first dreamed in 1964," he told the oilmen. "President Kennedy's idea was simple: We should be using the revenues we generate from energy development and the depletion of our natural resources for the protection of other natural resources, including parks, open space, and wildlife habitat."

On March 17 at a hearing on public lands energy policy held by the Senate Energy Committee Salazar noted that LWCF is authorized at \$900 million per year, but if inflation were considered it should be \$3.4 billion. He added, "The truth of the matter is every year we end up funding only a small fraction of that amount and that is something we need to address."

He said it was only fair that users of public lands return revenues to the country. "As the nation continues

to grow and we look at American citizen owned resources that are developed, and we look at the revenues that come from those resources, we should invest some of that money in the great landscapes of this country," he said.

On March 16 at a press conference Salazar said the Obama administration and Congress should look to new legislation to authorize oil and gas lease sales for dedicated revenues for LWCF. He called LWCF his second highest energy royalty priority behind insuring that oil and gas companies pay a fair royalty.

Salazar's source of money for a revived LWCF is the same that has been financing the program since 1964 (on paper) - offshore oil and gas revenues. Under existing law royalties are put into a fund in the U.S. Treasury, but are not spent on LWCF until Congress approves an appropriations bill.

Salazar would guarantee the money is spent on LWCF in a dedicated trust. As he told the Senate Energy Committee, "We ought to be looking at designation of money in trust for LWCF. I believe it would be very much part of a treasured landscapes fund for the 21st Century."

As the Obama administration nominee for assistant secretary of Interior for Fish and Wildlife and Parks, Thomas Strickland, told the Senate Energy Committee at a confirmation hearing March 24, "We need to look beyond funding LWCF. We need to look for a dedicated fund."

The Obama administration intends to support LWCF as it now stands. An outline of Obama's fiscal year 2010 budget calls for an appropriation of \$420 million, with a goal of full funding of \$900 million by 2014.

Salazar said the administration has made no call on recommending a new fund. "We have not yet made any final decisions yet that would relate to budget matters and where this money is going," he said, adding, "I have a personal point of view on that."

Salazar has frequently cited The Gulf of Mexico Energy Security Act of 2006 as an example of legislation that allocates oil and gas royalties to bulk up LWCF. That law directs the Minerals Management Service (MMS) to distribute to the state side of LWCF 12.5 percent of royalties from oil and gas lease sales from the 181 South Area of the Gulf of Mexico. In fiscal 2008 state LWCF revenues from the sales amounted to \$8.3 million.

The money is guaranteed and does not rely on an appropriation. In addition it is supplemental to any regular appropriation that Congress might make to the state side of LWCF.

Salazar said a major priority for him is a complete shake-up of oil and gas royalty policy. If the shake-up requires legislation, it would give him an opportunity to persuade Congress to share royalties with LWCF. As he said at a press conference March 16 on the administration's energy policy, "The permanent dedicated royalty that we developed to apply to Lease Sale 181 South is the kind of thing we will be looking at as we look at royalty reform. . . We're just beginning the conversations and will have a lot more to say on that."

Salazar has said he would like to model conservation spending on a Great Outdoors Colorado (GOCO) program, established by constitutional amendment that uses a portion of state lottery money for conservation purposes. In fiscal year 2008 the program received \$114.3 million, including 40 percent for parks, recreation and open space distributed on a per capita basis. Another 10 percent went to Colorado State Parks for state park and rec projects. Finally, a remaining 50 percent was allocated to a GOCO trust fund. Salazar said he drafted the constitutional amendment that created the program.

Through fiscal 2008 GOCO had allocated more than \$650 million to more than 3,000 projects, including the creation or enhancement of more than 1,000 community parks and recreation areas.

Derrick Crandall, president of the American Recreation Coalition, said, "I think that Salazar clearly wants to do something. He thinks GOCO was the biggest achievement in his career. He wants a parallel on federal lands using offshore revenues instead of lottery money. I think he is single-minded about that."

First surface transportation bill emphasizes cleanliness

Two senators and five House members are giving the park and rec community a first inkling what the notion of "livability" may mean to transportation policy in a new multi-year highway law.

They introduced legislation (S 575, HR 1329) that would allocate ten percent of revenues from a climate change bill to cleaner transportation, including such things as encouraging bike and pedestrian use.

One of the three major allocations from the bill would send money to "sidewalks, crosswalks, bicycle paths, greenways, pedestrian signals, pavement marking, traffic calming techniques, modification of public sidewalks (including projects to achieve compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and other strategies to encourage pedestrian and bike travel." The other two allocations are transit and intercity rail.

The bill, dubbed CLEAN TEA by its sponsors, is intertwined with two separate huge legislative initiatives. One is a climate change bill that would provide the revenues to run the program. The other is a multi-year surface transportation law that CLEAN TEA would more than likely be wrapped into.

The White House is emphasizing the livability notion in transportation. President Obama's urban policy says: "Our communities will better serve all of their residents if we are able to leave our cars to walk, bicycle and access other transportation alternatives. President Obama will re-evaluate

the transportation funding process to ensure that smart growth considerations are taken into account."

The sponsors of CLEAN TEA include Sens. Thomas Carper (D-Del.) and Arlen Specter (R-Penn.) and Reps. Earl Blumenauer (D-Ore.), Ellen Tauscher (D-Calif.), Steven La Tourette (R-Ohio), Melissa Bean (D-Ill.), and Mark Kirk (R-Ill.)

Their legislation surfaces as Congress begins to address climate change legislation. The Obama administration has proposed, and Congressional Democrats are considering, legislation that would charge producers of carbon an allowance (Republicans call it a tax.) The fiscal year 2010 Obama budget anticipates allowances will bring in about \$78.7 billion per year beginning in fiscal 2012. So, assuming an average of \$80 billion per year, a 10 percent allocation to CLEAN TEA would amount to \$8 billion per year.

The CLEAN TEA money would be allocated to regional, state and local entities of more than 200,000 population.

Assuming Congress approves the climate change legislation (*see separate article page 5*), CLEAN TEA would likely be considered when Congress writes a new surface transportation law. The existing law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) will expire on September 30.

Still to be resolved is a separate problem: The Obama administration February 26 dropped a bomb on the Highway Trust Fund by proposing to subject surface transportation programs to the vagaries of annual appropriations.

In outlining a fiscal year 2010 budget President Obama would end the automatic guarantee of \$50 billion or more each year to surface transportation programs - including more than \$1 billion in park and rec activities - that comes from the Highway Trust Fund. The fund is fueled by gasoline taxes.

SAFETEA-LU guarantees Highway

Trust Fund money for individual programs, such as transportation enhancements, recreation trails, scenic byways, national park roads, Safe Routes to School and dozens more. The money is not subject to annual appropriations and is allotted annually for individual programs, such as \$43.5 million for scenic byways in fiscal 2009.

House and Senate committee members from both parties that oversee the Highway Trust Fund protested the Obama budget with one voice. They wrote the President February 27, "Such a rule would essentially convert the mandatory contract authority that currently funds our highway, transit, and airport grant programs to a simple authorization of appropriations for budget scoring purposes." The objections were submitted by leaders of both the House Transportation Committee and the Senate Environment and Public Works Committee.

The House Transportation Committee may also ask for significantly more money than Obama is willing to spend in a new surface transportation law to replace SAFETEA-LU. In "Views and Estimates" submitted to the House Budget Committee this month the panel said the nation needs \$131.7 billion per year to improve conditions on highways and bridges. The Obama administration's total request for the Department of Transportation for fiscal 2010 is \$72.5 billion.

House moves on emergency fire money; Senate is interested

President Obama and Congressional leaders from both parties have taken major steps in the last month toward establishing an emergency fund for fighting forest fires.

As we have reported, Obama's fiscal year 2010 budget asks Congress to establish a \$347 million contingency fund for fighting major fires - \$282 million for the Forest Service and \$75 million for the Interior Department.

Then on March 26 the House approved legislation (HR 1404) that would

formally establish a contingency fund. The House action is not unexpected because it approved a similar bill last year, only to have it die in the Senate. The vote was 412-to-3.

The situation in the Senate may have changed. The chairman and ranking member of the Senate Energy Committee, Sens. Jeff Bingaman (N.M.) and Lisa Murkowski (Alaska) respectively, have this year introduced a Senate version of the House bill (S 561.) They also pledge to try to move a bill.

Bingaman and Murkowski wrote the Senate Budget Committee March 12 on the energy panel's agenda for this year, "The Committee plans to consider complementary legislation that would create a separate account to absorb funding for the large majority of emergency wildfire costs, leaving a small amount of funding within the Forest Service's operational budget to cover non-emergency wildfire suppression costs."

There are no guarantees. For instance, S 561 and HR 1404 do not specify an amount of money for the fund, which would continue to be subject to annual appropriations. In addition the House approved an amendment to the bill, called the Federal Land Assistance Management and Enhancement Act (FLAME), that would NOT consider bill allocations as emergency money, leaving the fund at even greater risk.

The FLAME bill enjoys impressive support. On March 13 five former Forest Service chiefs endorsed the bill and said, "The existing system for financing wildland fire suppression on the public lands simply does not work. It has resulted in intolerable reductions in the capacity of the U.S. Forest Service to carryout its important missions in the management of the National Forest System, Research, and State and Private Forestry. It is essential that funding for the rising cost of wildland fire suppression be separated from the regular budget of the agency."

The chiefs said the FLAME act and the Obama budget would help. The five chiefs who wrote to bill sponsors were

R. Max Peterson, F. Dale Robertson, Jack Ward Thomas, Michael P. Dombeck and Dale N. Bosworth.

As impressive in a way, 67 diverse interest groups March 20 formed an alliance to pitch for the bill. The Partner Caucus on Fire Suppression Funding Solutions wrote House bill sponsors March 20, "These growing (wildfire suppression) costs severely hamper the land management agencies' ability to fund other agency programs. Without resolution, suppression costs will continue to consume a larger percentage of agency budgets year after year, subsequently reducing funding for and crippling critical programs and projects."

The interest groups include the American Forest and Paper Association, the American Hiking Society, the National Association of Counties, the National Cattlemen's Beef Association, the National Ski Areas Association, the Sierra Club and the Western Governors' Association.

If the fund works, say interest groups, it would take a major step toward freeing the Forest Service budget from a practice of borrowing money from line programs to fight fires - and not paying it back.

American Forest & Paper Association (AFPA) President and CEO Donna Harman said, "This provides adequate fire suppression funding without other programs having to suffer. Without the FLAME Act it is extremely unlikely that the agency will be able to meaningfully implement a forest management program that restores forest health, prevents emissions of significant amounts of greenhouse gases, and maintains a strong forest products infrastructure."

And The Wilderness Society, which seldom agrees with AFPA, concurred. "The FLAME Act isn't a silver bullet but it is a step in the right direction on getting firefighting costs under control," said Cecilia Clavet, a national forest policy analyst with the society.

S 561 and HR 1404 follow the outlines of a similar bill introduced in

the House last year by House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) That is, it would establish a fund to be used for large, complex emergency fires. The Secretary of Agriculture and Secretary of Interior would decide which suppression activities would be eligible for the fund.

Fire suppression costs have increased from 13 percent of the Forest Service budget in fiscal 1991 to nearly 50 percent now. Although Congress has increased the fire budget almost every year - it now stands at more than \$2 billion, the cost of fighting huge emergency fires has topped the appropriation by as much as \$1 billion. That has forced the Forest Service to borrow from other programs, including recreation management, and Congress has not always repaid those programs.

Cosponsors of Rahall's bill this year include Republican Reps. Mike Simpson (Idaho) and Greg Walden (Ore.) The House approved last year's bill on July 9, 2008, but it did not move in the Senate Energy Committee.

Notes

DoI: Lots of birds in trouble.

Secretary of Interior Ken Salazar released a report March 19 that says as many as one-third of the nation's bird species are "endangered, threatened or in significant decline due to habitat loss, invasive species, and other threats." But the study, coordinated by the Fish and Wildlife Service (FWS), also says that many other species of birds, particularly wetlands birds, are responding to conservation efforts. Those recovering species include pelicans, herons, egrets, osprey, and ducks. On the down side the situation in Hawaii is particularly dire, said the report. "Habitats such as those in Hawaii are on the verge of losing entire suites of unique bird species," said Dr. David Pashley, American Bird Conservancy's vice president for Conservation Programs. "In addition to habitat loss, birds also face many other man-made threats such as pesticides, predation by cats, and collisions with windows, towers and buildings." FWS and its partners that participate in the U.S. North American Bird Conservation Initiative

prepared the report. Those partners included the American Bird Conservancy, the Association of Fish and Wildlife Agencies, Cornell Lab of Ornithology, Klamath Bird Observatory, National Audubon Society, The Nature Conservancy and the U.S. Geological Survey. The report, *U.S. State of the Birds*, is available at <http://www.stateofthebirds.org>.

Tellico OHV route contested. Environmental groups and off-highway vehicle (OHV) groups are locking horns over a Forest Service environmental assessment (EA) that may lead to the closure to OHV use of the Tellico OHV area on the border of North Carolina and Tennessee. The competing groups are urging their members to comment to the Forest Service on the EA that evaluates the possible closure of the 39-mile long area. Environmentalists, as represented by the Southern Appalachian Forest Coalition, are calling for the closure of the area to protect the Tellico watershed and brook trout. On behalf of OHVs the BlueRibbon Coalition has posted an alert to its members asking them to submit the opposite comments to the Forest Service, i.e. keep the Tellico area open to OHVs. The comment period ends Monday, March 30.

Ski area use bill introduced.

Sen. Mark Udall (D-Colo.) introduced legislation (S 607) March 17 that would make clear that the Forest Service may authorize ski resorts to host year-round recreational activities on national forest land. Existing law implies that the resorts may only allow skiing activities under their federal permits. But resorts want to provide a wide variety of recreational activities for their customers. Udall said the 1986 National Forest Ski Areas Permit Act "does not reflect the full spectrum of snowsports for which ski areas are now used." In addition the resorts also want to provide non-winter recreational opportunities on national forest land.

No Yellowstone snowmobiles; bikes?

Now that snowmobile use in Yellowstone National Park is over for the season, effective March 21, the park is allowing bicyclists to ride in West Yellowstone, Madison, Norris, and Mammoth Hot Springs

areas of the park. The park won't open for cars, trailers, RVs and buses for another month. The park warns bicyclists that cycling in Yellowstone in early spring "is not for the faint of heart" because of the unpredictable weather, including severe winter snow. NPS warns, "There are no services open in the interior of the park and riders should be prepared to take care of all their own needs. The cleared section of the road may be narrow and covered with a layer of snow and ice, and pullouts may remain filled with snow." For more information go to: <http://www.nps.gov/yell/planyourvisit/springbike.htm>.

Landrieu asks parish park study.

Sen. Mary Landrieu (D-La.) introduced legislation (S 626) March 17 that would authorize a study by the Park Service of

a possible Lower Mississippi River National Park. The park would be carved out of that portion of Louisiana that lies below New Orleans in Plaquemines Parish. Landrieu said the area contains natural, cultural and historic attributes that are worthy of at least a study for national park designation. Of its natural setting S 626 says that the area "is split down the middle by the Mississippi River, surrounded on three sides by the Gulf of Mexico, and crossed by numerous bayous, canals, and ditches." Plaquemines Parish marks the beginning of the Mississippi River flyway and is the site of two national wildlife refuges. Finally, the area's history is marked by Fort St. Philip, famous for its role in the Battle of New Orleans, and Fort Jackson, famous for its role in the Civil War.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations 2009 (DoI, FS, Corps, Transportation, etc.)		
HR 1105 (Obey)	President Obama signed into law March 11 as PL 111-8.	Provides modest increases for most park and rec programs.
Appropriations fiscal 2010		
No bill yet	Obama administration outlined February 26.	Would provide broad increases for park and rec programs.
Congressional Budget 2010		
No resolution numbers yet	House panel approved March 25. Senate panel approved March 26.	Would allow for increased natural resources spending.
Appropriations Stimulus		
HR 1 (Obey)	President Obama signed into law Feb. 17 as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
Omnibus Lands Bill		
S 22 (Bingaman) HR 146 (Holt)	House gave final approval March 25.	Includes 160+ individual bills, including NLCS, new national parks.
National Landscape Conservation System		
HR 404 (Grijalva) S 22 (previous item)	Grijalva introduced Jan. 9. Included in omnibus (above.)	Would give NLCS official designation by Congress.
Grand Canyon withdrawal		
HR 644 (Grijalva)	Grijalva introduced Jan 22.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
Surface Transportation		
HR 1329 (Blumenauer) S 575 (Carper)	Blumenauer introduced March 5. Carper introduced March 11.	Would establish a piece of a surface transportation law with climate change money.
Fire suppression		
HR 1404 (Rahall) S 561 (Bingaman)	House approved March 24. Bingaman introduced March 10.	Would establish an emergency fire-fighting fund to limit borrowing from line programs.
Ski area uses		
S 607 (M. Udall)	Udall introduced March 17.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.