

# Federal Parks & Recreation

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## Hearing looks at Delaware park; omnibus candidate?

The Senate Energy Committee provided new fodder for an upcoming omnibus lands bill May 19 when it held a hearing on several individual bills of some moment.

The Obama administration gave at least a lukewarm endorsement to each of the bills. On the table were measures to:

- \* establish the first unit of the National Park System in Delaware (S 1801 HR 3893) - a First State National Historical Park;

- \* expand the Gettysburg National Military Park by adding Gettysburg Railroad Station (S 3159, HR 4395) to the site;

- \* designate a Susquehanna Gateway National Heritage Area (S 349) in Pennsylvania; and

- \* designate a Chimney Rock National Monument (S 3303, HR 5223) in Colorado.

The Obama administration endorsed all four bills, but asked the committee to delay action on the Susquehanna heritage area until the administration put together a comprehensive heritage areas position. NPS Associate Director for Park Planning Stephen E. Whitesell said that heritage area policy is "waiting on further discussions with the Office of Management and Budget."

As *FPR* reported in February the Senate Energy Committee this year intends to put together an omnibus lands bill from committee-passed measures. The committee under chairman Jeff Bingaman (D-N.M.) plans to follow the procedure it used in 2009 when Congress approved an omnibus bill with more than 160 individual bills (PL 111-11 of March 30, 2009.)

Committee staff indicate the bill this year will include committee-passed measures that affect as many states as possible. The more states with a stake in the omnibus bill, the greater the chance the Senate will defeat a hold with 60 votes. The committee prefers the omnibus approach because senators almost always file holds against individual bills, effectively blocking them.

Sen. Richard Burr (R-N.C.), ranking Republican on the Senate subcommittee on National Parks, noted that most of the parks bills before the committee May 19 would require additional appropriations. And he complained that all the bills were introduced by Democrats, and none by Republicans.

**SAN JUAN COUNTY:** As a starting point in an omnibus bill the committee may turn to a San Juan County, Utah, bill that Sen. Bob Bennett (R-Utah) is developing. Bennett, who lost the Republican nomination for his seat May 8, says he is developing a San Juan County bill similar to a Washington County, Utah, bill that was included in last year's omnibus measure. The Washington County bill designated 256,338 acres of wilderness, designated two national conservation areas, designated 165.5 miles of the Virgin River as wild and scenic, and authorized the sale of significant tracts managed by the Bureau of Land Management (BLM.)

**MONUMENTS:** An omnibus bill could also provide a home for new national monuments that the Interior Department is evaluating, if the monuments aren't designated by Presidential proclamation under the Antiquities Act of 1906. An internal Interior Department document indicates that the department is evaluating 14 such monuments covering millions of BLM-managed acres in the West.

**SKI RESORT SUMMER USES:** The House Natural Resources Committee Dec. 16, 2009, approved this legislation (S 607, HR 2476) that would authorize ski resort owners to provide year-round recreational opportunities. The Senate Energy Committee held a hearing on a Senate bill from Sen. Mark Udall (D-Colo.) Oct. 29, 2009. Rep. Diana DeGette (D-

Colo.) introduced the House bill.

**FEDERAL LAND TRANSACTION FACILITATION ACT:** Sen. Bingaman and Rep. Martin Heinrich (D-N.M.) have introduced this legislation (HR 3339, S 1787) that would allow BLM to sell lands cleared by all land management plans. Under an existing law BLM may only sell lands cleared for disposition by land management plans completed prior to 2000. BLM has raised more than \$100 million from the land sales, most of which is used for conservation and acquisition.

Here are recaps of the bills that the Senate Energy Committee held a hearing on May 19:

**DELAWARE NATIONAL PARK:** Sens. Thomas Carper (D-Del.) and Edward Kaufman (D-Del.) introduced this bill (S 1801) to establish a National Park System unit in their state of Delaware. Rep. Mike Castle (R-Del.) introduced a counterpart bill (HR 3893) Oct. 21, 2009. Delaware, the first state to vote to join the union, is also the only state without a unit of the National Park System. Carper and Kaufman would change that by designating a First State National Historical Park. The park would include historical sites, such as an area in Dover where local officials decided to ratify the U.S. Constitution.

**GETTYSBURG EXPANSION:** Pennsylvania Sens. Arlen Specter (D) and Robert B. Casey (D) introduced legislation (S 3159) last month that would add the Gettysburg Railroad Station to Gettysburg National Military Park. The bill would also add a 45-acre tract south of the battlefield to the park. The National Trust for Historic Gettysburg currently operates the railroad station. In 2006 the Gettysburg Borough Council rehabilitated the station but, Specter said, doesn't have the money to operate it. The other, 45-acre tract was the site of cavalry skirmishes during the 1863 battle. It was donated a year ago to the park. The House passed a counterpart bill (HR 4395) March 19 introduced by Rep. Todd Russell Platts (R-Pa.)

**SUSQUEHANNA GATEWAY NATIONAL HERI-**

TAGE AREA: Sens. Specter and Casey introduced this bill (S 349) that would designate a portion of York and Lancaster Counties in Pennsylvania as a Susquehanna National Heritage Area.

CHIMNEY ROCK NATIONAL MONUMENT: Sen. Michael Bennet (D-Colo.) and Rep. John Salazar (D-Colo.) introduced this legislation (S 3303, HR 5223) that would designate the Chimney Rock Archaeological Area in Colorado a national monument. The 4,726-acre area in the San Juan National Forest was the site of a settlement of Pueblo Indians.

### **White House: Outdoor programs needed in obesity fight**

The White House last week gave impetus to the drive to connect outdoor recreation to the health of the nation's youth.

It published an 124-page White House report on childhood obesity that included several major recommendations that parks and recreation areas be beefed up to give young people a place to exercise.

In one major outdoor recommendation the report, *Solving the Problem of Childhood Obesity*, calls directly for more parks, particularly in low-income communities. In a second major outdoor recommendation it calls for a greater emphasis on livable communities, including safer routes to schools.

Melody Barnes, the chairman of the White House Task Force on Childhood Obesity, said the administration will begin to work immediately with its partners on an implementation strategy. "Many of our ideas can be implemented right away, at little or no cost," she said. "With the First Lady's leadership and working in strong partnership with states, local communities, and the private sector, we look forward to moving without delay to get this plan into action."

The report singles out the Land and Water Conservation Fund (LWCF) as a key program to provide parks and play-

grounds. It recommends "Targeting LWCF funds to increase use of and access to parks and open space in low-income neighborhoods and communities that receive funding, and by expanding (Indian) Tribes' access to funding and strengthening their capacity to compete for funding."

The Obama administration is already providing some LWCF support. It has recommended an appropriation of \$50 million in fiscal year 2011 for the state side of the program, which provides money for state and local parks. That's up \$10 million from a \$40 million fiscal 2010 appropriation. However, the federal side of LWCF would still receive the lion's share of LWCF under the administration budget, \$384 million.

As for the federal program that would provide some of the most direct assistance to city parks, the Urban Parks and Recreation Recovery program, the administration budget asks no money.

In the obesity report's second major outdoor recommendation - surface transportation - it focused on the concept of livability in surface transportation programs. It recommended that Congress write a new Surface Transportation Act that includes a livability initiative.

The House subcommittee on Highways and Transit approved a Surface Transportation Act bill (unnumbered) June 24, 2009, that includes a major livability component. It would establish a new Office of Livability that would oversee such programs as transportation enhancements, recreational trails, scenic byways, Safe Routes to School and a new U.S. bicycle route system. All told the Surface Transportation Act would spend \$500 billion over six years.

Says the obesity report of livability, "A complete network of safe bicycle and pedestrian facilities would allow children to take more trips through active transportation and get more physical activity. New Federal aid construction projects should accommodate bicyclists and pedestrians by incorpo-

rating 'Complete Streets' principles." Complete Streets include space for bicyclists and pedestrians.

In its fiscal 2011 budget request the Obama administration recommended an initial \$527 million livability proposal in the Department of Transportation that would provide grants to state and local agencies. Of the \$527 million, \$200 million would help communities plan transportation alternatives to integrate housing, shopping and other activities in more, well, livable ways.

Within an active transportation rubric the obesity report touts the value of a Safe Routes to School program that has provided \$612 million to 6,500 schools since 2005. The report sets this benchmark for the nation: "Increase by 50% by 2015 the percentage of children ages 5-18 taking safe walking and biking trips to and from school." That sounds like a lot but it would mean that even after a 50 percent increase only 20 percent of school trips would be by foot or bike.

Although the obesity report includes dozens of policy recommendations, it does not mention the President's America's Great Outdoors Initiative. The President himself kicked off that initiative April 16 calling on his cabinet to put together an outdoor policy report by November 15.

Among other things Obama linked his outdoors initiative to youth and exercise, saying, "(We) want to foster a new generation of community and urban parks so that children across America have the chance to experience places like Millennium Park in my own Chicago."

## **Gulf spill has not damaged parks and refuges . . . yet**

The Park Service and the Fish and Wildlife Service (FWS) are playing prominent roles in the drive to limit damage to natural resources from the Gulf of Mexico oil spill.

NPS Director Jon Jarvis is physically working out of a Mobile, Ala.,

incident command center and Acting FWS Director Rowan Gould is working out of a Houma, La., incident command center. And Everglades National Park Superintendent Kan Kimball has been deployed to a new St. Petersburg, Fla., command center.

Thus far, according to NPS spokesmen, the oil from BP's Deepwater Horizon oil well has not reached any national park. One spokeswoman said May 19 that no parks had yet suffered damage.

NPS said the most threatened park unit was Gulf Islands National Seashore, made up of barrier islands and the coast itself in the Gulf off Mississippi and Florida. The second most endangered NPS unit is Jean Lafitte National Historical Park & Preserve in Louisiana, said Rudy Evenson, an information officer at Gulf Islands National Seashore. He was coordinating the NPS response.

Gulf Island is still open for business. Beaches are open for visitors, concession boats are running out to the islands and fishing continues.

Depending on the currents and winds, potentially endangered in Florida are the De Soto National Monument, Everglades National Park, Dry Tortugas National Park, Big Cypress National Preserve and Biscayne National Park. The Florida park units are not yet in the direct path of the spill, but could be if a "loop current" moves the oil around the southern tip of Florida and up the east coast.

An analysis of tar balls that have washed up on the Florida Keys indicates they did not come from the Deepwater Horizon spill.

Longer term, the accident threatens recreational fishing around the Gulf, said the Bonefish & Tarpon Trust in a new study released May 17. The trust said the Deepwater Horizon accident could harm an \$1.2 billion per year sport fishing industry in the Everglades. And that amount doesn't count spending by out-of-state fishermen.

"We originally funded this study

to quantify how much the Everglades had to contribute, economically. Sadly, it now it tells us what we stand to lose," said Kirk Fordham, Everglades Foundation CEO. The foundation financed the study. "This potential tragedy makes our mission of preserving and restoring America's Everglades even more urgent."

NPS says the Deepwater Horizon spill threatens seagrass beds, which are nurseries for fish, crustaceans and turtles; salt marshes, which provide a buffer that protects the mainland; mangroves, which also provide a buffer for the mainland; and all manner of historic structures, such as shipwrecks, Civil War defenses and archaeological sites.

The National Parks Conservation Association (NPCA) anticipates severe impacts. "Not only will this tragedy impact our coastal wetlands, but it will also have detrimental effects on the commercial, recreational, and beach-going tourism economies that are dependent on healthy water ecosystems," said NPCA Executive Vice President Theresa Pierno.

Clean-up responsibilities are fairly well delineated. "We have a pretty standard procedure for handling these (spills)," said NPS's Evenson. "The spilling party is responsible for all the cleanup. BP and the Coast Guard are coordinating the command center. Everyone else works within that structure."

At the park and refuge level NPS and FWS officials are participating in SCAT teams, as in Shoreline Cleanup Assessment Teams, consisting of a handful of people. They are the on-the-spot teams that ensure that BP doesn't do any more damage to resources than necessary.

NPS has some experience with oil spills because of the Exxon Valdez accident in Alaska in 1989.

## **Kerry, Lieberman keep some outdoor aid in climate bill**

The big new compromise climate change bill laid out by Sens. John Kerry

(D-Mass.) and Joe Lieberman (I-Conn.) May 12 would, over time, allocate billions of dollars to conservation programs. Those programs include the Land and Water Conservation Fund and a host of fish and wildlife programs.

But the operative words are "over time," because the money would not begin to flow until 2019, almost a decade hence, and even then the money would gradually be ramped up.

Said Neil Shader of The Wilderness Society, "We'll now be trying to get the programs started sooner."

Conservationists will also be lobbying for more money than is in the Kerry-Lieberman draft. By the conservationists' estimates the bill would provide an average of \$500 million per year less for a climate change adaptation fund than a House-passed bill. The senators' fund, paid for by pollution allowances (taxes to Republicans), would allocate about \$1.2 billion per year, compared to \$1.7 billion in the House bill.

In a second area affecting parks and recreation some backers of the Highway Trust Fund worry that the Kerry-Lieberman bill would, indirectly, siphon money away from a big surface transportation law. The bill would do that by imposing high allowances (or taxes) on refineries and not relaying the money to surface transportation programs. Highway Trust Fund supporters say any such allowances should be allocated to surface transportation. (*See following article.*)

For all the debate about the details of the Kerry-Lieberman bill, an even bigger question remains: Will the measure go anywhere? The senators were optimistic. "The path to 60 votes in the Senate has been long, but despite Washington conventional wisdom, we are closer than ever to a breakthrough. Two Congresses ago, we had 38 votes for energy and climate legislation," said Kerry. "Last Congress we had 54 Senators prepared to vote yes. Now we're asking this Senate to hold a debate and insist on a vote again, with a fundamen-

tally new policy approach that should secure bi-partisan support. This is the time."

Said Lieberman, "We are proud to have support from a growing and unprecedented coalition of business, national security, faith, and environmental communities, who are energized to work hard to pass this bill this year."

But Sen. James Inhofe (R-Okla.), ranking Senate Environment and Public Works Committee (EPW) Republican, dismissed that rosy scenario. "My first reaction to the Kerry-Lieberman bill is that it's the same old cap-and-trade scheme that the Senate has defeated three times since 2003," he said. "In fact, it has a strong resemblance to the disastrous Waxman-Markey bill. Only now, along with paying skyrocketing electricity prices, consumers will pay a gas tax."

The Senate EPW committee has not set a hearing yet on the Kerry-Lieberman bill, which has not been formally introduced yet. The committee has been busy with the Gulf of Mexico oil spill.

The Waxman-Markey bill is the measure approved by the House June 26, 2009 (HR 2425.) It was sponsored chiefly by Reps. Henry Waxman (D-Calif.) and Edward Markey (D-Mass.) In addition Inhofe's EPW committee approved a bill (S 1733) similar to the House bill Nov. 5, 2009. It too was sponsored by Kerry.

Putting pressure on the Senate to act, either on Kerry One or Kerry Two, is the Obama administration's EPA. It published final regulations May 13 that require entities that produce 100,000 tons or more of carbon pollutants to obtain permits. The regulations will kick in for operations that now hold permits on January 1 and for new operations on July 1, 2011.

Said Kerry, "The Obama Administration has again reminded Washington that if Congress won't legislate, the EPA will regulate."

What happens on Capitol Hill depends to a large extent on whether Sen.

Lindsey Graham (R-S.C.), who helped Kerry and Lieberman draft their bill, will support it. His backing could produce enough Republican support to provide the needed 60-vote majority.

The natural resources management provisions in the Kerry-Lieberman bill approximate the House-passed bill and the Senate EPW bill. All would revise fundamentally management priorities on federal and nonfederal lands to emphasize adaptation to climate change.

The bills would have every federal agency or department complete a plan to comply with standards in the legislation, or standards set by a climate change panel established by the legislation. State agencies would be in the same boat as federal agencies.

In addition the bills would establish a Natural Resources Climate Change Adaptation Fund that would provide billions of dollars to protect natural resources. In a major difference from the House bill, the Kerry-Lieberman bill and the Senate EPW committee bill would guarantee money in the fund. The House would subject distribution of the money to appropriations in annual spending bills.

The main complaint against HR 2425 and S 1733 was a national cap on pollutants they would impose. The House bill and the Senate EPW committee bill would establish a national cap on hydrocarbons that would allow polluters to buy-and-sell pollution credits.

Kerry-Lieberman would not establish a national cap but would set limits on three different sectors of the economy, such as manufacturing and power plants. The two different regulatory approaches would not directly affect parks and recreation.

## **County sees economic harm from Cape Hatteras plan**

Dare County, N.C., says a draft Park Service proposal to regulate off-road vehicle (ORV) access in Cape Hatteras National Seashore could devastate its economy.

Responding to a preferred alternative in a draft EIS NPS published in March, the county said, "Beach closures (under an interim rule) have already had a devastating and unfair impact on many Dare County businesses causing foreclosures, bankruptcies, lay-offs, cutbacks, expensive refinancing, and depleted college funds and savings accounts."

NPS's preferred alternative would close 40.8 miles of existing ORV use areas. It would also set aside 27.2 miles of ORV tracks for ORV use year-round. That is down from 50.1 miles that were available previously.

In its comments to NPS the county asked for additional pass-through corridors to the beach for ORVs, smaller buffers for Piping Plovers (from 1,000 meter to 200 meters) and relocation of turtle nests rather than protection of the nests in inappropriate areas.

NPS published the draft EIS March 5 to end a decade-long dispute over balancing ORV use in the seashore with protection of habitat for turtles, water birds and other species.

In a draft EIS the Park Service painted its new restrictions on ORV use as a positive for users because it would eliminate confusing seasonal closures. "Under alternative D, visitors to the Seashore would have the maximum amount of predictability regarding areas available for ORV use and vehicle-free areas for pedestrian use with most areas having year-round, rather than seasonal designations," said the seashore in describing the preferred alternative.

The park added, "Restrictions would be applied to larger areas over longer periods of time to minimize changes in designated ORV and non-ORV areas over the course of the year."

Conservation groups that brought litigation that led to the Park Service writing the EIS have their own ideas about the 800-page document. One suggestion advanced by the National Parks Conservation Association (NPCA) would supplement, if not replace, ORV use with a mass transit system.

"Specifically, NPS should be contemplating whether some sort of environmentally sensitive mass transit system could accomplish the objective of getting people efficiently on and off the beach while reducing the number of vehicles and vehicle trips," said NPCA in comments submitted to NPS in association with the Natural Resources Defense Council and The Wilderness Society.

The groups said NPS should consider tapping into a 2005 surface transportation Transit in the Parks program that provides seed money for alternative transportation systems.

ORV groups such as the United Four Wheel Drive Associations pretty much echo the concerns of Dare County as to corridors, buffers and turtle relocation. In a bulletin to their members the groups said that the law that established the seashore called for recreational use as well as resource protection. "Therefore, it is important to balance resource protection with reasonable access for recreation," said the groups.

Sen. Richard Burr (R-N.C.) has been on the ORV users side of this fight. He introduced legislation (S 1557) Aug. 3, 2009, that would authorize increased ORV use in Cape Hatteras. Burr holds an important outdoor policy position in the Senate as ranking Republican on the subcommittee on National Parks.

His bill would effectively restore a Park Service Interim Management Strategy of June 13, 2007, that a court agreement superseded. That agreement, signed off on by U.S. District Court Judge Terrence Boyle in North Carolina April 30, 2008, essentially forbids ORV use at night during the peak summer and shoulder seasons. And it bars ORV access within breeding zones.

The decree is supposed to stay in effect until NPS completes the EIS and writes a new management strategy. The decree sets a deadline of April 1, 2011.

Rep. Walter Jones (R-N.C.) and five of his North Carolina House col-

leagues introduced a House version of the Burr bill (HR 718) in January.

The decree settled a lawsuit brought on behalf of Defenders of Wildlife and the National Audubon Society against the Park Service and Dare and Hyde Counties in North Carolina.

The environmentalists filed suit in October 2007 to protest Park Service and Fish and Wildlife Service management policies that they argue endanger the plovers, turtles and other species. One of their first demands was a ban on beach driving on 12 miles of the 68-mile shoreline.

## **Oberstar hurls earmarks gauntlet down before GOP**

House Transportation Committee Chairman James Oberstar (D-Minn.) last week called the bluff of House Republicans who both oppose earmarks as a matter of policy but also request earmarked water projects.

Oberstar sent letters to all 116 House Republicans who requested earmarks in an upcoming Water Resources Development Act (WRDA) and asked them to either renounce their requests or to support them.

"You can't have it both ways," said Oberstar. "You're either for funding important projects in your district or you're not. It's interesting to note that the moratorium the Republican leadership adopted only lasts until after this fall's election."

In his letters Oberstar asked the House members to make a decision. "In the absence of my receiving a signed, original letter from you by May 25, 2010, specifically requesting that your projects or studies be withdrawn from consideration, I will assume that you continue to support the projects and studies that you submitted in the enclosed letter and your requests will remain pending before the Committee," he wrote.

Oberstar's office said the chair-

man will send a similar letter to House Republicans who have requested earmarks in a six-year, \$500 billion surface transportation law. (*See following article.*)

Outdoor activities become involved here because WRDA not only authorizes dozens of recreation projects carried out by the Corps of Engineers and the Bureau of Reclamation, but it also authorize tasks under the Everglades restoration project called CERP.

Thus far four Republican House members have reportedly decided to rebel against their leaders and pursue earmarks in WRDA, including former committee chairman Don Young (R-Alaska.)

That House Republicans renounce earmarks in the House committee doesn't mean those projects are dead. The Senate Environment and Public Works Committee is also developing a 2010 WRDA bill and will almost certainly include specific projects in it. And later in the year a House and Senate conference committee will decide which projects are included in the bill.

Both Oberstar and EPW Chairman Barbara Boxer (D-Calif.) are beginning to address seriously a 2010 WRDA. Boxer held an initial hearing May 6 and the Oberstar committee held a hearing April 15. As noted above Oberstar has asked committee members to recommend pet projects by May 25. Boxer asked Senate members to submit recommendations by May 18.

The process has been greatly complicated in the House because the House Republican Conference March 10 voted to request no projects this year. So 116 House members who have already submitted requests will either have to rescind those requests or defy Republican leaders.

WRDA laws usually include hundreds of projects costing billions of dollars. House members have already submitted more than 2,200 requests.

A WRDA law in 2000 authorized CERP (the Comprehensive Everglades Restora-

tion Project), an overarching \$7.8 billion federal-state initiative to revive the Everglades. And a WRDA law in 2007 authorized two major projects within CERP.

In asking her Senate colleagues to submit recommendations for projects in the next WRDA, Boxer emphasized the jobs implications of a new bill. "From trade to transportation, disaster prevention to rural recreation, the Water Resources Development Act and the projects, policies, and programs it authorizes are essential components of creating jobs and keeping our economy growing," she said.

To be clear WRDA bills only authorize projects. Appropriations bills must follow up with spending allocations to pay for them. Still, Democrats and Republicans normally work together to secure Congressional approval of the enormous number of projects authorized by WRDA bills.

That is why the House Republican ban on earmarks is so important this year. The Republicans approved the total ban on earmarks to outdo Democrats who earlier this year approved a ban on for-profit earmarks.

At an initial House committee hearing Nov. 18, 2009, members of the Florida Congressional delegation indicated they would request money for old and new projects under CERP.

Rep. Ron Klein (D-Fla.) put in a plug for one initiative known as the Broward Water Preserve Area projects in southern Broward County and northern Dade County. He said other Florida House members would on their own submit requests for other Everglades projects.

Completion of CERP promises to take many years of hard work. While Congress first gave approval to the then-estimated \$7.8 billion CERP in 2000, it must also (1) approve individual projects once feasibility studies are completed and (2) appropriate money to pay for the individual projects in annual money bills.

## New Senate climate bill may hinder new highway money

Advocates of surface transportation programs fear that a new Senate climate change bill could reduce spending for the Highway Trust Fund.

The draft climate bill, circulated May 12 by Sens. John Kerry (D-Mass.) and Joseph Lieberman (I-Conn.), would not directly shift gasoline taxes away from the highway fund, as advocates had originally feared.

But it would impose new allowances (also called taxes) on gasoline refineries and use the money for non-highway purposes, such as renewable energy research. As a result of the higher gasoline prices, Congress would have a disincentive to also increase gasoline taxes to pay for a new, six-year \$500 billion surface transportation law.

"The evidence is clear; Congress can ill afford to consider any legislation that preempts funding from the Highway Trust Fund which supports the vital transportation systems every American relies on," said John Horsley, executive director of the American Association of State Highway and Transportation Officials.

Under existing law gasoline taxes go into the Highway Trust Fund for use in surface transportation programs, as in the existing multi-year highway law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) That law finances such park and rec programs as transportation enhancements, recreational trails, scenic byways, federal land roads, Safe Routes to School, Transit in the Parks and much more.

Complicating things, while Congress is developing a climate change bill it is also beginning to write a multi-year law to replace SAFETEA-LU. And that's where the alliance says gas taxes should go.

In a separate complication to writing a new transportation law, the House Transportation Committee under

chairman James Oberstar (D-Minn.) is about to put the squeeze on Republicans who might want projects (including trails) among the thousands of earmarks in a new measure.

Last week Oberstar sent letters to all 116 House Republicans who requested earmarks in an upcoming Water Resources Development Act and asked them either to renounce their requests or to support them. His office said he would send a similar letter to House members who might want projects in a new six-year, \$500 billion surface transportation law.

The House Republican Conference March 10 had voted to request no set-aside projects this year, whether in a WRDA or a surface transportation law. So, under the Oberstar dictate, House members will either have to rescind those requests or defy Republican leaders.

A broad coalition of interest groups that benefit from Highway Trust Fund gas taxes opposes any plan to divert those gas taxes to other purposes, such as climate control. The interest groups include at least three recreation associations.

Among the signatories to a protest to Congress were America Bikes, League of American Bicyclists, and the Safe Routes to School National Partnership. They were joined by such big hitters as the American Association of State Highway and Transportation Officials and the American Road & Transportation Builders Association.

President Obama signed into law March 18 a law that both extends the existing surface transportation law through the end of the calendar year and guarantees full funding for transportation-related recreation programs throughout the fiscal year.

That is, the stimulus law (PL 111-147) extends SAFETEA-LU through December 31. That gives Congress the rest of the year to write and pass a comprehensive new five-or-six year law.

In addition to keeping SAFETEA-LU alive the law provides full funding for

transportation programs in fiscal 2010 by (1) increasing the appropriation for SAFETEA-LU from \$30 billion to \$42 billion, (2) canceling \$8.7 billion in take-backs from previous year SAFETEA-LU allocations, called rescissions, and (3) fattening up the Highway Trust Fund that provides money for SAFETEA-LU with a \$19.5 million infusion. So surface transportation programs are effectively paid up through September 30.

## **Calif. Desert bill gets some praise from administration**

The Obama administration May 20 said it would work with Sen. Dianne Feinstein (D-Calif.) to protect the California Desert, while promoting solar power development in the area.

The administration praised, with qualifications, a bill (S 2921) from the powerful appropriator that would put more than one million acres of the California Desert off limits to solar power development.

The land at issue lies on Bureau of Land Management (BLM) land between the Joshua Tree National Park and the Mojave National Preserve.

BLM Director Bob Abbey said at a Senate Energy Committee hearing on the bill, "The Department of Interior supports the goal of S 2921 and looks forward to working closely with Sen. Feinstein . . . We do have numerous suggestions and major and minor technical modifications to recommend."

For instance, the administration is concerned about what it considers a too-short deadline for preparing an EIS to evaluate the siting of renewable energy projects.

At the hearing ranking committee Republican Lisa Murkowski (R-Alaska) worried that the bill would withdraw conservation lands from renewable energy development before the lands had been studied thoroughly. "It is frustrating to see one of the better areas for solar production in the West encumbered by national monuments and wilderness areas, (before areas are studied,)" she said.

Feinstein, who oversees the Interior Department budget as chairman of the Senate subcommittee on Interior appropriations, said, "We tried to strike a careful balance between conserving our pristine heritage and creating an efficient process for energy development."

The bill would designate a 941,000-acre Mojave Trails National Monument, which includes about 266,000 acres of controversial Catellus lands that BLM recently obtained. The measure would also designate a Sand-to-Snow National Monument of about 134,000 acres.

As a quid pro quo to the monument designation, the legislation would streamline a solar project permitting process by establishing strict deadlines to ensure developers move quickly into production, require federal land managers including the military to write programmatic EISs to identify high-potential areas to be developed (the Department of Defense manages 3 million acres in the desert), and provide grants and loan guarantees for new transmission technologies.

The bill also offers right-of-way holders an opportunity to relocate to federal renewable energy zones that the Interior Department is now developing.

Feinstein is trying to walk a tightrope between protection of the desert on one side and encouragement of solar power development on the other. To offset the new monument land Feinstein would offer in her bill incentives for solar development on other BLM lands.

Feinstein said she was motivated to protect the desert lands in part because of an expensive federal/non-profit acquisition of former railroad lands in the California Desert between 1999 and 2004. The 600,000 acres had been owned by the Catellus Development Corporation. The federal government put up \$18 million and the Wildlands Conservancy paid \$40 million to acquire them. The lands were transferred to BLM to manage.

When Feinstein learned last year

that BLM had approved right-of-way (ROW) applications for solar and wind projects on the former Catellus lands, she hit the roof. "As the sponsor of the legislative provisions that helped secure the deal to acquire the roughly 600,000 acres of former private land, I found the BLM's actions unacceptable," she said.

According to press reports, at least two companies have canceled projects in the proposed monument area. They include BrightSource Energy, with Robert F. Kennedy, Jr. as a partner, and Tessera Solar. BLM said it has approved applications for solar development on 30,000 acres in the desert ROWs. But Feinstein noted that the projects had not received permits yet or taken other serious steps toward development.

BLM has as yet approved no construction permits for solar projects on public lands. However, it has received more than 225 applications covering more than 2 million acres. The bureau may approve some of the applications where BLM has completed environmental documentation before the bureau completes a programmatic EIS.

## Notes

### **NPCA wary of Rainier overflights.**

The National parks Conservation Association (NPCA) said a fortnight ago that the Park Service should consider no overflights over Mount Rainier National Park in an overflight plan. NPS is laying the groundwork for writing overflight regulations for Mount Rainier. "We go to places like Mount Rainier National Park to get away from the sights and sounds that surround us in our daily lives, like aircraft buzzing overhead," said Sean Smith, NPCA's policy director and private pilot. "Given the iconic wilderness that surrounds Mount Rainier, sightseeing overflights—if not properly managed—can disrupt natural sounds, dislocate wildlife, and reduce visitor enjoyment." Under existing NPS policies the park hosts up to 114 air tours per year.

### **Vilsack okays roadless activities.**

Secretary of Agriculture Tom Vilsack May

13 said he has authorized 14 projects in national forest roadless areas, including reconstruction of a campground in the Big Horn National Forest in Wyoming. Vilsack said all of the activities were allowable under a Clinton-era roadless rule that forbids most road construction and timber harvesting in 58 million acres of roadless national forest. That roadless rule is tied up with competing federal court rulings and the Obama administration says it won't write a new rule until the legal situation is clearer. Until the litigation is settled, Vilsack himself is making decisions on proposed activities within roadless areas. In the May 13 action Vilsack said he authorized exploration of minerals in 12 areas where claimants held valid existing rights. He also authorized the drilling of 12 methane wells in Colorado for health and safety reasons near the West Elk Coal Mine. Finally, he authorized reconstruction of the campground.

#### **Central Idaho lands bill back.**

With support from Idaho's senators, Rep. Mike Simpson (R-Idaho) is ready to roll this year with a central Idaho wilderness/lands bill. However, the measure's ultimate success will almost certainly depend on an omnibus lands bill that the Idaho bill could be attached to. Still, said an aide to Simpson, "We're hopeful this will be the year it will get done. We're very appreciative of the support of Sens. (Mike) Crapo and (James) Risch." Crapo and Risch, both Idaho Republicans, have introduced a counterpart Senate bill. The Central Idaho Economic Development and Recreation Act (HR 5205, S 3294) would at its core designate 332,775 acres of wilderness in the Sawtooth and Challis National Forests and the BLM-managed Challis District. It would also set aside some trails for off-highway vehicle use and close others. Simpson has been working on the proposal for a decade. Indeed, the House July 24, 2006, approved a predecessor bill, only to have the measure die in the Senate. Simpson introduced his latest version of a bill May 4. It was cosponsored by Rep. Walt Minnick (D-Idaho). Crapo and Risch introduced their bill April 30. The strategy for the Idaho delegation now is to obtain a hearing from the Senate

Energy Committee in June and then attempt to attach the measure to any omnibus lands bill that moves this year. The committee put out the word in March it would develop an omnibus bill later this year. (See related article page one.)

#### **Chesapeake Bay restoration sought.**

President Obama May 12 kicked off an administration-wide initiative to restore the struggling Chesapeake Bay to health. The bay, which includes 13 National Wildlife Refuges and 51 National Park System units, has been plagued for generations by farm and residential pollution. The once-vaunted recreational fisheries of the bay have dwindled. Late last year EPA, the Interior Department and other federal agencies developed a restoration strategy that includes something called a Chesapeake Total Maximum Daily Load, or a maximum pollution load for the bay. The initiative is designed to conserve two million acres of natural areas, forests and farmland. Among other things the Department of the Interior says it will work with state and local governments to produce a Chesapeake Treasured Landscape Initiative.

#### **Duck hunting status quo expected.**

The Interior Department said May 13 in a *Federal Register* notice that it anticipates no changes in bag limits and seasons for the upcoming migratory bird-hunting season. But the department says that is dependent on additional information about populations, harvest, and habitat conditions. In addition the Fish and Wildlife Service (FWS) must consult with four Flyway Councils. Last year FWS said an annual duck breeding count indicated a 25 percent increase above a long-term average. In addition FWS said the number of ponds in Canada and the north central United States had jumped by 45 percent over the previous year. Comment on the regulatory system for this year by June 25 to: *Public Comments Processing, Attn: 1018-AX06; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.* E-mail comments to <http://www.regulations.gov> and follow the instructions for submitting comments on Docket No. FW-R9-MB-2010-0040.

#### **Wetlands groups to fight Oberstar.**

A broad industry-based coalition has been formed to oppose House Transportation Committee Chairman James Oberstar's (D-Minn.) new wetlands bill (HR 5088.) His measure would require a permit for most wetlands under the Clean Water Act. The legislation is designed to reverse a June 2006 Supreme Court decision that held that only water bodies related to navigable waters should be regulated. Conservation groups such as Ducks Unlimited say the subsequent federal policy has led to the destruction of breeding habitat for ducks, and threatens thousands of additional acres. But the industry groups, including the National Association of Manufacturers, the American Forest and Paper Association, and the livestock industry, want nothing of it. They have formed a website called [protectmywater.org](http://protectmywater.org). The legislation would effectively restore the status quo ante before the 2006 Supreme Court decision. The legislation would require permits from the Corps of Engineers and EPA under Section 404 of the Clean Water Act for activities affecting most water bodies. There has been some action in the Senate. The Senate Environment and Public Works Committee June 18, 2009, approved a counterpart bill (S 787) but the measure has not moved any further toward Senate floor action. The American Land Rights Association, among other private property rights advocates, has helped keep S 787 off the Senate floor.

**Mojave cross stolen.** No motive has been identified yet, but somebody stole a cross from an inholding within the Mojave National Preserve that was the subject of a recent Supreme Court decision. The theft took place around May 9 or May 10. In its decision the Supreme Court seemed to say April 27 that Congress may authorize the siting of a cross on private land within a unit of the National Park System without violating the Constitution. In the case before the court Congress in 2004 approved a land exchange that allowed the Veterans of Foreign Wars to own and display the cross on Sunrise Rock within the Mojave National Preserve. In the exchange the VFW received one acre and provided the government with five acres. Congress passed the land exchange law to overcome a 2002 U.S. District Court

decision that said the location of the cross on federal land within the preserve violated the U.S. Constitution's ban on the establishment of a religion by the government. In its holding the Supreme Court did not say specifically that a cross on exchanged private land within a park preserve was Constitutional. Instead Justice Anthony Kennedy sent the case back to the District Court to determine if Congress violated the Constitution by locating the cross within the preserve, even if it is no longer on federal land. However, Kennedy implied that the siting of the cross within the monument was Constitutional. The Supreme Court decision is identified as *Salazar (Interior Secretary) v. Buono (Docket No. 08-472, date April 28, 2010)*. It is available at the Supreme Court's website, <http://www.supremecourtus.gov>

#### **TRCP chooses Fosburgh as head.**

The broad sportsmen's alliance called the Theodore Roosevelt Conservation Partnership (TRCP) announced last week that it has chosen Trout Unlimited executive Whit Fosburgh as its new president. Fosburgh, a former aide to former Sen. Tom Daschle (D-S.D.), has been with Trout Unlimited since 1995, most recently as vice president for program development. He replaces interim president Diane Craney.

**Tellico OHV lawsuit filed.** Three off-highway vehicle (OHV) advocacy groups May 18 sued the federal government to block a controversial Forest Service Tellico River decision. The Oct. 14, 2009, decision would close permanently the 39-mile OHV trail system in the Upper Tellico River watershed of the Nantahala National Forest in North Carolina. National Forests in North Carolina Supervisor Marisue Hilliard said OHVs were causing water quality problems "in hundreds of locations." But Roger Theurer, president of the Southern Four Wheel Drive Association, said, "It is apparent the Forest Service has disavowed any interest in continuing historical, or any, vehicle access to the System. We hope that our organizations have been equally clear that we will fight for reasonable and sustainable access. This is but one step in that continuing effort."

## Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
<b>Appropriations 2011</b> No bill yet	President submitted budget request Feb. 1.	Would increase LWCF significantly but provide flat budgets, at best, elsewhere.
<b>Appropriations fiscal 2010 (Interior)</b> HR 2996 (Dicks)	President Obama signed into law Oct. 30, 2009, as PL 111-88.	Provides broad increases for park and rec programs.
<b>Appropriations fiscal 2010 (Energy and water)</b> HR 3183 (Visclosky) S 1436 (Dorgan)	President Obama signed into Oct. 28, 2009, as PL 111-85.	Roughly maintains FY 2009 levels. Senate reduced Everglades money.
<b>Appropriations fiscal 2010 (Agriculture)</b> HR 2997 (DeLauro)	President Obama signed into law Oct. 21, 2009, as PL 111-80.	Restores some conservation money, but leaves EQIP short.
<b>Appropriations fiscal 2010 (Transportation)</b> HR 3288 (Olver)	President Obama signed into law Dec. 16, 2009, as PL 111-117.	Does not make up Highway Trust Fund shortfall.
<b>Appropriations Stimulus</b> HR 1 (Obey)	President Obama signed into law Feb. 17, 2009, as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
<b>LWCF revival</b> HR 3534 (Rahall) S 2747 (Bingaman)	House hearings in Sept. 2009. Bingaman put in Nov. 6, 2009.	Both would guarantee full funding of \$900M per year.
<b>UPAR revival</b> HR 3734 (Sires)	Sires introduced Oct. 6, 2009.	Would establish \$445 million urban park grant program in HUD.
<b>Omnibus Lands Bill</b> S 22 (Bingaman) HR 146 (Holt)	President signed into law March 30, 2009, as PL 111-11.	Includes 160+ individual bills, including NLCS, new national parks.
<b>National Landscape Conservation System</b> HR 404 (Grijalva) S 22 (previous item)	Included in omnibus law (previous item.)	Gives NLCS official designation by Congress.
<b>California Desert protection</b> S 2921 (Feinstein)	Senate committee hearing May 20.	Would establish monument to protect 1 million acres of BLM-managed desert.
<b>Grand Canyon withdrawal</b> HR 644 (Grijalva)	House subcommittee hearing July 21, 2009.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
<b>Surface Transportation</b> HR 1329 (Blumenauer) S 575 (Carper) S 1036 (Rockefeller) Unnumbered (Oberstar)	Blumenauer put in March 5, 2009. Carper put in March 11, 2009. Rockefeller put in May 12, 2009. House subcommittee approved Oberstar bill June 24, 2009.	Blumenauer would establish a piece of a surface transportation law with climate change money. Rockefeller would establish broad goals for law. Oberstar would extend outdoor programs for six years.
<b>FLREA (rec fee law) repeal</b> S 868 (Baucus)	Baucus introduced April 22, 2009.	Would repeal the comprehensive federal rec fee law.
<b>Fire suppression</b> HR 1404 (Rahall) S 561 (Bingaman)	Included in Interior money bill above.	Establishes an emergency fire-fighting fund to limit agency borrowing.
<b>Ski area uses</b> S 607 (M. Udall)	Udall introduced March 17, 2009.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.