

# Federal Parks & Recreation

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## Senators seek LWCF aid; full funding faces obstacles

Senate supporters of the Land and Water Conservation Fund (LWCF) are beating the drums for a significant appropriation in fiscal year 2014.

In a letter to appropriators April 26, 24 senators requested unspecified amounts of money, both for LWCF and for the Forest Legacy program. The signees included at least one Republican, Sen. Richard Burr (R-N.C.)

More problematic is the second half of the Obama administration's conservation recommendation - new legislation to guarantee \$900 million per year for LWCF beginning in fiscal 2015 from a new set of levies on public lands energy development. The Senate letter did not mention the permanent LWCF program recommendations.

For now three senators are taking the lead in requesting significant fiscal 2014 money for LWCF and Forest Legacy - Burr, Sen. Patrick Leahy (D-Vt.) and Sen. Jeanne Shaheen (D-N.H.)

The 24 senators prepared a letter dated April 26 for submittal to the chairman and ranking Republican on the Senate Appropriations subcommittee on Interior and Related Agencies, Jack Reed (D-R.I.) and Lisa Murkowski (R-Alaska), respectively.

It said, "The entire suite of LWCF programs protect natural resource lands, outdoor recreation opportunities and working forests at the local, state and federal levels, ensuring that critical wildlife habitat, hunting and fishing access, state and local parks, Civil War battlefields, productive forests and other important lands are protected for current and future generations."

"As you begin the process of drafting your FY 2014 bill, we respectfully request much needed funding for these critical programs," the senators said. The letter did not recommend specific amounts.

The fiscal 2014 Congressional Budget (S Con Res 8) the Senate approved March 23 appears to have enough money in it to allow Senate appropriators to cover the Obama administration request for LWCF and Forest Legacy. The budget recommends \$38 billion for natural resources programs.

The problem lies in the House budget (H Con Res 25), which would appropriate \$6.5 billion less for natural resources than the Senate, or \$31.5 billion in discretionary authority.

In its request for LWCF in fiscal 2014 the Obama administration requested \$356 million for federal land acquisition and \$60 million for state grants for the fund from regular appropriations and a new fund combined.

The money for federal land acquisition would come primarily from regular appropriations, \$234 million, complemented by \$122 million from a new LWCF law. Likewise the money for state grants would come primarily from regular appropriations, \$40 million, combined with \$20 million from a new LWCF law.

In a surprise move the administration also recommended that Congress put up \$15 million for the long-moribund Urban Parks and Recreation Recovery (UPAR) program. And it recommended that UPAR be cut in on LWCF money in the long term. For fiscal 2013 UPAR would receive \$10 million from regular appropriations and \$5 million from a permanent LWCF.

The Forest Legacy program would receive a total of \$84.8 million under the Obama budget, \$60 million in routine appropriations and \$24.8 million from a future guaranteed LWCF law. Forest Legacy, administered by the Forest Service, authorizes land acquisition to provide wildlife habitat and rural jobs.

**Permanent, guaranteed LWCF:** The administration proposal to provide a guaranteed \$900 million per year to LWCF is receiving mixed reviews. Western House Republicans are, as always, hostile, particularly to federal land acquisition.

When we asked an aide to House Natural Resources Committee Chairman Doc Hastings (R-Wash.) whether he thought the administration's guaranteed LWCF proposal was dead on arrival, he said, "President Obama's spending priorities show that he is not acting in the best interests of the taxpayer. Members continue to believe that buying more federal land is not the best use of taxpayer dollars and not the way we should be prioritizing spending."

An official of an association representing recreation professionals who are on the front lines in implementing LWCF, was not enthusiastic about writing a new law to replace the existing one. The existing law is scheduled to expire at the end of September 2015.

"I think our focus should be on a simple one-sentence reauthorization of the 1965 LWCF Act for another five years with the caveat that the Secretary of the Interior be required to critically evaluate the LWCF program (federal and state) and to identify ways to adapt it to meet the public outdoor recreation demand and needs for the next 50 years," said Dr. Glenn E. Haas, vice president of the Society of Outdoor Recreation Professionals.

"The more we burden the discussion with full funding, percentage splits, use of money for maintenance, or alternative sources of funds, the more one group or another will dissent and reduce the probability of an LWCF program beyond Sept 2015," he said. Haas added, "My 'hopeful meter' is only 50-50 at this time."

But conservationists are all in. The Land and Water Conservation Alliance praised President Obama for recommending full funding for LWCF. Said Kirk Bailey, vice president of government affairs for the Outdoor Industry

Association on behalf of the LWCF group, "Accessible, close to home recreation is essential to the growing \$646 billion outdoor industry and vital in getting Americans active and outdoors. We applaud the President for his vision for the Land and Water Conservation Fund and his understanding of how important outdoor recreation and tourism are to America's prosperity and growth."

Senate Finance Committee Chairman Max Baucus (D-Mont.) is likely the key to any permanent LWCF legislation. Baucus announced April 23 that he will retire at the end of 2014, but in the meantime he intends to make conservation a major focus for his committee.

"I'm ready to roll up my sleeves and get to work," he said. "I will double down on legislation to permanently protect the American side of the North Fork watershed and keep the Rocky Mountain Front the way it is for future generations." However, he didn't mention LWCF specifically in his retirement announcement.

Baucus is expected to try to write a new federal tax code in this Congress that could possibly include the allocation of new oil and gas revenues to LWCF, as requested by the administration.

Baucus has introduced stand-alone legislation (S 338) this year that would provide guaranteed full funding for LWCF. His lead cosponsors were Burr and Senate Energy Committee Chairman Ron Wyden (D-Ore.) Twenty-seven senators have sponsored the legislation.

Here's how the administration would distribute some LWCF money in fiscal 2014:

\* LWCF FEDERAL: Request, \$356 million (BLM \$48.9 million, Fish and Wildlife Service \$106.3 million, NPS \$90.6 million, and Forest Service \$92.2 million). Fiscal 2012, \$186.7 million (BLM \$22.4 million, Fish and Wildlife Service \$54.7 million, NPS \$57 million and FS \$52.6 million). House committee, \$46.7 million total.

\* UPAR: Request, \$15 million.

Fiscal 2012, nothing. House committee, nothing.

\* LWCF STATE: Request, \$60 million. Fiscal 2012, \$45 million. House committee, nothing.

\* FOREST LEGACY: Request, \$84.8 million (\$24.8 million from a new LWCF law). Fiscal 2012, \$53.3 million. House committee, \$3 million.

## **Manhattan Project bill is really moving now on Hill**

If there is such a thing as bipartisan momentum, then a bill to add three Manhattan Project sites to the National Park System has it.

Last week the House Natural Resources Committee approved unanimously a bill (HR 1208) to designate a Manhattan Project National Historical Park on the three sites. Two Republicans and a Democrat sponsored the bill.

And last week the Senate Energy Committee heard the Obama administration strongly endorse a counterpart Senate bill (S 507) that was introduced by four Democrats and a Republican.

At the House mark-up April 24 committee chairman and lead bill sponsor Doc Hastings (R-Wash.) pledged to work for its passage. "I'm committed to bringing the bill to the House floor this Congress and working with the Senate to get it signed into law," he said.

Said lead Senate sponsor Maria Cantwell (D-Wash.) after the Senate subcommittee on National Parks hearing April 23, "I am encouraged by today's discussion in support of the bill and look forward to moving forward towards a committee vote."

Park Service Deputy Director for Operations Peggy O'Dell on behalf of the administration endorsed the Senate bill April 23, saying, "The Administration supports S 507. The development of the atomic bomb though the Manhattan Project was one of the most transformative events in our nation's history, it

ushered in the atomic age, changed the role of the United States in the world community, and set the stage for the Cold War."

Conservationists are on board. Ron Tipton, senior vice president of Policy for the National Parks Conservation Association, said, "With a small percentage of our national parks currently dedicated to interpreting science and technology, the Manhattan Project National Historical Park would help enhance our National Park System - particularly as we look to its 2016 centennial celebration."

But nothing is ever easy in Congress. Most ominously, there is always the number one slayer of legislation - the Senate hold by which one senator can delay legislation for weeks, months or years with a simple demand for a 60-vote majority.

And S 507 gives fodder for a hold from the right and the left. For the right there is a significant cost. Said O'Dell at the Senate hearing, "Because the Department of Energy would maintain and operate, as they do currently, the primary facilities associated with the Manhattan Project National Historical Park, the study estimated that the National Park Service's annual operation and maintenance costs for the three sites together would range from \$2.45 million to \$4 million. It also estimated that completing the General Management Plan for the park would cost an estimated \$750,000. Costs of acquiring lands or interests in land, or developing facilities, would be estimated during the development of the General Management Plan."

And some Democrats are uncomfortable about a national park unit dedicated to a weapon of mass destruction. Rep. Dennis Kucinich (D-Ohio) spoke out against the legislation when it reached the House floor last year.

"At a time when we should be organizing the world towards abolishing nuclear weapons before they abolish us, we are instead indulging in admiration at our cleverness as a species," he

said. "The bomb is about graveyards; it's not about national parks."

The House and Senate bills also differ on significant points. Reflecting western Republican concerns about an expanding federal land base, HR 1208 would not allow land purchase. It would also forbid the use of condemnation to obtain land and would bar federal agencies from establishing a "buffer zone" around the park properties. In its testimony in the House the Park Service disagreed with those provisions.

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

The new NPS unit would focus on three locations where the atomic bomb was devised and built - Los Alamos, N.M.; Oak Ridge, Tenn.; and Hanford, Wash. Most of the land and buildings would come from existing Department of Energy facilities. But the Senate legislation does authorize the acquisition of private land from willing sellers.

## **House budgeteers ponder source of future roads money**

The House Budget Committee April 24 began to address the question that will determine if recreation programs related to transportation can survive: Where will transportation money come from?

As it has in the past the U.S. Chamber of Commerce unambiguously endorsed for the committee an increase in the gasoline tax, which terrifies politicians. Other witnesses suggested the elimination of recreation-related programs - transportation enhancements, recreational trails, etc.

Committee chairman Paul Ryan (R-Wis.) said there were no easy answers. "The Highway Trust Fund is broke," he said. "This problem has been building for years. In the 90s, Congress set a floor on spending. But it didn't set a ceiling. So the gap between spending and revenue continued

to grow – on average, by \$1 billion a year over the last decade – while gas-tax receipts stalled. In the next decade, the CBO anticipates the gap to widen. It expects the Highway Trust Fund to run annual cash deficits of \$13 (billion) to \$14 billion.”

The existing surface transportation law Moving Ahead for Progress in the 21st Century Act (MAP-21), PL 112-141 of July 6, 2012, provides surface transportation money, including for recreation, through September 2014. The existing 18.4 cents per gallon tax falls far short of paying the annual \$50 billion-plus needed for the surface transportation bill, so Congress is borrowing money from general revenues for MAP-21. That is unlikely to happen again.

Given that background, Ryan convened the hearing to look for new sources of money. Janet Kavinoky, executive director for transportation and Infrastructure for the U.S. Chamber of Commerce, urged Congress to overcome its distaste for taxes and increase the gas tax.

“We must find revenues for the Highway Trust Fund to ensure that the federal government remains an important partner to states, locals and the private sector, to support international and interstate commerce, economic growth and demographic change,” Kavinoky said. “This includes paying more in user fees to shore up the Highway Trust Fund and ensure adequate investment. As has been repeated several times, this is not a new position. The Chamber has been saying this to Congress every chance we can for years.”

“We all know the dire condition of our highway and transit systems,” she said. “It is going to take money to fix it – it is that plain and simple. With the money running out, we need to phase in a moderate increase in the gas tax over a number of years and index it to inflation.”

If the political will is not there to increase gasoline taxes, Robert W. Poole, Jr., director of transportation policy for the Reason Foundation,

suggested eliminating recreation programs and transit programs that are financed by MAP-21.

“The federal government should concentrate on major, nationwide issues, such as its constitutionally authorized role of ensuring the free flow of interstate commerce,” he said. “That, along with the power to establish post roads, appears to provide a sound justification for a major national highway network, such as the Interstates.”

If the Highway Trust Fund gasoline taxes were used only for interstate purposes, Poole said, existing gasoline tax revenues would almost carry the day. “This approach would recognize that the size of the annual shortfall is approximately the amount of highway user-tax revenue devoted each year to the HTF’s Transit Account and other non-highway programs,” he said. “The 10-year CBO projection shows annual highway contract authority at \$41 billion, and the sum of revenues and interest allocated to the Highway Account and the Transit Account as averaging \$40.1 billion per year.”

Meanwhile, other House and Senate leaders responsible for finding money for surface transportation programs, including outdoor programs, have promised to consider all sources of money to pay the bill long into the future. Most important, House Transportation Committee Chairman Bill Shuster (R-Pa.) is leaving the door open to an increase in gasoline taxes to power the Highway Trust Fund, which in turn powers transportation-related recreation programs.

MAP-21 kept both recreation and transit programs alive, although it modified old outdoor programs. It consolidated such programs as transportation enhancements and recreational trails into a Transportation Alternatives line item. The estimated allocation to the Transportation Alternatives program is \$760 million per year, or about a \$200 million decrease.

In addition the programs now must

complete with each other and with other programs for the \$760 million. Within Transportation Alternatives MAP-21 set aside \$85 million for the recreational trails program, while allowing states to opt out if they wished. Only Florida and Kansas opted out.

## **NPS Centennial plans move up a notch with park reports**

Step-by-step the Park Service and its friends are laying the groundwork for the 2016 Centennial of the National Park System.

In disparate steps in the last month (1) seven units of the system published State of the Parks reports that identify what needs to be done to spruce up the parks and prepare them for the Centennial. Separately, (2) a National Parks System Advisory Board subcommittee looked at nonconventional possible sources of revenues for the parks.

The actions are a part of the preparations by NPS and its allies to carry out the recommendations of an Aug. 25, 2011, Park Service plan for the Centennial titled *A Call to Action*. It is available at <http://www.nps.gov/calltoaction>.

The seven park units identified a wide range of problems. That makes sense because the units enjoy a wide range of climates in different parts of the country. But one overarching problem persists in most parks - climate change, said NPS Director Jon Jarvis.

"National parks today face a variety of challenges, but none as great as our changing climate," Jarvis said. "First of all, we're taking action to shrink our carbon footprint. For example, we reduce carbon emissions by driving electric vehicles and replacing old equipment with energy-efficient products. We install energy-efficient lighting and purchase green energy where possible. We also share information about what we do so park visitors or people who visit us online can, where practicable, follow our lead in their homes and communities."

The State of the Parks report on Cabrillo National Monument in California presents an example of the problems parks are having with climate change. The report says, "Overshadowing all our concerns for the natural resources are the potential consequences of rapid climate change and ocean acidification. Increasing temperature, decreasing rainfall, and decreasing pH of seawater will impact most, if not all, species of the coastal sage scrub and rocky intertidal ecosystems at Cabrillo. However, we do not understand what the additive effects will be of climate change and other disturbances, such as urban development and invasive species."

Other park units have quite different problems, such as Organ Pipe Cactus National Monument in Arizona and its border with Mexico. Says an Organ Pipe report, "Some examples of issues facing the monument include the creation of thousands of miles of unauthorized roads and trails, associated damage to soils and vegetation, interruption of natural ecological processes, expansion of exotic invasive species, disturbance to wildlife movements, recurring vandalism and theft at cultural-resource sites, and an abundance of trash."

NPS said the following units prepared State of the Parks reports and that 50 are expected to have completed their reports by 2016: Big Hole National Battlefield (Mont.), Cabrillo National Monument, Klondike Gold Rush National Historical Park (Alaska), Mississippi National River and Recreation Area (Minn.), Salem Maritime National Historic Site (Boston,) Saugus Iron Works National Historical Site (Boston,) and Organ Pipe Cactus National Monument (Arizona). The reports are available at: <http://www.nps.gov/stateoftheparks/>.

**Outside money:** Meanwhile, the National Park System Advisory Board Centennial subcommittee of seven people met April 26 to discuss 17 funding recommendations prepared by friends of the National Park System. The recommendations were assembled by the National Parks Conservation Association, the National Park Foundation and the National Park Hospitality Association. The subcommittee is headed by Gretchen

Long, former chair of the National Parks Conservation Association.

The 17 recommendations were presented March 19 to a stellar group of past and present Congressmen, cabinet members and other VIPs of the park and rec world at a meeting hosted by the Bipartisan Policy Center.

At the meeting two sources of revenue appeared to draw the most interest - diversion of a portion of oil and gas royalties to a new NPS fund of about \$350 million per year and a penny per gallon gasoline tax of about \$1.5 billion per year. (The gas tax would be used for all federal land management agency roads, not just park roads.)

### **Hatteras ORVers making push for bill to open seashore**

North Carolina off-road vehicle (ORV) advocates are once again mounting a campaign to reverse a Park Service plan that reduced beach access to ORVs in the Cape Hatteras National Seashore Recreational Area.

Following up on both Senate and House hearings on legislation (HR 819, S 486) to reverse the policy, the ORV groups are calling on their members to press Congress to move the bills.

They face one big problem: The Obama administration is four-square against the legislation and four-square behind the Park Service policy. National Park Service Deputy Director for Operations Peggy O'Dell told the Senate subcommittee on National Parks April 23 that the plan is working.

"The interim plan (that the bill would reinstate) would not do harm in the short-term but in the long-term it would do harm," she said when pressed by Sen. Joe Manchin (D-W.Va.) "That would be like killing the golden goose, if the park no longer had the wildlife values that people go there to see."

But Manchin, a cosponsor of S 486 because West Virginia ORV users visit the North Carolina seashore, said the new policy was not working. "Have

you talked to the local citizens?" he asked O'Dell. "Have you sat down with the people who live and operate there because I just heard from them yesterday (April 22)?" he asked.

O'Dell said the policy was developed with input from all local interests and from people around the country who value the park. And she said Superintendent Barclay Trimble and his staff continue to consult with the locals.

At issue is a final Park Service rule of Jan. 23, 2012, that governs ORV use in the seashore. The Obama administration published the rule after four years of debate about a Bush administration strategy of June 2007 that kept most of the seashore open to ORVs.

The January NPS rule would keep 28 miles of the seashore open to ORV use but designate 26 miles of vehicle-free areas.

In addition to HR 819 and S 486 ORV users filed a lawsuit Feb. 9, 2012, against the Park Service plan in U.S. District Court for the District of Columbia. However, the plaintiff Cape Hatteras Access Preservation Alliance (CHAPA) suffered a setback on January 5 when U.S. District Court Judge Emmet G. Sullivan in Washington, D.C., referred the case to Judge Terrence Boyle of North Carolina's Eastern District Court.

That's a setback for the plaintiffs because Doyle has repeatedly ruled in favor of environmentalist litigants - The Audubon Society and Defenders of Wildlife.

The ORV advocates sent a bulletin to their members April 26 after the Senate hearing urging action on the Senate bill. "We ask you to contact your Senators and the members of the Energy and Natural Resources Committee as quickly as possible in hopes that a favorable Committee markup of S. 486 and ultimately a full Senate vote can occur without delay," said the Outer Banks Preservation Association, the North Carolina Beach Buggy Association, and CHAPA.

By O'Dell's numbers 56 miles of beach are open to vehicles. Twenty-six miles are closed. She said, "Contrary to some reports, there is not now and never has been a ban on ORVs at the Seashore. The great majority of the beach is open to ORVs, visitation is rising, and tourist revenues are at record levels. At the same time, beach-nesting birds and sea turtles are finally showing much-needed improvements."

Rep. Walter Jones (R-N.C.) introduced the House bill that was given a hearing March 14 by the House subcommittee on Public Lands. The House Natural Resources Committee approved a predecessor bill last year on June 15, 2012. Sen. Richard Burr (R-N.C.) is the lead sponsor of the Senate bill.

### **Colorado named most imperiled river in annual top 10 list**

The Colorado River last month was given the dubious honor of being named the nation's most endangered river in the 27<sup>th</sup> annual list of the nation's ten most endangered rivers. The conservation group American Rivers prepared the list.

American Rivers said the Colorado is being damaged by more than 100 dams that have been constructed in the four states it courses through and by climate change. The net result is too little water for the foreseeable future, which may lead to massive droughts.

The dams on the Colorado are already taking their toll, according to the report. "Dams have fundamentally changed the river ecosystem, impacting fish, wildlife, and recreation, as well as natural and cultural resources in places like Dinosaur National Monument, Canyonlands National Park, and Grand Canyon National Park," says American Rivers.

Sen. Michael Bennet (D-Colo.) welcomed the report. "(T)here is no doubt whatsoever that a growing population and a warming climate constitute serious threats to the Colorado River and its health into the future," he said.

David Nimkin, southwest senior regional director of the National Parks Conservation Association, said the river is crucial to nine units of the National Park System in the Southwest. "These parks and recreation areas depend on the river's natural and cultural resources for their endurance and allure and in turn create vital economic boons for surrounding communities throughout the basin," he said.

The NPS units are Arches National Park, Black Canyon of the Gunnison National Park, Canyonlands National Park, Curecanti National Recreation Area, Dinosaur National Monument, Glen Canyon National Recreation Area, Grand Canyon National Park, Lake Mead National Recreation Area, and Rocky Mountain National Park.

Since 1986 American Rivers has published the list of the 10 most endangered rivers in the country. It is one of the most influential "top ten lists" in the country. The group says it derives the list from nominations from citizens and groups across the country.

Decisions on nominated rivers are based on the probability that inclusion in the list can lead to action, on the significance of the water body and, of course, on the severity of the threat to the river.

This year the top ten are the Colorado; the Flint River in Georgia; the San Saba River in Texas; the Little Plover River in Wisconsin; the Catawba River in the Carolinas; the Boundary Waters in Minnesota; the Black Warrior River in Alabama; the Rough & Ready and Baldface Creeks in Oregon; the Kootenai River in Montana and Idaho; and the Niobrara River in Nebraska, South Dakota, and Wyoming.

American Rivers gave special mention to the Merced River, which flows 135 miles through the Yosemite Valley (and of course Yosemite National Park) in California. Conservationists are alarmed because Rep. Tom McClintock (R-Calif.) has introduced legislation (HR 934) that would remove wild and scenic river protections on a portion

of the river to increase the size of the New Exchequer Dam.

But it's the Colorado River that American Rivers is most concerned about. Although it touches just the four states of Colorado, Arizona, Nevada and California the Colorado also provides water and energy to three other states - New Mexico, Utah and Wyoming. "Thirty-six million people from Denver to Los Angeles drink Colorado River water," says the report. "The river irrigates nearly 4 million acres of land, which grows 15% of the nation's crops."

Dams pose one major threat to the Colorado, says American Rivers. "More than one hundred dams have been built on the Colorado River and its tributaries for flood control, hydropower, and agricultural and municipal water supply," the report says. "Despite the benefits of dam building and irrigation, over-allocation and drought have placed significant stress on reservoirs and water storage."

Climate change poses another threat, says American Rivers. "Climate change is expected to reduce Colorado River's flow by 10 to 30 percent by 2050. Warmer weather, less snow, a reduction in stream runoff, and changed timing of spring runoff are all likely impacts. Currently scheduled water deliveries from the Colorado system are not sustainable in the future if climate change reduces runoff even by as little as 10 percent."

The report recommends that the Obama administration and Congress take a number of steps to provide the Bureau of Reclamation with money and direction for storing water, conserving water and allocating water.

The report is available at:  
<http://www.americanrivers.org/assets/pdfs/mer-2013/2013-report.pdf>.

## **Oyster farmer hones arguments in court battle with NPS**

Attorneys for an oyster farm seeking a new permit in Point Reyes National Seashore sharpened their attack

on the Interior Department April 22 in a plea to a federal circuit court.

The attorneys said that the decision by then Secretary of Interior Ken Salazar to not renew the permit (1) violated a law directing a review of the old permit and (2) violated the National Environmental Policy Act (NEPA).

At bottom the Drakes Bay Oyster Company contended that the Congressional direction in a fiscal year 2009 appropriations law (PL 111-88 of Oct. 30, 2009) told the secretary of Interior to renew the permit.

"Congress intended Section 124 to be an asymmetrical, limited-purpose statute that would benefit DBOC, override any legal impediment to continued oyster farming, and result in an extension of the (special use permit) - the statute was not intended to harm DBOC or to insulate a permit denial from judicial review," said the attorneys for Drakes Bay in a submittal to the Ninth U.S. Circuit Court of Appeals.

However, that provision, written by Sen. Dianne Feinstein (D-Calif.), may not be as clear as the Lunnys' attorneys assert. The language in the law "authorized" the secretary to extend the permit for 10 more years, but did not "direct" him to do so.

The appellant also objected to Salazar's invocation of a 1976 Point Reyes Wilderness Act (PL 94-544) to infer that the lands used by the oyster farm were intended for wilderness. They said the 2009 appropriations law mooted the wilderness law when it said "notwithstanding any other provision of law."

On the environment front the oyster farm argued that Salazar violated NEPA by issuing his decision based on a draft EIS, and before issuing a record of decision.

"Here, Defendants' errors obviated standard procedure: the Secretary did not wait until 30 days after the notice, and the decision was made without a NEPA-required Record of Decision," said the appellants' filing to the appeals

court. "Defendants have not complied with these regulations – period – and the ensuing decision is thus unlawful."

The battle over the oyster permit has become politicized with the conservative group, Cause of Action, and House Natural Resources Committee Chairman Doc Hastings (R-Wash.) working on behalf of the appellant Lunny family.

On the left numerous national and local environmental groups oppose the permit but their opposition was compromised somewhat when famed chef Alice Waters sided with the Lunnys. She buys oysters harvested by the Lunnys.

The Ninth U.S. Circuit Court of Appeals entered the conversation February 25 when it ordered the Park Service to allow the oyster farm to continue to operate until the court considers the lawsuit objecting to the closure.

In the order the Ninth U.S. Circuit Court of Appeals hinted strongly that the Drakes Bay Oyster Company has a good case in its objection to the Interior Department decision to close down its operation. "Appellants' emergency motion for an injunction pending appeal is granted, because there are serious legal questions and the balance of hardships tips sharply in appellants' favor," the court said in its brief two-page injunction.

The court said it would take up the case May 13-17, giving the company a while longer to operate. The Lunnys' April 22 plea responds to the circuit court request for recommendations from the parties on the proper disposition of the case.

Although the court did not say what the 'serious legal questions' in the Interior Department order are, the owner of the oyster farm, Steve Lunny, and Feinstein have questioned assumptions in a Park Service EIS about noise and pollution from the oyster farm. They said the quality of the science was not adequate.

However, U.S. District Court Judge Yvonne Gonzalez Rogers in U.S. District

Court in Oakland had previously upheld the department decision.

## **Oceans policy continues to flow; Hastings asks back-up**

House Natural Resources Committee Chairman Doc Hastings (R-Wash.) continued his two-year campaign last month to obtain background materials that led to an Obama administration National Ocean Policy.

The administration completed the policy April 16 that it says will provide a coordinated policy benefitting coastal communities and coastal businesses.

But Hastings complained the policy constitutes top-down zoning of the ocean and coast and may restrict business development. To that end on April 19 he wrote Council on Environmental Quality Chair Nancy Sutley and asked again for the background materials.

"Over the past two years, the Obama Administration has repeatedly limited public transparency and frustrated attempts to obtain information about the cost, legal authority, activities, and staffing involved with developing and implementing regional ocean zoning plans and other parts of the National Ocean Policy," said Hastings.

Separately, Hastings last year persuaded the House Appropriations Committee to approve a rider that would have prevented issuance of the plan. However the provision was not enacted.

The policy, which carries through on a proposed policy of January 2012, essentially directs federal agencies to do good for the oceans, for instance protect 100,000 acres of wetlands. It does not order any particular agency to take any particular steps. It does establish a National Ocean Council – essentially made up of all federal agencies – to coordinate things.

At a hearing of the House subcommittee on Fisheries, Wildlife and Oceans April 18 Sutley described

a benign-sounding document. "As I have stated before this committee, the National Ocean Policy provides a framework for the 27 federal agencies, departments and offices involved in some form or fashion in the use of our oceans to better work together and avoid conflicts that often delay or derail projects that support the economy and coastal communities," she said.

"At its heart, this policy is a common-sense, good government approach," she continued. "It helps spur economic growth, aid in the national defense, empower States and communities, and save taxpayer dollars by cutting red tape. It accomplishes this through better coordination to avoid conflicts and delays."

Sutley added that regional planning bodies (one of Hastings's main problems) would be voluntary and would be established only when regions of the country requested them.

But Hastings said, "What is certain is that this policy represents a significant step towards the mandatory zoning of our oceans and is a backdoor attempt to control the way inland, coastal and ocean activities are managed. If implemented, it will inflict red tape and economic damage both onshore and offshore across a wide-range of activities including agriculture, fishing, construction, manufacturing, mining, oil and natural gas, and renewable energy."

At a March 22, 2013, hearing on the draft policy competing recreation interests had different ideas. Capt. Robert F. Zales, II, president of the National Association Of Charterboat Operators, said, "The (policy) process has the potential and is likely to create new and expanded regulatory requirements in addition to those we have, creating more regulatory burdens and expanding costs to our businesses."

Zales was countered by Terry Gibson, principle of North Swell Media, LLC, who testified, "Unfortunately what you will hear from many of the more vocal voices on the fringe of the fishing community is fear, confusion

and an unwillingness to engage in a proactive process. . . The policy gives fishermen an equal, if not greater, voice alongside other ocean industries and users."

The White House policy is available at:  
<http://www.whitehouse.gov/oceans>.  
Hastings's letter is available at: <http://naturalresources.house.gov/UploadedFiles/04-19-13HastingsOceanPolicyLetter.pdf>.

## **Jewell gives AGO continued attention at Interior Dept.**

In one of her first public statements as Secretary of Interior Sally Jewell last week committed herself to advancing President Obama's lead recreation initiative called America's Great Outdoors.

"I certainly intend to continue the momentum that was started by Secretary Salazar, and the other cabinet and bureau officials that have worked closely with him, in this effort so that we raise awareness of the importance of connecting people to America's great outdoors (AGO)," she said at an Earth Day event. Jewell replaced Ken Salazar as secretary April 15.

"I think that Secretary Salazar, as charged by President Obama, did a really nice job of engaging the cross bureaus to understand what is America's great outdoors," she said.

To emphasize her support for AGO, Jewell participated April 25 in a celebration of National Park Week at an event with middle school students at Prince William Forest Park in Virginia. AGO and the Obama administration have stressed the link between outdoor activity and good health. "When we spark a fire of passion for the outdoors in our children, we give them a lifelong gift of being able to enjoy nature and live healthier lives," she said.

The Obama administration launched AGO on Feb. 16, 2011, at an Interior Department event that Jewell, then CEO of the big recreation industry

company REI, attended. Among the recommendations of the AGO report was a significant increase in recreation-related exercise for young people.

In its fiscal year 2014 budget request April 10 the Obama administration proposed two major new changes in AGO - expansion of the Land and Water Conservation Fund (LWCF) and, more tangentially, expansion of the role of the Bureau of Reclamation.

For LWCF the budget makes a strong pitch for full, guaranteed funding at \$900 million per year, but not until fiscal 2015 to give Congress time to write a new law.

For fiscal 2014 the administration requested \$356 million for federal land acquisition and \$60 million for state grants for the fund from regular appropriations and a new fund combined. *(See separate article page one.)*

For the Bureau of Reclamation the budget proposes \$120.2 million for river restoration activities related to AGO. We call that tangential to AGO because most of the Bureau of Reclamation projects are already on the books and involve endangered species more than recreation.

All told the fiscal 2013 Interior Department budget includes \$5.3 billion for AGO, which again is a little misleading because the administration puts many old programs under the AGO heading. The \$5.3 billion represents an increase of \$179.8 million above fiscal 2012, the department says, with much of that coming from the proposed increases for LWCF.

## Notes

### **Interior's number two leaving.**

The Interior Department said April 30 that Deputy Secretary of Interior David J. Hayes is following his boss former Secretary of Interior Ken Salazar out the door. Hayes, the number two ranked department official, will leave at the end of June to take a position at Stanford Law School. Hayes has been one of the more prominent deputy secretaries of Interior, frequently testifying

before Congress and serving as point man on tough issues. The department described Hayes as a conservation leader, particularly in promoting the President's America's Great Outdoors initiative. Hayes was confirmed by the Senate in May 2009. Hayes also served as deputy Secretary of Interior in the Clinton administration.

### **Charlotte's Foxx named at DoT.**

President Obama April 29 nominated Charlotte, N.C., Mayor Anthony Foxx (D) as the next Secretary of Interior, replacing former secretary Ray LaHood. Charlotte has a checkered recreation record. On the downside the Alliance for Biking and Walking ranks Charlotte 44th out of 51 cities in the number of people who walk and bike. However, Foxx personally is a biking enthusiast. He has served as host to an annual Bike to Breakfast event in the city and has launched a Bike Charlotte event. If confirmed by the Senate, Foxx would oversee the Federal Highway Administration, which allocates more than \$1 billion per year to park and recreation programs such as federal land roads, transportation enhancements, Safe Routes to School, scenic byways and mass transit in the parks.

### **Jewell promises Everglades help.**

Newly-minted Secretary of Interior Sally Jewell reiterated May 1 the Obama administration's commitment to restore the Everglades ecosystem. In a tour of south Florida she said, "We still have much work to do, from addressing invasive species to developing new water projects, and we will work with the state, Native American Tribes, local governments and all the stakeholders to get the job done." The Interior Department said that the administration has invested \$1.7 billion in Everglades projects. Jewell stopped by the Tamiami Bridge project that her predecessor Ken Salazar had just visited March 19. The Salazar visit marked the completion of a one-mile bridge over the Tamiami Trail, the largest construction project in the history of the National Park Service. Separately, members of the Florida Congressional delegation have introduced legislation (S 414, HR 913) that would authorize almost \$1.4 billion in new Everglades restoration projects.

**Kiernan to leave NPCA.** For 15 years Tom Kiernan has been one of the nation's most prominent advocates of the National Park System, if not the most prominent, as president of the National Parks Conservation Association (NPCA). No more. Kiernan will leave NPCA May 22 to take a position as head of the American Wind Energy Association. Kiernan's departure from NPCA is a bit complicating because the association is a key participant in the campaign to revitalize the National Park System as it approaches its Centennial in 2016. Kiernan has played a key role in that campaign. Meanwhile, NPCA has formed a search committee to find a replacement for a president who increased the association's annual budget from \$17 million to \$32 million and increased staff from 65 to 160.

**House worries about ski water.** A leading House Republican criticized the Forest Service April 25 for establishing a policy that gives the agency a shot at acquiring water rights owned by ski resorts. Under court order the Forest Service is currently taking public comment on a possible new policy. But Rep. Tom McClintock (R-Calif.) criticized the old policy at a hearing on water rights held by the House Subcommittee on Water he chairs. "In 2011, the Forest Service issued a directive that would effectively take these private property rights without compensation, in violation of state law, and at the expense of millions of dollars to ski areas- all the while jeopardizing continued recreational use in the future," he said. As *FPR* reported in the last issue the Forest Service held three public hearings in April to take recommendations on a new policy. U.S. District Court Judge William J. Martinez in U.S. District Court in Colorado on Dec. 19, 2012, threw out the old policy on procedural grounds. He said the Forest Service failed to give notice and take comments before inserting the policy in ski resort permits. The service is now taking comments. At the House hearing Geraldine Link, director of public policy for the National Ski Areas Association, said the 2011 policy could cost the resorts millions of dollars. "In the short term, the taking of these

assets by the government could cause a ski area to go into default on a loan because water rights are assets, and their removal could result in violation of debt/equity ratio loan covenants," she said. "In the long term, they hinder a ski area's ability to obtain access to capital for growth and expansion in the future by lowering the valuation of the ski area's assets." At the same hearing the subcommittee took on an Obama administration plan to establish a new system of blueways (see following.)

**House worries about Blueways.** A leading House Republican criticized the Obama administration April 25 for establishing a National Blueways System. Rep Tom McClintock (R-Calif.) objected to the action at a hearing on water rights held by the House Subcommittee on Water he chairs. "We will hear of an edict establishing a 'National Blueways' system passed not by Congress but rather imposed by a former American Rivers executive turned bureaucrat who is trying to turn a 44 million-acre watershed into a federal playground under the guise of 'coordination,'" he said. The American Rivers executive is former association president Rebecca Wodder, who served as an adviser to former Secretary of Interior Ken Salazar. Salazar announced the establishment of the National Blueways System in June 2012 concurrent with the designation of the first unit - a Connecticut River and Watershed National Blueway in New England. On January 9 the Department of Interior designated a second unit - the White River National Blueway in Arkansas and Missouri. Seven senators and 18 House members wrote Salazar February 14 to request cancellation of the program. They object to a provision of Salazar's Secretarial Order 3321 setting up the National Blueways System that puts a committee of federal officials in charge, without Congressional input. The letter was sent by the Western Caucus en masse. Caucus cochairs Sen. John Barrasso (R-Wyo.), Rep. Stevan Pearce (R-Ariz.) and Rep. Cynthia Lummis (R-Wyo.) led the effort.

**Calif. Desert EIS input asked.**  
The Bureau of Land Management (BLM)

May 2 described a new approach to preparation of supplementary environmental documentation on route designations in the California Desert. BLM is preparing an EIS at the direction of the U.S. District Court for the Northern District of California. The EIS will lead to the amendment of a motorized vehicle plan for the West Mojave portion of the desert. In the May 2 notice BLM said it was clarifying a previous notice on the approach it would take to preparing the EIS and plan amendments.

**House passes NPS regs bill.** The House approved by a 409-to-0 vote April 23 legislation (HR 1068) that would reorganize Park Service regulations in the United States Code and put them in one place. It would not affect the substance of the rules. The lead sponsor of the legislation, House Judiciary Committee Chairman Bob Goodlatte (R-Va.), said on the House floor, "These laws (applying to the National Park Service) have been codified in scattered sections of title 16 of the United States Code. In addition, as laws relating to the National Park System were amended and new laws enacted pertaining to these provisions, the code classifications have become cumbersome to use." He added, "This measure collects provisions relating to the establishment and administration of the National Park System, outdoor recreation programs that the Secretary of the Interior administers, and the responsibility of the Secretary to preserve historic sites, buildings, objects, and antiquities – all of which are currently found in various places throughout title 16 of the United States Code – and restates these provisions as a new positive law title of the code."

**NPCA asks fracking protection.** The National Parks Conservation Association (NPCA) published a new report April 25 recommending the Bureau of Land Management (BLM) give national parks special protection from hydraulic fracturing, or fracking. Fracking is a technique for breaking up shale to produce oil and gas locked inside. NPCA worries that fracking on BLM-managed lands will harm water quantity and quality in national parks. Among

other things the report recommends that NPS be designated a cooperating agency with BLM in preparing environmental documents. NPCA studied fracking near five NPS units: (1) Theodore Roosevelt National Park, (2) Glacier National Park, (3) Grand Teton National Park, (4) Upper Delaware Scenic and Recreational River and Delaware Water Gap National Recreation Area, and (5) Big South Fork National River and Recreation Area, and Obed Wild and Scenic River. The report is available at: <http://www.npca.org/about-us/center-for-park-research/fracking/>.

**PEER: Parks slow on bottles.** The environmental group Public Employees for Environmental Responsibility (PEER) complained last week that the Park Service is moving too slowly to ban water bottles in parks. PEER said only a "handful" of units have eliminated bottles since NPS Director Jon Jarvis on Dec. 14, 2011, effectively delegated responsibility to ban bottles to parks subject to the approval of regional directors. Since then only three sets of park units have approved at least a partial ban: Petrified Forest National Park and Saguaro National Park in Arizona; Arches National Park, Canyonlands National Park and Timpanogos Cave National Monument in Utah; and Mount Rushmore National Memorial in South Dakota. "For national parks setting a sustainable solid waste standard, what was supposed to be a rising tide has slowed to a trickle," said PEER Executive Director Jeff Ruch. PEER said three park units had banned plastic water bottle sales (Utah's Zion National Park, Hawaii Volcanoes National Park and Grand Canyon) National Park, while another eight units never allowed sales.

**IBLA backs 'Jeep Jamboree'.** The Interior Board of Land Appeals (IBLA) upheld in early April a Bureau of Land Management (BLM) decision authorizing a two-day "Jeep Jamboree" in southeastern Utah for two days in each of the next five years. The board began by holding that the appellant Southern Utah Wilderness Alliance (SUWA) did not have standing to appeal because it did not demonstrate that either the alliance or any of its members would be negatively

affected by the jamboree. While he was at it IBLA Administrative Judge James F. Roberts asserted that SUWA's complaints about an environmental assessment (EA) backing the race held no water. He rejected arguments that BLM should have considered alternatives in the EA besides the selected route, did not adequately demonstrate that the race would not harm water quality and did not assess mitigation measures. The special use permit authorizes Jeep Jamboree USA to send out up to 25 vehicle and 75 people each day of the two-day meet.

## Boxscore of Legislation

### Appropriations Fiscal 2013 (first half)

Congressional leaders agreed to base funding for all appropriations bills during the first half of fiscal 2013 on an August 2011 budget agreement. President Obama signed the six-month bill into law September 28 as PL 112-75.

### Appropriations Fiscal 2013 (second half)

HR 933 (Rogers). President Obama signed into law March 26 as PL 113-6. Law approves appropriations through end of fiscal year at about fiscal 2012 levels, minus an \$85 billion sequestration.

### Appropriations Fiscal 2014

Obama submitted request April 10. Would increase most conservation spending and maintain federal agency spending. Asks guaranteed LWCF.

### Congressional Budget Fiscal 2014

H Con Res 25 (Ryan), S Con Res 8 (Murray). House approved March 21. Senate approved March 23. Senate anticipates \$6 billion more for natural resources than House.

### Land and Water Conservation Fund

S 338 (Baucus). Baucus introduced February 14. Would guarantee \$900 million per year to program in perpetuity.

### National monuments

HR 250 (Chaffetz), HR 382 (Foxx), HR 432 (Amodei), HR 1434 (Daines), HR 1439 (Labrador), HR 151 (Pearce), HR 757 (Stewart), HR 1459 (Bishop), HR 1495 (Gosar), S 104 (Vitter), S 472 (Heller). House hearing April 16. Would require Congressional approval or state approval

of national monuments designated under the Antiquities Act.

### National heritage areas

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

### Montana wilderness/recreation areas

S 37 (Tester). Tester introduced January 23. Would designate 666,260 acres of wilderness, six recreation areas totaling 288,780 acres and special management areas totaling 80,720 acres.

### Farm bill

S 10 (Reid). Reid introduced January 22. Would establish new farm policy through 2018, complete with conservation programs.

### Hunting federal lands

S 170 (Murkowski). Murkowski introduced January 29. Would declare BLM and FS lands open to hunting and fishing unless specifically closed.

### Everglades projects

HR 913 (Hastings), S 414 (Nelson). Both introduced February 28. Would authorize four major restoration projects at \$1.4 billion (see following).

### WRDA (Everglades)

S 601 (Boxer). Senate committee approved March 20. Would authorize new projects (see previous), perhaps including Everglades restoration.

### Hatteras ORVs

HR 819 (Jones). Jones introduced February 16. Would rescind a Park Service policy limiting off-road-vehicles on the seashore.

### National park in Delaware

HR 703 (Carney), S 347 (Carper). President designated national monument February 25. Provides a first national park in the first state to join the union.

### Manhattan Project

HR 1208 (Hastings), S 507 (Cantwell). House committee approved April 24. Senate subcommittee hearing April 23. Would establish national park unit to acknowledge development of the Atom Bomb in New Mexico, Tennessee and Washington.