

Federal Parks & Recreation

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Climate change bill begins to move, but future is cloudy

The House Energy and Commerce Committee was at press time attempting to complete climate change legislation (HR 2454) that would allocate a substantial amount of pollution fees to natural resource programs.

While the bill before the committee would allocate significantly less money to the programs than the \$7 billion per year conservationists have recommended, it would still provide a significant boost.

Committee Chairman Henry Waxman (D-Calif.) was determined to complete the bill this week before Congress left for a Memorial Day holiday today (May 22), although the committee mark-up was proceeding at a glacial pace. What happens to the controversial bill after that is problematic at best.

The bill would require producers of carbon pollutants - coal plants, other utilities, chemical plants and oil refineries - to pay fees called allowances. One percent of the allowances would be allocated to wildlife and natural resources protection for fiscal years 2012 through 2025.

Exactly how much that would entail is unclear. The Obama administration has estimated allowances of \$646 billion over 10 years. But the committee offered numerous exemptions to existing polluters, such as automobile manufacturers, to gain passage of the bill. By one account the committee bill would reduce the Obama administration estimate by 70 percent.

With no reductions the Obama administration estimate works out to about \$65 billion per year. If the bill exempted 70 percent of polluters that would leave \$20 billion, and one percent

of that would leave \$200 million. That contrasts with an estimate last year by the National Wildlife Federation that an early Senate version of a climate bill would produce \$7 billion per year for a natural resources fund. Again, the House numbers are conjectural.

Different Democratic leaders have different takes on what will happen next to the legislation. One thing is sure: Other House committees, such as the Ways and Means Committee and the Natural Resources Committee, will prepare separate contributions to the lead bill shortly. Then House leaders will wrap all the contributions into a consensus bill, the plan goes.

Ten senior Democrats introduced legislation (HR 2192) April 30 as a stand-alone bill that the House Natural Resources Committee is expected to use to describe a Natural Resources Climate Adaptation Fund. House subcommittee on National Parks, Forests and Public Lands chairman Raúl M. Grijalva (D-Ariz.) is the lead sponsor.

Although some Democrats are counting on House passage by July 4, House Speaker Nancy Pelosi (D-Calif.) has not yet committed to that goal.

Meanwhile, Senate committees have been assessing their contributions to a counterpart bill all year, led by Senate Environment and Public Works Committee. Sen. Barbara Boxer (D-Calif.) chairs the panel.

The Senate will probably be an even tougher sell than the House because of the 60 votes needed to take up a bill. For instance, on June 6, 2008, the Senate refused to take up a predecessor climate bill in a 48-to-36 vote, well short of the 60 votes needed.

Of the money available for a Natural Resources Climate Adaptation Fund the House Energy Committee bill says the Land and Water Conservation Fund should receive 12 percent, states should receive 38.5 percent for climate adaptation activities, the Interior Department should receive 25 percent for a raft of programs run by land management agencies, the state wildlife conservation

grant program should receive one percent, the Forest Service five percent, EPA five percent, the Corps of Engineers 7.5 percent and the Department of Commerce 7 percent.

Committee Republicans led by ranking minority member Joe Barton (Texas) have produced an alternative to the Democratic bill that would not impose fees on carbon producers. Instead, it would set performance standards for new plants - but not old plants - that would reward efficiency and new technology.

The Republican alternative may be offered in part or in whole on the House floor. It would not establish a conservation fund. It would encourage oil and gas drilling on the Outer Continental Shelf and in the coastal plain of the Arctic National Wildlife Refuge. Although some senators have called for using royalties from such development for conservation purposes, the Republicans would use the money for energy renewal and alternative energy programs.

Salazar pitches House on energy money for state LWCF

Secretary of Interior Ken Salazar took his campaign to beef up the Land and Water Conservation Fund (LWCF) with offshore oil royalties to the House last week.

In an appearance before the money people who pay the freight, i.e. the House subcommittee on Interior appropriations, he said, "Offshore oil and gas royalties now contribute 27 percent to the states and the rest goes to the (U.S.) Treasury. I want us to explore the possibility of taking some of those revenues and directing them into a 21st Century Land and Water Conservation Fund."

At least one subcommittee member, Rep. Ben Chandler (D-Ky.), seemed to be on board. "You said President Obama had a vision of fully funding it and this would be one way we could get there, it seems to me," he told Salazar.

Salazar said he has also met privately with subcommittee chairman Norman

Dicks (D-Wash.) on the issue and told him that the whole idea behind LWCF is to take revenues from development of the earth to fund the program.

Dicks has championed LWCF over his decade as subcommittee chairman. In a January 31, 2007, floor speech he complained that conservation spending had dropped by 1.2 percent during the previous five years.

"You know, we may have to work to get new legislation enacted in order to increase the amount of money," he said. "The land and water conservation money, the amount of money that the administration proposed, has never shown up in the budget. So it is time for us to find some new solutions."

An aide to Dicks said at the time the Congressman had in mind a possible revival of the old CARA-lite program that Congress enacted as part of a fiscal year 2001 appropriations bill. It provided some \$1.5 billion per year for land acquisition, wildlife conservation grants, forest legacy and other programs. But Congress stopped funding it after two years.

From its beginning the Obama administration has promised to fully fund LWCF, some day. It launched that commitment with a May 7 request for a \$420 million appropriation for LWCF in fiscal year 2010, but with only \$30 million for the state side of LWCF.

Some LWCF advocates don't say so publicly but they are less than enthused about the Obama administration's proposal because it would spend barely half of the \$420 million for LWCF on LWCF, just \$229 million. The other \$191 million would be used for Endangered Species Act grants and Forest Service Forest Legacy grants.

The Bush administration sought virtually no money for LWCF the last few years, asking for a survival appropriation of \$42.5 million in fiscal 2009. Congress provided \$160 million in fiscal 2009 for LWCF in total.

By our count Salazar has promoted

a national need to use offshore oil and gas revenues to beef up LWCF at least a half-dozen times. That includes a March 29 pitch to the American Petroleum Institute.

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

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

According to the Congressional Research Service, almost \$31 billion has been deposited into LWCF over the last 43 years, yet less than half that, or \$15 billion, has been appropriated. And under the Bush administration much of the appropriated money was diverted to non-LWCF programs, such as protection of endangered species habitat.

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

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

park and rec projects. Finally, a remaining 50 percent was allocated to a GOCO trust fund. Salazar said he drafted the constitutional amendment that created the program.

In its fiscal 2010 budget request the Obama administration asked for an increase of \$11 million for the state side of LWCF, or \$30 million compared to a fiscal 2009 appropriation of \$19 million.

For the federal side it asked for an increase of \$38.6 million, or \$199 million compared to a fiscal 2009 appropriation of \$160 million.

Congress attaches guns-in-parks rider to credit bill

The House May 20 gave final Congressional approval to legislation that would force the Interior Department to authorize concealed weapons in national parks and national wildlife refuges.

That would jibe with a Bush administration rule that is temporarily held up by a federal court injunction.

The rider is attached to a bill (HR 627) that would protect credit card holders. The Senate, under the lead of Sen. Tom Coburn (R-Okla.), initiated the amendment May 12 and approved it by a 67-to-29 vote.

The House followed suit May 20 when it accepted the Senate version of HR 627. The House held an unusual vote on the guns-in-parks amendment, approving it overwhelmingly by a 279-to-147 vote, with 105 Democrats joining 174 Republicans in favor.

President Obama is expected to sign the credit card bill into law shortly with the parks weapons provision, even though his administration has not taken a definitive position on the issue.

A federal judge blocked the Bush rule March 19 because she said it lacked an environmental analysis. The Obama administration has been writing an EIS to comply with the court order.

The Coburn amendment would bypass the EIS requirement. It would direct the Park Service and the Fish and Wildlife Service (FWS) to remove all regulations that prohibit guns in parks and refuges where states allows them in their parks and refuges.

An original House version of the credit card bill did not include the guns-in-parks provision. The House approved that version of HR 627 on April 27 by a 357-to-70 vote.

House Democratic leaders provided the vote on the Coburn amendment May 20 because Second Amendment rights are politically popular on both sides of the aisle. Democratic leaders had in the past prevented passage of other legislation with similar firearms provisions.

The lead sponsor of a stand-alone weapons-in-the-parks bill, Rep. Doc Hastings (R-Wash.), teased the Democrats this week. "After months of going to extreme lengths to avoid this issue, it appears Democrat leaders have finally recognized the need to hold an open vote and restore Americans' Second Amendment rights," said Hastings. "Passing this legislation will not only vindicate another Bush Administration rule but also codify common sense firearm policies."

Rep. Norman Dicks (D-Wash.), chairman of the House subcommittee on Interior appropriations, countered, "It will make our parks less safe. According to the FBI our national parks are currently among the safest places in the country and what they want to do here is change that and I think it is a big mistake. There were only 1.65 violent crimes per 100,000 visitors in 200. Compare to nearly 470 violent crimes per 100,000 for a nationwide average."

But Hastings, who is the ranking minority member of the House subcommittee on Natural Resources, said, "As I've said repeatedly, Congress now has the responsibility of correcting the Administration's refusal to restore Americans' Second Amendment rights on public lands. Fortunately, a bipartisan group of Senators, including Majority Leader Reid, took a step in the

right direction by voting for the Coburn amendment." Senate Majority Leader Harry Reid (D-Nev.) did vote for the amendment.

But there is also strong opposition, led by National Parks Conservation Association, the Coalition of National Park Service Retirees and the Humane Society of the United States. They asked President Obama May 13 to intercede.

"We ask that you support safety in America's national parks by requesting the removal of the Coburn amendment from the Credit Cardholders' Bill of Rights Act of 2009 (HR 627)," they wrote Obama. "Like the Bush regulation, Senator Coburn's amendment would put national park resources and visitors at considerable risk."

On Dec. 10, 2008, the Bush administration issued the rule now in dispute that allows visitors to national parks to carry guns, if state laws allow concealed weapons in state parks and refuges. According to the Coalition of National Park Service Retirees, the rule would authorize concealed guns in 388 of 391 park sites. The Bush rule replaced 1981 and 1983 rules that prohibited concealed weapons on refuges and parks, respectively.

On March 19 U.S. District Court Judge Colleen Kollar-Kotelly in the District of Columbia issued an injunction blocking implementation of the Bush rule until the government wrote an environmental impact review. On April 17 the Obama administration said it would write an EIS, giving it an opportunity to reverse the Bush rule.

For the most part amendment sponsor Coburn and his supporters argued that the regulations barring concealed weapons violate the Second Amendment to the Constitution. That amendment authorizes a right to bear arms, incident to the creation of a militia, depending on your point-of-view.

And Coburn and company said the Forest Service and the Bureau of Land Management have no problems with allow-

ing guns on the lands they manage. "In fact, on U.S. Forest Service land, the second amendment reigns as a right guaranteed under the Constitution," he said. "Under Bureau of Land Management land, the second amendment reigns. They do not have any significant increase in poaching versus the areas where we do not have guns."

Further, said Sen. Jim Webb (Va.), one of 27 Senate Democrats who supported the Coburn amendment, states that don't want guns in parks and refuges have the right to forbid them. "If you live in a different State that doesn't want to allow people to possess firearms to the extent that the second amendment would allow that sort of State legislation, then you can't bring a weapon or a firearm inside one of those jurisdictions," he said.

Hayes confirmed after initial set-back; Stanton at DoI

After an initial defeat last week the Senate Democratic Majority May 20 finally secured Senate confirmation of David Hayes as the number two official in the Interior Department.

The approval came after Sens. Bob Bennett (R-Utah) and Lisa Murkowski (R-Alaska) removed "holds" against Hayes. They removed their holds after Secretary of Interior Ken Salazar told Bennett that the Bureau of Land Management (BLM) did consult with the Park Service before offering 77 controversial tracts for oil and gas leasing in southern Utah. The sale was held Dec. 19, 2008.

Bennett placed his hold to protest a February 4 decision by Salazar to withhold issuance of the 77 tracts until the Interior Department reviewed them further. Salazar was concerned that BLM had not consulted adequately with the Park Service.

But in a May 20 letter to Bennett Salazar said the Park Service misled him by saying BLM had not consulted with the Park Service before offering tracts for lease near national parks. Said Salazar, "Based on my preliminary re-

view, I have since determined that, in fact, there was consultation between the BLM and the NPS, and as a result of that consultation, some parcels close to the national parks and monument were removed from the list of parcels for the December 19 oil and gas lease sale."

In the letter Salazar said Hayes will now head up a team to review the 77 parcels. He said the team will visit Utah "within 10 days" and talk to both BLM and NPS officials. Salazar said the Hayes team will report back by June 5.

Said Bennett, "The Senate has sent a clear message that we will hold the administration to its commitment of pursuing a balanced energy approach, which must include developing our energy resources here at home. I have spoken with the secretary, and he has assured me that the review will be more than a 'check the box' exercise."

Said Murkowski, ranking Republican on the Senate Energy Committee, "I'm now comfortable with the commitment we've gotten from Interior Secretary Salazar and am pleased to be able to release my hold on David Hayes.

In a separate development, on May 18 the Senate confirmed the nomination of Rhea S. Suh as assistant secretary of Interior for Policy, Management and Budget. She will serve as the top department official overseeing financial, administrative and policy.

The week before approving Hayes's nomination the Senate on May 13 had voted to leave intact the holds Bennett and Murkowski posted against Hayes. That vote was 57-to-39 with 60 votes needed to move the nomination to the Senate floor.

Salazar initially called the May 13 Senate vote a "political song and dance" at a May 13 hearing on the fiscal year 2010 Interior Department budget by the House subcommittee on Interior. "It shows the difficulty we have," he said. "I think the Utah decision we made was absolutely the correct decision. I stand by it and have no regrets. You see the political song and dance that

goes on when you make these kinds of decisions."

While the Obama administration has not yet announced a nomination for NPS director, the Interior Department did name former NPS director Robert Stanton as deputy assistant secretary of Interior for Fish and Wildlife and Parks. He will help his boss, assistant secretary Thomas Strickland, set policy for NPS and the Fish and Wildlife Service. The deputy position does not require Senate confirmation.

In that Strickland is also serving as Salazar's chief of staff the deputy secretary overseeing NPS and FWS should have a lot of leeway to make policy.

Stanton served as NPS director from 1997 to 2001 in the Clinton administration. Since then he has worked as a professor at Texas A&M University, Howard University and Yale University. Prior to that he served as regional director of the NPS National Capital Region from 1988 to 1997.

Bennett also has placed a hold on the nomination of Hilary Chandler Tompkins as solicitor, the number three spot in the department. And still to be confirmed are other department officials who make nice targets for Bennett and Murkowski, such as,

* Wilma Lewis, a former Interior Department Inspector General, as assistant secretary of Interior for Land and Minerals Management.

* A Park Service director when nominated. NPS Pacific Regional Director Jon Jarvis is the front-runner with former Colorado Gov. Roy Romer (D) coming up on the outside.

* A BLM director when nominated. Senate Majority Leader Harry Reid (D-Nev.) has been telling Nevada newspapers that former BLM Nevada State Office Director Bob Abbey has the inside line for the job.

Bennett placed the holds on Hayes and Tompkins because of his objections to Obama administration positions on oil

and gas development in roadless areas managed by BLM, particularly in southern Utah near Arches National Park, Dinosaur National Monument and Canyonlands National Park.

Bennett believes the Interior Department has no authority to conduct further administrative reviews to identify new wilderness study areas. However, in written responses to Bennett dated April 28 Tompkins held out the possibility of just such additional reviews under both the Federal Land Policy and Management Act (Section 202 - planning) and the Wilderness Act.

Congress nears passage of \$250M in emergency fire aid

Congress was closing in at press time on final passage of an extra \$250 million for emergency fire fighting for this fiscal year as part of an emergency supplemental appropriations bill (HR 2346.)

The House May 14 approved the money and the Senate was close to acting on a counterpart bill to HR 2346. The Senate Appropriations Committee included the \$250 million in a version of a bill it approved May 14.

HR 2346 is designed to provide additional fiscal year 2009 money for Middle Eastern and Asian wars and to fight a pandemic flu. At the request of the Obama administration the House threw in the extra fire money.

Meanwhile, outdoor interest groups this past fortnight were taking second looks at the Obama administration's fiscal 2010 budget request of May 7 and finding a lot to like, and a little not to like.

On the plus side, the National Parks Conservation Association (NPCA), despite no mention of a Park Service Centennial Challenge program, praised the Obama budget. NPCA President Tom Kiernan said, "The president's budget proposal includes an increase of \$135 million to operate and maintain our national parks and a total of \$68 mil-

lion to acquire land from willing sellers and prevent inappropriate development inside national parks."

Kiernan didn't mention the fact that the Obama administration did not commit specifically to continue the \$2 billion Centennial Challenge public-private program proposed by the Bush administration. He said the budget "also provides \$25 million for the parks' public-private partnership program, which is awaiting authorization by Congress." No such bill has been introduced in this Congress.

On the minus side hunters were disappointed by an Obama administration proposal to discontinue one-half of an "Open Fields" program that would pay private landowners to open their lands to hunters under state programs. The administration would retain the half of Open Fields that provides a \$50 million allocation to help states run programs over five years. That was included in last year's farm bill (PL 110-234 of May 23, 2008.)

But the administration proposed deletion of the other half of the program - a \$3 per acre payment to landowners to enroll conservation reserve program (CRP) lands in state open fields programs. Said the administration, "(T)he CRP incentive would have paid farmers whose CRP land is already in the State-run programs, which would not have assisted in achieving the goal of creating more access."

"However," the Wildland Management Institute objected, "a number of states do not have adequate resources to implement an effective public hunting-access program on private lands. Many of these states worked hard to get the Open Fields language included in the Farm Bill and were counting on the program to boost recreational access opportunities."

Of the \$250 million in the fiscal 2009 war supplemental for emergency fires \$200 million would go to the Forest Service and \$50 million to the Interior Department. If need be, the Forest Service could transfer up to \$50 million to the Interior Department.

The fiscal 2010 Obama administration budget proposes a separate, emergency wildfire contingency fund of \$282 million for the Forest Service.

For the regular Forest Service wildfire management program the budget proposes an \$106 million increase, from \$2.132 billion in fiscal 2009 to \$2.238 billion in fiscal 2010. All told the Forest Service would receive \$388 million more for wildfire programs in fiscal 2010 than in fiscal 2009.

The fiscal 2010 budget would also increase Interior Department fire fighting allocations by \$115 million, with the biggest increase a \$75 million emergency contingency fund. For regular wildland fire management expenses the budget would increase the Interior Department allocation by \$40 million, from \$859.5 million in fiscal 2009 to \$899.8 million in fiscal 2010.

Here is a recap of the Obama administration's fiscal 2010 request:

* STATE LWCF: an increase of \$11 million, or \$30 million compared to a fiscal 2009 appropriation of \$19 million;

* STATE WILDLIFE GRANTS: an increase of \$40 million, or \$115 million compared to a fiscal 2009 appropriation of \$75 million;

* FEDERAL LWCF: an increase of \$38.6 million, or \$199 million compared to a fiscal 2009 appropriation of \$160 million;

* URBAN PARKS AND RECREATION RECOVERY: no money, the same as fiscal 2009;

* NPS OPERATIONS: an increase of \$134 million, or \$2.266 billion compared to a fiscal 2009 appropriation of \$2.132 billion;

* NPS CONSTRUCTION: a DECREASE of \$26.5 million, or \$206 million compared to a fiscal 2009 appropriation of \$232.5 million;

* NPS RECREATION AND PRESERVATION: a DECREASE of \$6 million, or \$53.9 million compared to a fiscal 2009 appropriation of \$59.7 million;

* PROTECTION OF TREASURED LANDSCAPES: A new program with indirect assistance from an \$100 million increase

in NPS operations and a \$25 million matching grant program;

* FOREST LEGACY: an increase of \$41.6 million, or \$91.1 million compared to a fiscal 2009 appropriation of \$49.4 million;

* FOREST SERVICE RECREATION: an increase of \$2.5 million, or \$280.1 million compared to a fiscal 2009 appropriation of \$277.6 million;

* FOREST SERVICE TRAILS: an increase of \$1.1 million, or \$82.1 million compared to a fiscal 2009 appropriation of \$81 million;

* HISTORIC PRESERVATION STATE GRANTS: an increase of \$4 million, or \$46.5 million compared to a fiscal 2009 appropriation of \$42.5 million;

* SAVE AMERICA'S TREASURES: unchanged, \$20 million in fiscal 2009 and a fiscal 2010 million request of \$20 million;

* BLM RECREATION MANAGEMENT: an increase of \$4 million, or \$67.7 million compared to a fiscal 2009 appropriation of \$63.7 million; and

* FWS REFUGE MANAGEMENT: an increase of \$20.4 million, or \$483.3 million compared to a fiscal 2009 appropriation of \$462.9 million.

Statue of Liberty crown will open for next two years

The Obama administration has committed itself to an expensive and, possibly, risky goal of opening the crown of the Statue of Liberty to the public.

For the next two years, beginning on the Fourth of July, the crown will be open to 30 escorted visitors per hour. When the two years are up, the Park Service will shut off access for the crown for another two years for a major reconstruction of the interior of the statue.

The Bush administration closed the crown and access to it for safety reasons after the Sept. 11, 2001, terrorist attacks. A narrow, 168-step double-helix spiral staircase provides the only access to the crown.

The reconstruction will cost more than \$30 million, a Park Service spokes-

man at the Statue of Liberty told us. The extra cost of opening the crown for the next two years is not known yet.

The man responsible for the money, Rep. Norman Dicks (D-Wash.), sounded eager to take on the task May 13 at a hearing before the House subcommittee on Interior appropriations. After an extended briefing by Secretary of Interior Ken Salazar himself, Dicks said, "We look forward to a budget request in 2011."

Salazar acknowledged the risk. "I'm depending here on the recommendations of the National Park Service as well as experts who were hired to provide us with a review," he told Dicks. "Nothing in life is risk free but we have made extraordinary efforts and taken comprehensive efforts and I'm confident we will be able to minimize the risk to visitors."

Under the Salazar plan, for the next two years 10 escorted visitors each hour will be allowed on the way up to the crown, 10 visitors will be allowed in the crown and 10 will make their way down. "If you calculate that over the entire year and the hours that the statue will be open that equates to 50,000 people who will have access to the crown of the Statue of Liberty," said Salazar.

After the initial two years, "It will take about two (more) years to go through the construction stage of that and so access will be shut down for that two-year period while renovations take place," Salazar told Dicks. "At the end of that period we will not only have opened up the crown of Statue of Liberty but also we will have made it more safe for people."

Rep. Anthony Weiner (D-N.Y.), who savaged the Bush administration for the past six years for not opening the crown, wrote President Obama May 8 and asked him to be the first visitor when it reopens July 4.

"Reopening the crown of Lady Liberty on the 4th of July will restore a quintessential New York and American

experience and is a momentous event which embodies America's renewed commitment to diplomacy with the world. I commend you and Secretary Salazar for your courage and creativity in solving this problem with an even hand," wrote Weiner. The Congressman is contemplating a run at Mayor of New York.

Oberstar takes tentative first step toward roads bill

House Transportation Committee Chairman James Oberstar (D-Minn.) has reportedly proposed a major shake-up of surface transportation law in a two-page outline of a prospective multi-year bill.

However, the hand-written outline, reportedly shared only with key legislators, provides little detail on how such a program would affect park and rec programs.

One report says the outline makes room for a recreational trails program, but a close aide to Oberstar, Jim Berard, told us, "I don't have details on that." So it is not clear if Oberstar is talking about trails incident to a current recreational trails program, trails constructed pursuant to a transportation enhancements program, trails constructed pursuant to earmarks, or all of the above.

A major thrust of the Oberstar outline is to consolidate the 108 existing surface transportation programs into four subheads: critical asset preservation, highway safety improvement, surface transportation program, and congestion mitigation and air quality improvement.

Presumably, most outdoor programs would fall into the surface transportation program, the existing source of transportation enhancements money. Critical assets would include such things as major highways and bridges.

Oberstar indirectly addressed the crucial funding issue by listing more than eight possible revenue sources, including several bonds, infrastructure

banks, tolls, congestion pricing and federal loans. Under existing law gasoline taxes pay the freight.

The House Transportation Committee under Oberstar's lead is expected to begin writing a new five-year surface transportation law in the next couple of months, with the Senate following later. Normally, the Senate Environment and Public Works Committee under chairman Barbara Boxer (D-Calif.) would take the Senate lead, but Boxer is self-admittedly consumed with writing a climate change law.

On May 12 Senate Commerce Committee Chairman John D. Rockefeller (D-W.Va.) stepped into the breach and outlined his recommendations for goals for legislation. Rockefeller's committee only has a small piece of the game - highway safety and mass transit.

The Rockefeller bill (S 1036) doesn't address the guts of legislation, but the senator has long been a major champion of a scenic byways program and all bicycling programs.

The existing surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), is scheduled to expire September 30. The betting is that Congress will not complete a new bill by then and may be forced to extend SAFETEA-LU for a year or two, perhaps with a little more money.

The great obstacle is money: The new law is expected to cost between \$400 billion and \$500 billion and the gasoline tax as presently constituted would produce only half of that.

For the moment Oberstar is not expected to address the money issue, other than to identify possible sources of it. "Oberstar's philosophy is to create the right bill and not worry about the costs now," said one insider. "Then he would go back and reexamine gas taxes, vehicle miles traveled and other possible sources."

Said Berard, Oberstar's aide,

"Revenue will be the last piece of the bill to be decided. Also, it is the jurisdiction of the (House) Ways and Means Committee.) I do not expect that issue to be determined before the bill goes to the floor of the House."

The House Transportation Committee may draft a bill as early as the end of June. It will be watched closely to see how a new concept of "livability" in transportation plays out. President Obama and Oberstar are both big fans of the concept, which would use transportation to enhance communities, i.e. more access for bicyclists and pedestrians through better-planned towns and better-planned transportation.

The bill will also be closely watched for the earmarks included in it. Scorched by critics of the billions of dollars of earmarks in SAFETEA-LU, Congress this time is expected to make them a little more transparent by identifying sponsors.

For instance Rep. Norman Dicks (D-Wash.) recently made public his earmark requests to the House Transportation Committee that include several with pedestrian and bicycle benefits. As an example one small \$40,000 project would install "signed bike lanes approaching the Port Townsend Ferry Terminal on State Route 20 and designates bicycle areas in the loading zone in order to improve safety for bicyclists and reduce potential conflicts with motorists."

A second surface transportation bill (S 575, HR 1329) was introduced last month by two senators and five House members. S 575 and HR 1329 echo Obama's call for livability. The bills would do that by allocating ten percent of revenues from a climate change bill to cleaner transportation, including such things as encouraging bike and pedestrian use.

One of the three major allocations in the livability bills is for "sidewalks, crosswalks, bicycle paths, greenways, pedestrian signals, pavement marking, traffic calming techniques, modification of public sidewalks (including projects to achieve compliance

with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and other strategies to encourage pedestrian and bike travel." The other two allocations are transit and intercity rail.

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

Grand Canyon uranium war warms up with new exploration

Environmentalists May 8 stepped up their litigation against uranium mining on 1 million acres of public lands adjacent to Grand Canyon National Park.

They amended a standing lawsuit that already demands the Interior Department obey a House committee order to withdraw the lands from mining to also protest government acceptance of exploration activities there.

Specifically, the lawsuit targets the April 23 and April 27 clearance by the Arizona Strip Office of the Bureau of Land Management (BLM) of exploration activities on five projects north of Grand Canyon. The environmentalists are particularly upset because the go-aheads came under the Obama administration.

Asked if environmentalists anticipated a different policy from the Obama administration, Richard Mayol of the Grand Canyon Trust said, "We certainly hope so. We are aware that a lot of jobs have not been filled and Bush administration carry-overs are filling slots. We hope new Obama administration appointees take office soon and we can get a different result."

In dispute is an emergency withdrawal provision, Section 204(e) of the Federal Land Policy and Management Act of 1976 (FLPMA.) It purports to authorize either the House Natural Resources Committee or the Senate Energy Committee to authorize emergency withdrawals for up to three years.

On June 25, 2008, the House Natural Resources Committee, acting pursuant to Section 204(e), directed the Interior Department to withdraw from hard rock mining the 1 million acres near Grand Canyon. Reps. Raúl M. Grijalva (D-Ariz.) and Nick Joe Rahall (D-W.Va.) are the powers behind the withdrawal order. On Dec. 5, 2008, the Bush administration said the order was illegal and could not be implemented.

At that point the Grand Canyon Trust, the Center for Biological Diversity and other environmental groups amended an ongoing lawsuit to object to the Bush administration decision. That is the lawsuit the environmentalists amended again May 8.

Laura Skaer, executive director of the Northwest Mining Association, says the main issue in the litigation is the legality of the House committee order to Interior to withdraw the million acres. "Unfortunately, uranium exploration and mining on the Arizona Strip has become more about politics than science and facts," she said. "Chairman Rahall, Rep. Grijalva, and NPS are putting pressure on the Secretary's office to withdraw the area even though there is no factual basis to support a withdrawal."

Grijalva on January 22 introduced legislation to permanently withdraw the 1 million acres. It would have the Interior Department withdraw 1,068,908 acres near Grand Canyon from (1) all entry under general public land laws, (2) from hard rock mining and (3) from energy leasing. The law would protect valid existing rights.

Both the mining industry and the House Natural Resources Committee majority base their competing arguments about the legality of Section 204(e) of FLPMA on a Supreme Court decision, *INS v. Chadha*, 51 U.S.L.W. 4907 (June 23, 1983.) In it the court cast doubt whether one House of Congress can direct a federal agency to act without the other house agreeing, i.e. a unicameral decision instead of a bicameral decision. The Republicans say the Supreme Court direction is absolute.

But a House Natural Resources Committee analysis last year said that case law demonstrates that the courts would uphold the withdrawal authority if Congress acted as a landowner. The analysis did warn that a withdrawal as an "exercise of power" by Congress would probably violate Chadha.

Senate panel doesn't address wetlands permit bill, yet

Despite rumors to the contrary, the Senate Environment and Public Works (EPW) Committee this week did not take up a contentious bill (S 787) to require wetlands permits for most water bodies.

At least one opposition group, the National Water & Conservation Alliance, had alerted its followers that the EPW panel intended to mark up the bill May 20. But the committee, chaired by Sen. Barbara Boxer (D-Calif.), did not get around to it. In fact no mark-up session has been posted by the committee.

That will put off consideration of S 787 until June because Congress will be on vacation next week for the Memorial Day holiday.

Despite the delay, if there was a delay, the prospects for the bill this year are bright. Last year the opposition of the Bush administration pretty week froze the legislation in place, despite strong Hill support.

But a stronger Democratic majority in both the House and Senate, teamed with a supportive Obama administration, may be enough to put S 787 over the top. The bill was introduced by Sen. Russ Feingold (D-Minn.) and 23 cosponsors, including Boxer.

A House bill from House Transportation Committee James Oberstar (D-Minn.) is believed imminent. An Oberstar bill in the last Congress had a whopping 176 cosponsors.

But opponents are digging in their heels, including the National Water & Conservation Alliance. In its alert last week the alliance asked its members

to besiege the Senate with demands that the mark up be postponed. "This bill will profoundly impact every citizen & community in the country—your immediate attention and action is needed!" said the alliance. The National Water & Conservation Alliance is headed by Don Pamer of St. Paul, Minn., a long-time property rights advocate.

As we reported in the last issue of *FPR*, ranking EPW minority member James Inhofe (R-Okla.) and his fellow Republicans have asked for a hearing before any mark-up.

The legislation targets a critical June 2006 Rapanos Supreme Court decision that, while confusing, left no doubt that only water bodies related to navigable waters should be regulated. The legislation would effectively reverse the Rapanos decision.

S 787 is simple. It says that the Corps of Engineers, working with EPA, must approve Section 404 permits under the Clean Water Act for all projects on waters of the United States. Those waters are defined in S 787 as "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, . . ."

The Supreme Court was evenly divided in its June 19, 2006, decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, that muddied the regulatory waters. While the court upheld the authority of the Corps and EPA to regulate water bodies, it also limited the definition of a water body to navigable water.

Notes

GGNRA super O'Neill dies. Brian O'Neill, for 23 years the superintendent of the Golden Gate National Recreation Area, died May 13 at 67. O'Neill had a series of strokes after fairly routine heart valve replacement surgery. At

Golden Gate the gregarious O'Neill oversaw the development of the most visited national park unit in the system, with 16 million visits per year. Said Greg Moore, executive director of the Golden Gate National Parks Conservancy, "Many people saw Brian as a park maker with an inspired vision. And the Golden Gate National Parks constitute his masterpiece. Everywhere you turn in this national park - Crissy Field, Alcatraz, Fort Baker, the Presidio, and more - we see his amazing handiwork." But Moore, who worked with O'Neill for 30 years, said O'Neill was also a community builder. "He intrinsically knew that any aspiration, any special place, any worthy program - needs a community of people loyal to the vision and committed to one another and their common purpose. Few national parks can match the outpouring of volunteers, donors, members, or visitors who have been inspired by Brian or served by his dedicated National Park staff," said Moore. Among others O'Neill is survived by his twin brother Alan and his 97 year-old mother Mimi. Extraordinary tributes are available at <http://www.nps.gov/goga>, including a particularly moving one by his twin brother.

Salazar faults land buying. Secretary of Interior Ken Salazar May 13 agreed with Rep. Mike Simpson (R-Idaho) that the Interior Department land appraisal program is "broken," as Simpson put it. "People are willing to sell but find it very difficult to do," Simpson told Salazar at a hearing of the House subcommittee on Interior appropriations on the fiscal year 2010 Interior Department budget. Simpson was referring to two situations in Idaho, but Salazar said the problem is bigger than that. "I think it is a systemic issue that needs to be looked at because it is symptomatic of a much larger problem," he said. Most immediately, Salazar said he needs help. He said he wants the Senate to confirm Wilma Lewis, a former Interior Department Inspector General, as assistant secretary of Interior for Land and Minerals Management, and Rhea S. Suh, a program officer at the David and Lucile Packard Foundation, as Assistant Secretary for Policy, Management and Budget. Suh was in fact confirmed

May 18 after the hearing. Simpson's office said that a Bush administration reorganization that consolidated agency appraisal work in the department "has not worked."

FY 2009 "Legacy" grantees chosen.

The Forest Service announced May 18 that 24 projects in as many states will receive a total of \$50 million in Forest Legacy grants. The fiscal year 2009 money will be used to protect working forests from development. The grants range from a low of \$510,000 for a Gold Creek Ranch in Idaho to a high of \$3.67 million for a South Branch project in West Virginia. The Obama administration has upped the ante for the program in fiscal 2010 by requesting \$91 million. However, the Obama administration, using a trick it learned from the Bush administration, would obtain the \$91 million by raiding the Land and Water Conservation Fund. Forest Legacy grantees are chosen by a national competition that identifies the most ecologically and socially important projects. The Forest Service says the program "consistently" obtains matches of over 50 percent, well above the 25 percent required by law. More at: <http://www.fs.fed.us/cooperativeforestry/programs/loa/flp.shtml>.

DU asks Duck Stamp hike. Ducks Unlimited (DU) last week recommended that Congress increase the price of a federal Duck Stamp from \$15 to \$25. Rep. John Dingell (D-Mich.) has introduced a bill (HR 1919) to increase the fee from \$15 to \$25 for the next six years. DU Chief Biologist Dale Humburg said revenues from the stamp don't go as far as needed. "Waterfowlers have invested more than \$760 million into the Federal Duck Stamp - and it needs to remain a viable conservation tool if we are going to protect that investment into the future," said Humburg. "In order to ensure that we can continue to protect waterfowl habitat, there must be an increase to the buying power of the Duck Stamp." The price was last increased to \$15 in 1991. The fees are put into a Migratory Bird Conservation Fund along with appropriations from the Wetlands Loan Act of 1961, import duties from arms and ammunitions, receipts from

refuge admission fees, refuge rights-of-way, and Federal Aid funds. The Migratory Bird Conservation Commission oversees annual expenditures from the funds.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations fiscal 2010 No bill yet	Obama administration proposed May 7.	Would provide broad increases for park and rec programs.
Appropriations fiscal 2009 emergency HR 2346 (Obey)	House approved May 14. Senate committee approved May 14.	Would provide \$250 million For emergency fire assistance.
Congressional Budget 2010 H Con Res 85 (Spratt) S Con Res 13 (Conrad)	House approved April 2. Senate approved April 2.	Would allow for increased natural resources spending.
Appropriations Stimulus HR 1 (Obey)	President Obama signed into law Feb. 17 as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
Appropriations 2009 (DoI, FS, Corps, Transportation, etc.) HR 1105 (Obey)	President Obama signed into law March 11 as PL 111-8.	Provides modest increases for most park and rec programs.
Omnibus Lands Bill S 22 (Bingaman) HR 146 (Holt)	President signed into law March 30 as PL 111-11.	Includes 160+ individual bills, including NLCS, new national parks.
National Landscape Conservation System HR 404 (Grijalva) S 22 (previous item)	Grijalva introduced Jan. 9. Included in omnibus (above.)	Gives NLCS official designation by Congress.
Grand Canyon withdrawal HR 644 (Grijalva)	Grijalva introduced Jan 22.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
Surface Transportation HR 1329 (Blumenauer) S 575 (Carper) S 1036 (Rockefeller)	Blumenauer introduced March 5. Carper introduced March 11. Rockefeller introduced May 12	Blumenauer would establish a piece of a surface transportation law with climate change money. Rockefeller would establish broad goals for law.
FLREA (rec fee law) repeal S 868 (Baucus)	Baucus introduced April 22.	Would repeal the comprehensive federal rec fee law.
Fire suppression HR 1404 (Rahall) S 561 (Bingaman)	House approved March 24. Bingaman introduced March 10.	Would establish an emergency fire-fighting fund to limit borrowing from line programs.
Ski area uses S 607 (M. Udall)	Udall introduced March 17.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.
Weapons in parks HR 1684 (Hastings)(S 816 (Crapo) HR 627 (Maloney)	Hastings introduced March 24. Crapo introduced April 2. Congress approved May 20.	Would direct DoI to allow concealed weapons in national parks, refuges. HR 627 is a credit card rights bill.
Wetlands S 787 (Feingold)	Feingold introduced April 2.	Would require Section 404 permits for most projects in wetlands.
Climate change HR 2454 (Waxman)	House committee near passage May 22.	Would allocate billions of dollars to climate-related conservation projects.