

# Federal Parks & Recreation

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## Coburn report blasts NPS and Congress for wasting money

One of the fiercest critics of the National Park Service, Sen. Tom Coburn (R-Okla.), called on Congress October 29 to shake up the financing of the agency.

In a 208-page report, *Parked!*, Coburn recommended:

- \* a transfer of Land and Water Conservation Fund (LWCF) money out of acquisition to maintenance,

- \* a review of less-visited park units for possible closure, and

- \* substitution of nonfederal and endowment money for appropriations.

Coburn is not operating in a vacuum. He laid out many of his concerns to the Senate Energy Committee July 25 and received considerable deference from both Democratic and Republican members. For instance when he suggested using LWCF money for maintenance Sen. Lisa Murkowski (R-Alaska) seconded the idea and Sen. Mark Udall (D-Colo.) expressed interest.

Coburn also promoted the idea of an influential person championing an endowment for the parks. Senate Energy Committee Chairman Ron Wyden (D-Ore.), Sen. John Portman (R-Ohio) and Udall are reportedly seeking support for legislation to establish an endowment with matched dollar-for-dollar public-private contributions to the parks.

In his new report Coburn had little good to say about how the Park Service is run or how Congress oversees the agency. For one thing Coburn expressed frustration with the amount of money the Park Service spends on administration, \$454,768,000, out of an annual budget, about \$3 billion.

"The National Park Service's mission has become lost, its budget has become convoluted, and the funding priorities have become misaligned," the report said.

While he was at Coburn again took aim at one of his favorite targets - national heritage areas (NHAs), which receive about \$17 million per year from Congress. "There is no federal statute or criteria for establishing a NHA. In the absence of a formal process, these entities can only be designated by a congressional earmark," the report said. "Since 2000, Congress has increased the number of NHAs from 18 to 49. There were 10 NHAs earmarked in the Omnibus Public Land Management Act of 2009 alone."

Indeed on the Senate floor March 20 Coburn proposed an amendment to a fiscal year 2013 appropriations bill that would have reduced funding for NHAs from \$16.2 million to \$8.1 million, with the reduction used for NPS operations. The amendment was defeated by a 45-to-55 vote.

Coburn laid much of the blame for NPS's problems on Congress. "For years, members of Congress on both sides of the aisle have put their parochial desires ahead of the nation's best interest," he said. "Funding for low-priority and obscure parks earmarked by lawmakers has come at the cost of caring for our national treasures like the Grand Canyon, Yellowstone, the National Mall and Independence Park in Philadelphia. Last year alone, the National Park Service put off more than a quarter billion dollars in much needed maintenance projects, adding to the \$11.5 billion maintenance backlog already threatening the health, safety, and accessibility of park visitors."

Coburn and his report did not receive a free pass. The Coalition of National Park Service Retirees returned fire. In a statement the coalition said, "Polls show that 90 percent of Americans think our national parks are great so why break what isn't broken? Why would we go for slash-and-burn approach to fixing the parks when Americans clearly think they are a major national priority

that merits the necessary public funding so that they can be enjoyed by all Americans?"

The retirees concluded, "One must be deeply skeptical of the real motives behind this report, which has the appearance of being dressed up as deep concern about the parks when, in fact, the prescriptions for change could kill or severely damage our national parks."

Here are Coburn's three main recommendations:

**MAINTENANCE:** Congress should stop adding new parks to the system and expanding existing parks. The report says Congress should, "Eliminate the \$256 million gap between annual maintenance needs and funding provided by prioritizing existing National Park Service resources and augmenting current funds with recreational fee reforms, then redirect LWCF funding used to expand park service property until the backlog is eliminated." Coburn would use three out of every four LWCF dollars for maintenance.

The report poses the problem this way: "Over the last decade, Congress has appropriated \$527.4 million through the LWCF to acquire more land for the National Park Service. During that period, the needed repairs on existing NPS land increased by \$5.4 billion. This policy is in contradiction with the 'fix it first' strategy. No one builds an addition to his or her house when the roof is caving in. Nor should their government."

**CLOSURES:** The report identifies a long list of little-visited parks and the amounts of money required to operate them. It concludes, "The designation of national parks, intended to celebrate our land and heritage, has been perverted too often to earmark parochial projects with little or no national significance. The result is park resources are not being properly managed and the park system is losing its quality."

**FINANCING:** The report would substitute more money from partners and an endowment for appropriations. In

addition it would have Congress rewrite the Federal Lands Recreation Enhancement Act (FLREA) to increase entrance fees and expand them.

Of fees the report says, "These opportunities include increasing revenues through expanding parks eligible to collect fees and making modest pricing adjustments that retain affordability, especially on service-wide annual and senior lifetime passes."

The Park Service retirees responded: "Dramatically increasing the price of fees for national parks and the services in them is the equivalent of a recreational poll tax, pricing America's national parks out of the reach of many families, retirees on fixed incomes, veterans, and college age youth, etc."

Coburn would also use endowment money for new parks. "Any new park unit should utilize an endowment seeded with an initial federal investment matched on a dollar for dollar with non-federal funds," the report said. "The endowment must be large enough to cover annual operations and maintenance costs, so as only major construction or emergency projects will be covered by federal appropriations."

Coburn's report is at:  
[http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File\\_id=d5eed627-1799-435e-99fe-750a27ef5269](http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File_id=d5eed627-1799-435e-99fe-750a27ef5269).

## **Money flows for restoration of Atlantic areas hit by Sandy**

The Interior Department last week announced \$160 million in Hurricane Sandy restoration projects that include beefing up natural sites that would protect communities from future storms.

The money will be used by the Park Service, the Fish and Wildlife Service, the U.S. Geological Survey, and the Bureau of Safety and Enforcement (offshore oil development).

The department has already spent a separate pot of \$480 million for immediate recovery projects from a

Hurricane Sandy emergency relief law (PL 113-2 of January 29). That money was, and is, being used to reopen closed facilities, such as Statue of Liberty National Monument.

The law also set up a pot of \$360 million for restoration of natural sites and to prevent damage from future storms. That pot put up the \$160 million in restoration projects.

In addition to those projects on October 29 the Interior Department requested proposals for \$100 million in resiliency grants for states, communities, nonprofits and others. Winners will be announced in August 2014.

Said Secretary of Interior Sally Jewell of the resiliency grants, "By stabilizing marshes and beaches, restoring wetlands, and improving the resilience of coastal areas, we not only create opportunities for people to connect with nature and support jobs through increased outdoor recreation, but we can also provide an effective buffer that protects local communities from powerful storm surges and devastating floods when a storm like Sandy hits."

Among the largest of the 45 federal agency restoration projects announced October 24 was a \$15 million allocation in New Jersey to revitalize salt marshes to protect communities along 60 miles of the New Jersey coast.

"What we witnessed during Hurricane Sandy was that our public lands and other natural areas are often the best defense against Mother Nature," Jewell said. "By stabilizing marshes and beaches, restoring wetlands, and improving the resiliency of coastal areas, we not only create opportunities for people to connect with nature and support jobs through increased outdoor recreation, but we can also provide an effective buffer that protects local communities from powerful storm surges and devastating floods when a storm like Sandy hits."

Hurricane Sandy of course devastated much of the mid-Atlantic

coast on Oct. 29, 2012, taking out portions of numerous national parks and national wildlife refuges.

Congress responded with the emergency relief law that distributed for recovery activities \$348 million to the Park Service, \$78 million to the Fish and Wildlife Service, \$50 million to historic preservation, \$4.4 million to the Forest Service and more than \$1 billion to the Corps of Engineers.

In addition the law set aside \$360 million of flexible money to the Interior Department "to restore and rebuild national parks, national wildlife refuges, and other Federal public assets; increase the resiliency and capacity of coastal habitat and infrastructure to withstand storms and reduce the amount of damage caused by such storms."

Now the Interior Department is distributing some of that flexible restoration/prevention money, beginning with the \$160 million in federal projects announced October 24.

Interior said it actually received requests for 94 projects (45 were awarded) for a total of \$541 million (\$160 million was awarded.) The Obama administration convened a Technical Review Panel of ten experts from eight Interior bureaus, the Federal Emergency Management Agency, and the National Oceanic and Atmospheric Administration to choose winning projects.

The single largest allocation of \$24,897,600 was awarded to the Dyke Marsh in Alexandria, Va., part of the George Washington Memorial Parkway managed by NPS. It is eroding at an accelerated rate of six-to-eight feet a year, mostly from storms.

#### **Ellis Island partially reopens:**

The Ellis Island Immigration Museum that was swamped by Hurricane Sandy was mostly reopened to the public October 28. The entire island had been flooded.

Newly opened was the main level Great Hall where 12 million immigrants entered the United States. However, most of the museum collection is not

available to the public because it is still being stored in a facility in Maryland while a new electrical and climate control system is installed.

The Ellis Island site is part of the Statue of Liberty National Monument. The Statue of Liberty itself reopened July 4.

Here's what the Hurricane Sandy recovery law provided:

#### **Capital improvements DoI and**

**FS:** The Park Service received \$348 million. In its request for the money the Obama administration singled out for assistance Liberty Island, Ellis Island, Gateway NRA, and Fire Island units, but it also said national parks in Florida, North Carolina and Washington, D.C., would receive help.

The Fish and Wildlife Service received \$78 million primarily to repair damage in the E.B. Forsythe National Wildlife Refuge (New Jersey), the Long Island National Wildlife Refuge Complex (New York) and Prime Hook National Wildlife Refuge (Delaware).

The Forest Service received \$4.4 million to address damage to property, roads and trails at the Grey Towers National Historic Site and in the White Mountain and Monongahela National Forests.

#### **Interior Department restoration/prevention:**

The law appropriated \$360 million of flexible money to the Interior Department "to restore and rebuild national parks, national wildlife refuges, and other Federal public assets; increase the resiliency and capacity of coastal habitat and infrastructure to withstand storms and reduce the amount of damage caused by such storms." That is money Interior is now doling out.

**Historic Preservation:** The law appropriated \$50 million for grants to states "to fund rehabilitation and restoration of historic properties." No local match is needed.

#### **Corps construction/maintenance:**

The law allocated \$4.281 billion to

the Corps of Engineers for Construction (\$3.46 billion) and Operations and Maintenance (\$821 million).

More Interior Department information on the Sandy recovery effort is available at: <http://www.doi.gov/hurricanesandy>

## House and Senate headed in different budget directions

A House and Senate budget conference committee set up by an October 16 interim spending agreement has its work cut out for it.

The conferees, who began formal negotiations this week, are being asked to strike a deal by December 13 on an overall federal budget that would in turn determine how much money appropriators would have to spend on the outdoors in fiscal year 2014. And for many years in the future.

As part of those negotiations the conferees say they intend to address budget sequestrations brought on by a 2011 Budget Control Act. That law is expected to chop as much as \$100 billion off the top of total fiscal 2014 spending, if it is not modified or replaced.

Finally, the conferees are being asked to choose between fundamentally different House- and Senate-approved policy recommendations. Although the recommendations would only be advisory, they would set the general course for authorizing committees, if the authorizing committees wished to follow.

The conference committee is working under cochairs Rep. Paul Ryan (R-Wis.), chairman of the House Budget Committee, and Sen. Patty Murray (D-Wash.), chair of the Senate Budget Committee. The House approved its budget (H Con Res 25) March 21 and the Senate approved its budget (S Con Res 8) March 23.

On the bottom line the Senate budget assumes a total spending cap of \$1.058 trillion in fiscal 2014, or \$91 billion more than the House cap of \$967 million.

For a natural resources line item the two houses are just as far apart. The Senate budget recommends almost \$5 billion more for natural resources in fiscal 2014 than the House. The Senate resolution recommends \$42.9 billion compared to \$38.1 billion in the House budget.

For all the areas of disagreement the House and Senate budgets do concur on a few natural resources policies, such as adequate fire-fighting money and renewal of the Federal Land Transaction Facilitation Act. The budgets don't specify how much money authorizing and appropriations committees should put up for those programs.

As for line committee priorities in the budget negotiations, an aide to Senate Energy Committee Chairman Ron Wyden (D-Ore.) said, "Chairman Wyden has always made national park funding along with forest fire budgeting and other energy and natural resources issues priorities as a member of the Senate Budget Committee. He is looking forward to working with Sen. Murray and other conferees on a long-term fiscal plan that continues to advance those priorities."

Irrespective of the line committees, the two Houses have put forth major, major policy recommendations in their Congressional budgets, to wit:

**Conservation spending:** The House budget would transfer an unspecified amount of money from the Land and Water Conservation Fund (LWCF) out of land acquisition to maintenance. "This budget focuses on eliminating the maintenance backlog before moving to acquire additional lands," it says.

The Senate budget would fully fund LWCF at \$900 million. It says S Con Res 8 "protects investments in the preservation of public spaces, the restoration of impaired ecosystems, and the recovery of at-risk species."

**Federal Land Transaction Facilitation Act (FLTFA):** Both budgets support an extension of FLTFA, albeit with some important changes. FLTFA authorizes the sale of excess BLM

and Forest Service lands and uses the proceeds to acquire conservation lands. In a new twist the House budget recommends 70 percent of revenues be used for deficit reduction, instead of for land acquisition, as was the case under the old law. The Senate would simply extend the old law.

**Climate change:** The House budget would cut back on climate-change spending by natural resource agencies. It says, "This budget resolution reduces spending for government-wide climate change-related activities and recommends better coordination of programs and funds to eliminate duplicative and unnecessary spending."

The Senate budget would increase investments "in federal resiliency activities." It adds: "House Republican proposals, however, would move us in the opposite direction. According to an analysis by the Center for American Progress, the Republican budget would have cut \$3 billion from energy programs in 2013 alone."

## **Rail-trails lawsuit bumped up to the Supreme Court**

The Supreme Court last month said it would consider a lower court ruling that held that railroad rights-of-way (ROWs) across federal lands revert to the federal government when abandoned by the railroad. The subject ROW is destined for a rail-trail.

Oppositely, private landowners who hold patents to land on the ROWs appealed to the Supreme Court and argued that their patents required title to the abandoned ROW be transferred to them.

This is a big deal, said the Rails-to-Trails Conservancy, because it could set a precedent for numerous other proposed rail-trails. "A win would reaffirm the grand vision of our forefathers that explicitly held that these linear public spaces should remain of and for the people," said the conservancy in a bulletin to its members.

On the other hand, "A loss would

not only potentially block the public rail-trail providing access to Medicine Bow National Forest, but would also threaten rail-trails across America that utilize federally granted rights of way," the conservancy said.

In a filing with the Supreme Court the Justice Department said hundreds of landowners could file claims nationally to land along abandoned ROWs. "Under current Federal Circuit precedent (other than the Ninth Circuit decision), the United States will be obligated to pay just compensation on many claims in which ownership of the right-of-way is often a determining factor," said the feds. "Those claims could impose considerable financial liability on the United States and the public fisc (sic), . . ."

On the other hand the landowners say various Homestead Acts that allowed them to patent land on the subject right-of-way within the Medicine Bow-Routt National Forest in Wyoming give them priority on abandonment of the ROW. That priority consists of title to the lands and forbids rail trails.

The landowners worry that the Tenth and Seventh U.S. Circuit Courts of Appeals have issued contrasting decisions - the Tenth that the federal government holds a reversionary right to the private lands and the Seventh that the federal government does not.

When the federal government patented the lands within railroad ROWs to private landowners, it subjected the patents to the railroad's use of the lands. What happens to those lands after a railroad is abandoned - reversion to landowners or reversion to the feds for a trail - is now before the Supreme Court

Argued the appellants in their petition to the Supreme Court, "As these railroad ROWs are abandoned, the issue of ownership will necessarily arise. Landowners within the Seventh Circuit may be able to quiet title to abandoned 1875 Act ROWs and, thereby, prevent their land from becoming a public recreational trail."

"In contrast," the petitioners argue, "similarly situated landowners in the Tenth Circuit will not be able to quiet title, but will have to try to seek just compensation - which would be paid for by the taxpayers. Just compensation, however, is cold comfort for having to endure the disruption and inconvenience of having essentially a 'linear park' on one's property."

In the facts of the case in 2006 the United States filed a lawsuit under the Quiet Title Act to obtain title to a 28-mile stretch of a ROW that the Wyoming and Colorado Railroad Company abandoned. When the federal government filed suit against 51 landowners all capitulated except one, the appellant here, the Marvin M. Brandt Revocable Trust, et al.

The case involves a tangle of federal laws, but the question before the Supreme Court boils down to this: On abandonment of a railroad ROW through federal land does the federal government hold a reversionary right to private property through which the ROW courses? Or do the feds only own an easement that is extinguished on abandonment of the ROW?

In a series of decisions in 2008 and 2009 the U.S. District Court in Wyoming held that the federal government held a reversionary right to the ROW and could file suit in federal court to obtain title to the private lands. In a Sept. 11, 2012, decision the Tenth U.S. Circuit Court of Appeals agreed.

However, the Seventh Circuit, according to the petition to the Supreme Court, "concluded that 1875 Act ROWs are easements and that the United States did not retain a reversionary interest after the underlying land was patented into private ownership."

## **WRDA bill goes to conference; Everglades projects are in**

When the House and Senate go to conference over a water resources development bill - perhaps next week, they will face two substantially different sets of outdoor provisions.

But on perhaps the lead issue - authorization of the next generation of projects to restore the Everglades ecosystem - they are in substantial agreement. A House-passed bill (HR 3080) explicitly would authorize four Everglades projects that would cost more than \$1.8 billion. Half of the \$1.8 billion would be federal money and half would be State of Florida money.

A Senate-passed bill (S 601) would authorize the projects inferentially by including water resources projects cleared by Corps of Engineers final reports.

Senate Environment and Public Works Committee chair Barbara Boxer (D-Calif.) is champing at the bit to begin the conference. "I am so pleased that the House passed its water resources bill today so that we can move forward with the House-Senate conference as soon as possible," she said after the House approved HR 3080 October 23.

On May 15, the Senate passed a counterpart Water Resources Development Act (WRDA) by an 83-to-14 margin. Congress tries to pass a WRDA bill every two years but has not been able to enact one in the last six years.

The Office of Management Budget (OMB) October 23 conditionally endorsed the House bill. "The Administration supports House passage of H.R. 3080 as it would advance some of these policies and principles, but it should be improved with additional reforms and modifications of problematic provisions," said OMB.

The two bills differ on significant outdoor details. For instance the House October 23 approved an amendment that would forbid the Obama administration from implementing its National Ocean Policy. The vote was 225-to-193.

Amendment sponsor Rep. Bill Flores (R-Fla.) said the amendment would prevent zoning of the ocean. "Executive Order 13547 was signed in 2010, and it requires that various bureaucracies essentially zone the ocean and the sources thereof," he said on the House floor. Flores noted he has offered

the same amendment four other times to various appropriations and authorization bills. The House approved the provision each time, but the Senate refused to accept it. S 601 doesn't include it.

But one of the amendment's critics, Rep. Jim Langevin (D-R.I.), said the amendment is "an affront to states' rights. By preventing the Army Corps of Engineers from coordinating ocean and coastal planning with federal and state partners, it will inhibit the ability of state like Rhode Islands, my home state, from managing resources in a way that fits their needs and priorities."

In a separate area the House bill explicitly includes recreation under a Harbor Maintenance Trust Fund. The backlog in the fund, financed by users of ports and harbors, has grown to \$8 billion (sound familiar, Land and Water Conservation Fund?). Annual expenditures from the harbor fund averaged \$700 million to \$800 million the last five years, says a House Transportation Committee report.

The House would increase the annual allocation by linking it to annual collections, beginning at 65 percent. Given that annual collections approach \$1.8 billion, that would mean annual expenditures of more than \$1.1 billion.

Rep. Candice Miller (R-Mich.) said the House bill would set aside 10 percent of the Harbor Maintenance Fund for recreation purposes, i.e. dredging support to communities to expand recreational boating opportunities. The Senate bill does not establish a percentage set-aside from the fund.

In still another area the House bill includes a provision that would bar the Corps of Engineers from denying access to floating cabins where recreational vessels are allowed. The Senate bill does not include a counterpart provision.

In total the House bill would authorize \$8 billion in expenditures and the Senate \$12 billion. However, the House Transportation Committee says

its bill would deauthorize \$12 billion in old projects, effectively paying for itself.

Unlike the House bill, which identifies the 23 new water resources projects, the Senate bill would let the Obama administration choose projects to fund. However, the Corps would be expected to follow its own priority recommendations.

Appropriations to pay for the projects - whether identified by the administration or by Congress - would still have to come from separate appropriations bills.

**Everglades restoration:** The most important outdoor provisions are the authorizations of four Everglades projects. Of the \$1.8 billion, the State of Florida would have to pay half.

Since 2000 when Congress approved an overarching multi-billion-dollar Comprehensive Everglades Restoration Project (CERP) in a previous WRDA, only two of the dozen or so projects anticipated by the law have been authorized.

Under CERP the Corps of Engineers, the State of Florida and Interior Department agencies are charged with carrying out major projects to restore the Everglades by in general replumbing south Florida.

HR 3080 would authorize these four Everglades projects:

- \* Caloosahatchee River West Basin Storage Reservoir, \$594 million (\$297 million federal, \$297 million state),

- \* Biscayne Bay coastal wetland, \$192 million (\$96 million each),

- \* Broward County water preserve area, \$866 million (\$433 million each), and

- \* C-111 Spreader Canal, \$180 million (\$90 million each).

Sen. Bill Nelson (D-Fla.) and Reps. Alcee Hastings (D-Fla.) and Mario Diaz-Balart (R-Fla.) put the four

Everglades projects into stand-alone bills (S 414, HR 913) in February with slightly less authorization amounts.

More information is available on the projects at:

[http://www.evergladesplan.org/pm/projects/landing\\_projects.aspx](http://www.evergladesplan.org/pm/projects/landing_projects.aspx).

## **NPS completes Yellowstone snowmobile plan - for 2014-15**

The Park Service October 24 issued final, final regulations to establish a new snowmobile management regime in Yellowstone National Park.

Before the new policy can take place in the winter of 2014-2015 NPS must fend off any lawsuits that come its way, if any.

In the interim the rule calls for the continuation this winter (2013-2014) of snowmobile limitations that NPS has used for the last four winters.

To sum up, this winter the park will allow up to 318 snowmobiles per day and up to 78 snowcoaches per day. The following winter (2014-2015) NPS would authorize up to 50 groups of snowmobiles daily to enter the park with up to seven vehicles in a group and up to 60 snowcoaches. That's a total of 110 "transportation events." In addition both snowmobiles and snowcoaches would have to pass tougher noise emission standards eventually.

The new policy has been welcomed by snowmobile interests and state and local governments. Some, but not all, environmentalists have been uneasy about it.

One major environmental group, the National Parks Conservation Association (NPCA), praised the NPS rule because of new pollution standards that would reduce noise and carbon dioxide emissions. "These are crucial requirements, particularly given the recent trend of noisier and dirtier park-approved snowmobiles," said Tim Stevens, NPCA's Northern Rockies regional office director. "Reduced noise and carbon monoxide emissions coupled

with travel at lower top speeds will better protect public safety, wildlife and visitor opportunities to enjoy the sounds of nature in Yellowstone."

The Coalition of National Park Service Retirees, which has been a major critic of the new proposal, accepted it. Said the retirees, "The Coalition, which has been very engaged with this issue over many years, supports the new rule as a reasonable approach to minimize impacts on the park's resources and values while also enhancing their enjoyment."

Earlier the retirees had taken issue with a central tenet of the rule when it was proposed April 16, 2013 - implementation of new noise and air pollution standards by the winter of 2017-2018. The retirees recommended an earlier implementation in the winter of 2015-2016.

On the other side of the road the American Council of Snowmobile Associations suggested its members endorse the proposed rule as follows: "I am writing in support of the Proposed Winter Use Rule (RIN 1024 - AE15) for Yellowstone National Park and particularly support its approach to managing winter use by transportation events. This will be a very positive change which will allow greater flexibility for park management while protecting park resources and providing reasonable visitor access."

The Wyoming Congressional delegation is more or less on board with the NPS proposal. As Sen. John Barrasso (R-Wyo.) said when the plan was completed in February, "Today's announcement will hopefully bring to close a 15-year long debate on how the National Park Service manages Yellowstone's winter use activities. I'm encouraged Wyoming's views were incorporated into the final plan.

## **Point Reyes oyster dispute appealed to full 9<sup>th</sup> circuit**

The Oyster Farm that lost a three-judge circuit court decision on access to Point Reyes National Seashore has

not given up. On October 18 Drakes Bay Oyster Company asked the full Ninth U.S. Circuit Court of Appeals to consider the case.

The Drakes Bay Oyster Company asserted in a 74-page petition that Congress in a fiscal year 2009 appropriations law overrode a 1976 law requiring portions of the park to be maintained as wilderness. That includes the oyster farm site.

"Here the Park Service insisted that the 1976 Act and its underlying intent mandated that the oyster farm be removed and the area converted into wilderness," says the petition. "Congress overrode this misinterpretation by enacting a statute ('Section 124') that authorized the Secretary to issue a permit to Drakes Bay 'notwithstanding any other provision of law'. But the Secretary did not get the message."

Said Peter Prows, a member of the Drakes Bay legal team and partner with Briscoe Ivester & Bazel LLP, "The majority decision, if allowed to stand, would set some alarming precedents. The majority has created new rules that would allow government agencies to disobey Congress, prohibit courts from considering whether the actions of government agencies were arbitrary and capricious, and seriously undermine environmental law."

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, usually an ally of environmentalists, sided with the Lunnys. She buys oysters harvested by the oyster farm. Sen. Dianne Feinstein (D-Calif.) has also backed the Lunnys.

A three-judge panel of 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 considered the lawsuit objecting to a planned closure. On September 3 the three judges issued their split decision upholding the closure of the oyster farm.

At bottom the Drakes Bay Oyster Company contends that the Congressional direction in a fiscal year 2009 appropriations law (PL 111-88 of Oct. 30, 2009) made clear the permit was to be extended.

The debate among the three Ninth Circuit judges - all appointed by Democratic Presidents - focused on the language of the 1976 Point Reyes Wilderness Act. The law directed NPS to manage the Drakes Bay area "as wilderness, to the extent possible, with efforts to steadily continue to remove all obstacles to the eventual conversion of these lands and waters to wilderness status."

The majority held that meant remove the oyster farm.

But in his dissent Judge Paul J. Watford, held the opposite. "Continued operation of the oyster farm is fully consistent with the Wilderness Act, and the farm's existence is therefore not an 'obstacle' to converting Drakes Estero to wilderness status as directed by the Point Reyes Wilderness Act," he said.

The Ninth Circuit decision is available at: [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000654](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000654).

## **FLREA extension/revision on House subcommittee radar**

The House subcommittee on Public Lands has made development of long-term legislation to replace or extend an existing recreation fee law a priority.

Under the lead of chairman Rob Bishop (R-Utah), the subcommittee "is working on legislation to extend and update the program," said a spokesman for the House Natural Resources Committee.

No date has been set yet for introduction of a bill but it is understood Bishop may run out a draft by December that would revise the law for six-to-10 years. And he may hold a hearing later this year.

Congress bought itself time to rewrite the sometimes controversial law by including in an interim fiscal year 2014 appropriations spending law (PL 113-46 of October 16) a one-year extension of the existing law. That law, the Federal Lands Recreation Enhancement Act (FLREA), now expires on Dec. 8, 2015.

On paper major credit for including the extension in the spending law has gone to Senate Majority Leader Harry Reid (D-Nev.), but American Recreation Coalition President Derrick Crandall said interest groups should also take a bow.

Among the groups that signed a letter to the Hill seeking the extension were the American Hiking Society, Association of Partners for Public Lands, National Association of State Park Directors, National Parks and Conservation Association, National Park Hospitality Association, and the Outdoor Industry Association.

"Should FLREA expire in December 2014, federal land agencies would lose approximately \$300 million in revenues during a time of considerably constrained budgets," the groups wrote House and Senate leaders. "The loss of these fee revenues would equal the reductions imposed by the FY13 sequester for the National Park Service. A simple extension of FLREA to December 2015 would allow Congress to consider a longer reauthorization and potential adjustments."

At a June 18 hearing of the House Natural Resources Committee various interests advanced three separate strategies for extending FLREA:

*Simple extension.* Like the interest groups the Obama administration in its fiscal year 2014 budget request recommended a one-year extension of FLREA. That's what Congress did last

month in the interim appropriations bill.

*Rewrite.* The leading critic of the bill, the Western Slope No-Fee Coalition, so dislikes FLREA that it says Congress should scrap it and write a new law now.

*Multi-year extension, plus.* The recreation industry recommended a three-year extension of FLREA combined with pilot programs to test new fees, such as variable entrance fees to the Park Service that would peak in peak seasons.

FLREA, enacted on Dec. 8, 2004, (PL 108-447, Section 804) was only good for 10 years. The law brings in about \$270 million per year and most of the money is used to improve recreation facilities.

The Park Service reaps about \$179 million per year, or about eight percent of its recreation budget; the Forest Service takes in about \$66 million, or 25 percent of its recreation budget; the Bureau of Land Management receives \$18 million, or 25 percent of its recreation budget; the Fish and Wildlife Service grosses \$5 million, or one percent of its rec budget; and the Bureau of Reclamation receives less than \$1 million.

Much of the recreation establishment supports renewal of FLREA. That includes House Appropriations subcommittee on Interior and Related Agencies Chairman Mike Simpson (R-Idaho), who may or may not be asked to revise FLREA in the stead of the authorizing committee.

The lead critic of FLREA, Western Slope No-Fee Coalition President Kitty Benzar, has concentrated her fire on the Forest Service and BLM practice of charging entrance fees to large areas that contain developed sites, even if the visitor does not intend to use the developed campground or marina. Those are called amenity fees.

Benzar charged the agencies have abused special amenity fees by building unneeded facilities in an area in order to call it developed and by defining

special areas overly broadly.

## House and Senate finally go to conference on Farm Bill

A 41-member House-Senate conference committee began work October 30 on a farm bill that is expected to include major conservation provisions.

At the initial conference meeting Sen. Michael Bennet (D-Colo.) lobbied for the conservation provisions in a Senate-passed farm measure. "The Senate Bill would () place more land in conservation by once again linking crop insurance participation to basic conservation practices," he said.

The administration opposes a House-passed Farm Bill and endorsed a Senate-passed bill. The National Association of Conservation Districts prefers the slightly more generous conservation programs in a Senate bill.

The big hang up is not conservation but food stamps. If that issue is resolved, the conferees said they are fairly confident a final bill can be put together.

When the old Farm Bill expired October 1, the House and Senate finally took steps to go to conference to produce a new law, one with major conservation provisions.

The House acted most recently October 11 in voting to send 12 Republicans and nine Democrats to a conference with seven Democratic senators and five Republican senators.

The conferees are tasked with quickly resolving massive differences between a House-passed, three-year bill (HR 2642) and a Senate-passed, five-year bill (S 954). The Senate approved its measure in June and the House in July. However, the two sides have been unable to even come close to an agreement on a new Farm Bill over the last two years.

In total the Senate bill would trim \$3.5 billion from projected spending for conservation programs, according to the Congressional Budget

Office (CBO). The House committee bill would reduce conservation spending by \$4.8 billion, said CBO.

In the run up to a conference the House Democrats October 12 asked their Republican colleagues to reject a strategy of separating food assistance programs from traditional farm programs into two bills. But the House rejected the amendment by a vote of 195-to-204 and passed HR 2642 for the farm programs and HR 1947 for the food assistance programs.

If the House and Senate can't pass a stand-alone bill Senate Majority Leader Harry Reid (D-Nev.) has suggested incorporating a measure in a grand budget agreement. Such an agreement is a long shot at best but Reid said the Farm Bill might be thrown in with tax reform, a budget deal and other federal policies.

Overall the Senate bill follows the pattern of Farm Bill legislation over the last two years, i.e. it would reduce funding across-the-board, would reduce funding for conservation programs specifically and would consolidate programs. The House bill follows suit in reducing spending, but with even larger cuts than the Senate.

Included in both the Senate-passed and House-passed bills are provisions to keep alive the Conservation Reserve Program, a consolidated conservation easement program, an Open Fields program and the new loan/conservation policy.

In addition the Senate bill includes a new provision that would require farmers to remove fragile lands from cultivation as part of a crop insurance program. The crop insurance would largely replace direct payments now made to farmers.

In total the House would reduce farm spending by \$40 billion over the next 10 years, or \$17 billion more than the \$23 billion the Senate would cut.

The Senate generosity applies to conservation, including a Conservation Reserve Program and an Open Fields program. The Senate committee would

reduce the Conservation Reserve Program from the existing 32 million acres to 25 million acres, but that is more than the 24 million acres in the House bill.

And both bills would retain an Open Fields program with the Senate providing \$40 million over five years and the House \$30 million. The program is formally known as the Voluntary Public Access and Habitat Incentive Program. The money would be used to continue an existing program that has passed \$50 million in grants through states to encourage private landowners to welcome outdoor recreationists on their lands.

## **NPS backs César Chávez park to complement new monument**

The Park Service October 24 recommended that Congress establish a national historical park to honor labor leader César E. Chávez.

The park would build on a César E. Chávez National Monument that President Obama designated just over a year ago on Oct. 8, 2012. NPS recommends adding to the Nuestra Señora Reina de la Paz monument site locations known as Forty Acres and Filipino Hall in Delano, Calif.; a 1966 Delano to Sacramento March Route; and the Santa Rita Center in Phoenix, Ariz.

Secretary of the Interior Sally Jewell said, "Recognizing these sites associated with his leadership of the United Farm Workers as part of a national historical park will ensure that his contributions to the Civil Rights movement will be preserved and shared as an inspiration for future generations."

There are good political reasons for the designation of a park honoring Chávez. Democrats in general and President Obama in particular have traditionally received a large majority of the Latino American vote.

Republicans are not so enthusiastic. When President Obama designated the original 10.5-acre Chávez monument last fall, House Natural Resources Committee Chairman Doc

Hastings (R-Wash.) said, "This national monument designation is an unnecessary use of Presidential powers and appears to be based more on politics than sound policy."

The Park Service report, *Cesar Chávez Special Resource Study and Environmental Assessment*, says NPS would not have to acquire any land to manage the site. However, it says, "legislation would provide the NPS with authorization to acquire the Forty Acres should the existing owners wish to donate or sell the property at some future time."

Operation of the facility would cost \$1 million to \$3 million, the report says. "The estimated operational budget would primarily fund NPS staff, interpretive and educational programs, and outreach," says NPS. "The higher end of the range would be more likely if the NPS were to acquire the property and assume full responsibility for operations, management, and maintenance of the historic structures."

Designation of the site might also have a secondary impact - attracting Hispanic Americans to the National Park System. Surveys have shown that Hispanic Americans don't visit the system in proportion to their population.

So, said Ron Sundergill, Pacific Region Director of the National Parks Conservation Association, the Chávez monument and an historic site might prove an attraction to Hispanic Americans.

"Creating the César E. Chávez National Monument provided an important step towards diversifying our National Park System from the inside out, to ensure that our national parks truly represent and reflect our shared heritage," he said. "Since the national park site was designated, students and visitors from near and far now have expanded opportunities for learning of Chávez and the farm workers movement's legacy, with the National Park Service as their guide."

Concludes the NPS report, "The

NPS finds that sites associated with Cesar Chávez and the farm labor movement in the American West are suitable for inclusion in the National Park System. These sites depict a distinct and important aspect of American history associated with civil rights and labor movements that is not adequately represented or protected elsewhere."

The report is available at [www.nps.gov/pwro/chavez](http://www.nps.gov/pwro/chavez).

## Notes

### **Suh to oversee NPS and FWS?**

President Obama said October 29 he intends to nominate Assistant Secretary of Interior for Policy Rhea Suh as Assistant Secretary of Interior for Fish and Wildlife and Parks. In that position Suh would set policy and oversee the National Park Service and the Fish and Wildlife Service. Because Congress four years ago confirmed Suh to the assistant secretary for policy position she stands a good chance of confirmation this time around. However, one of Suh's landmark achievements in the policy position - development of a Land and Water Conservation Fund (LWCF) transformation initiative - could be an Achilles Heel because most Senate Republicans don't like LWCF. Suh's LWCF proposal, enunciated in the fiscal year 2014 administration budget request, would have Congress transition to full funding of LWCF and would guarantee \$900 million per year for the program. Allocations from the fund now are subject to annual appropriations. Suh also played a leading role in the development and implementation of the administration's Youth in the Great Outdoors Initiative.

**Shutdown cost, but an upside?** The Park Service and concessioners are still totaling up the costs of the government shutdown from October 1 to October 16, but early estimates are it set back the Park Service at least \$7 million and the concessioners some \$50 million. That's fees the Park Service would have collected and revenues the concessioners would have received. But was there an upside in heightened awareness among the American people of the importance of the

National Park System? Maybe so. Said Emily Douce, budget and appropriations specialist with the National Parks Conservation Association, "As for the shutdown bringing attention to the parks, yes, we agree. There was a huge outcry of the recent closure of the parks from local communities losing business, from visitors that couldn't enter the parks, and from Congress (both sides of the aisle)." Said Derrick Crandall, counselor to the National Park Hospitality Association, "Many of us believe we can make lemons into lemonade from this. The shutdown clearly increased recognition of the National Park Service." He said in talking with elected officials on both sides of the aisle, "I've seen something I have seen in decades in new ideas and offers to help." Whether that translates into more robust appropriations for the Park Service remains to be seen. Said NPCA's Douce, "What is disturbing is that there is this attention, particularly from Congress, about the importance of our national parks, but the budget to operate the parks has been cut by 13 percent (in today's dollars) over the last three years. The budget deal that was passed continues the sequester cuts already imposed that has already impacted the NPS visitor centers, the protection of resources, reduced staff by nearly 2,000 people." The closures also set back other federal land management agencies, but the closures of the national parks gained national headlines, with Congressional Republicans protesting an overly aggressive administration closure policy.

### **Hastings dogging DoI on Blueways.**

House Natural Resources Committee Chairman Doc Hastings (R-Wash.) is keeping up his attacks on a major Obama administration conservation initiative called the National Blueways System. Congressional Republicans from both sides of the Hill charge that the administration was intent on designating blueways - major watersheds - without consulting the public and despite public opposition. In an October 25 letter to Secretary of Interior Sally Jewell Hastings asked how long a temporary suspension of the program would last. Jewell announced the suspension July

17. "It remains unclear whether this is a permanent end to a legally suspect program, or a temporary pause," Hastings wrote. The chairman also asked Jewell to preserve all relevant documents involving former department official Rebecca Wodder, the supposed architect of the program. She has since left the department. Hastings wrote Jewell, "It is vital that the Department take the steps necessary to protect Ms. Wodder's documents from being destroyed and to ensure that they remain available in response to Congressional requests." At a July 17 hearing of the House subcommittee on Water, chairman Tom McClintock (R-Calif.) said environmentalists are contemplating designation of portions of 3.5 million miles of rivers across the country as blueways. That assertion is based on a May 28 request to Senate appropriators from 79 environmental groups for a \$3.3 million allocation to the program in fiscal year 2014. Among the requesters was the American Rivers environmental group. Wodder is a former CEO of American Rivers.

#### **Senators set cabin fee hearing.**

The Senate subcommittee on Public Lands has scheduled a hearing for November 20 on legislation (S 1341) that would establish a new system of fees for the 14,000 owners of cabin inholdings within the National Forest System. The House Natural Resources Committee approved a slightly different version of the bill (HR 1159) March 20. Both measures would establish a multi-tier system of fees to replace the existing law - the Cabin User Fee Fairness Act of 2000. Under that law the Forest Service in 2007 began reappraising the value of cabins, based on five percent of the market value. Because some cabins had not been appraised for as much as 30 years the appraisals went through the roof. Sen. Jon Tester (D-Mont.) is the lead sponsor of the new Senate bill. Other cosponsors include Sens. Max Baucus (D-Mont), John Barrasso (R-Wyo.), Dianne Feinstein (D-Calif.), Mike Crapo (R-Idaho), Mike Enzi (R-Wyo.), and Chuck Grassley (R-Iowa). The Senate bill would establish 11 tiers of fees beginning at \$500 and topping off at \$5,500. The House bill would establish 10 tiers of fees, also beginning at

\$500, but topping off at \$5,000. Last year the House approved a predecessor bill but the Senate did not act.

#### **State-federal partnership bill in.**

Rep. Don Young (R-Alaska) introduced legislation (HR 3294) October 15 that would allow states to manage federal lands. HR 3294 would establish a procedure for states to identify lands it wished to manage that are now managed by BLM, the Forest Service, the National Park Service, and the Fish and Wildlife Service. In a petition to the Secretary of Interior or Secretary of Agriculture a state would have to demonstrate it could and would pay at least 50 per cent of a cost-share arrangement. The secretaries would have 90 days to approve or deny a petition. A state would receive royalties and fees as established in a partnership agreement. A state would also be responsible for recovery in the event of an emergency. As a stand-alone bill the measure stands little chance of passage because the Obama administration has consistently opposed the diminution of federal authority over public lands.

#### **New state 'shutdown' bill.**

Rep. Chris Stewart (R-Utah) introduced legislation (HR 3311) October 23 that would allow states to pay to keep national parks and other federal operations going in the event of another government shutdown. The bill singles out activities that affect local economies, such as tourism, mining, timber and transportation. Stewart of course is focusing on the recent closure of all 401 national park units in the wake of the government shutdown from October 1 to October 16. Several states, including Stewart's Utah, were able to use their own money to keep national parks going. The bill pertains just to Interior Department agencies. Said Stewart, "The PARC Act would ensure that an agreement is in place to allow states to quickly continue funding and operating federal facilities and programs that are vital to their economies, if they so choose." The bill would not affect the Forest Service. Separately, President Obama signed into law October 16 (PL 113-46) legislation that allows compensation to states that

did use their own money to keep national parks open during the government shutdown. Five states paid to keep 12 national park units open. In still another related development on October 11 eighteen House members introduced legislation (HR 3286) to compensate states such as Utah for paying to keep parks open. Rep. Steve Daines (R-Mont.) was the chief sponsor. Sen. Lamar Alexander (R-Tenn.) introduced a counterpart bill (S 1572) October 15.

**FS singles out ski area directive.**

During the government shutdown the Forest Service October 2 proposed several changes to its policies governing year-round activities at ski areas. Now that the service is back in business on October 21 it put out a press release publicizing the proposal. The service has already posted a directive carrying out a 2011 law authorizing such summer activities as zip lines, mountain bike parks, Frisbee golf course and rope courses. The proposed new directive would specify forbidden activities in the 122 ski resorts operating on national forest lands. The forbidden uses include tennis courts, water slides and water parks, swimming pools, golf courses and amusement parks. In addition the proposed directive would guide use of ski areas by the non-paying public, i.e. cross-country skiers or hikers. The Forest Service says ski areas cover 180,000 acres of the 193 million-acre National Forest System. The service is taking comments until December 2 at <http://www.regulations.gov>. Comment by mail to: *USDA Forest Service Ski Area Comments, Pacific Southwest Regional Office, 1323 Club Drive, Vallejo, CA 94592.*

**NACD likes water rights bill.** The National Association of Conservation Districts (NACD) October 21 endorsed legislation (HR 3189) that would forbid federal agencies from inserting provisions in permits that lay claim to water rights on behalf of the federal government. NACD President Earl Garber said in a letter to House subcommittee on Water leaders, "Not only is compelling individuals to relinquish water rights for permits unfair to those who have paid to use

their water permits, the required waiver of water rights to the federal government overlooks state laws concerning water rights transfer and ownership as well as Constitutional takings issues." The substance of the bill is brief - only two paragraphs. It forbids the Forest Service or the Interior Department from conditioning any permit or other contract "on the transfer or relinquishment of any water rights" to the United States. But ranking subcommittee Democrat Grace Napolitano (D-Calif.) said the Forest Service should provide input before the subcommittee marks up the bill. Mark-up has not been scheduled yet. Prompting the legislation in part was an attempt by the Forest Service three years ago to obtain water rights held by ski resorts operating on national forest land. That's most of the big ones. Commodity users of the public lands fear the Forest Service policy could affect their water rights. A federal court entered the act on Dec. 19, 2012, when it threw out the Forest Service water rights policy on procedural grounds. Judge William J. Martinez in U.S. District Court in Colorado said the service failed to give notice and take comments before inserting the policy in ski resort permits

**Grand Canyon ROW backed.** The Interior Board of Land Appeals (IBLA) in a recent order refused to stay a Bureau of Land Management (BLM) decision approving a right-of-way (ROW) to the famous Skywalk above Grand Canyon National Park. The Hualapai Tribe that owns the skywalk requested the ROW to provide direct access to it. The appeal to IBLA was brought by the Grand Canyon Ranch, LLC, which owns a private road that also provides access to the Skywalk. The appellant charges tolls to use the road and earns money from tourist facilities. The appellant complained to BLM that the Hualapai ROW would cost it money. But IBLA said, "The ROW does not hinder access to (the appellant's) property and tourist facilities, as appellant admits, nor does it force (the appellant) to close the Old Road or prevent it from imposing tolls for travel across its private property." Despite the stay IBLA will consider the appeal.

## Boxscore of Legislation

### Appropriations Interim Fiscal 2014

HR 2775 (Black). President Obama signed into law October 16 as PL 113-46. CR keeps the government in money through January 15 at fiscal 2013 levels, including sequestration deductions.

### Appropriations Fiscal 2014 (Interior)

No bill number yet. House committee began mark-up July 31. Draft Senate bill proposed August 1. House panel would keep NPS operations about level but cut severely almost all conservation programs. Senate would appropriate significant increases.

### Appropriations Fiscal 2014 (Agriculture)

HR 2410 (Aderholt). House committee approved June 13. Senate committee approved June 20. Senate committee would provide more money.

### Appropriations Fiscal 2014 (Energy and Water)

HR 2609 (Frelinghuysen). House approved July 10. Senate committee approved June 27. Senate bill would provide significantly more money.

### Appropriations Fiscal 2014

#### (Transportation)

HR 2610 (Latham), S 1243 (. House bill pulled from floor July 31. Senate bill approved from floor August 1. Senate bill would provide significantly more money.

### Congressional Budget Fiscal 2014

H Con Res 25 (Ryan), S Con Res 8 (Murray). House-Senate conference has until December 13 to complete its work. Senate anticipates \$6 billion more for natural resources than House.

### Land and Water Conservation Fund

S 338 (Baucus), HR 2727 (McKinley). Baucus introduced February 14. McKinley introduced July 18. Baucus would guarantee \$900 million per year to program in perpetuity. McKinley would guarantee state grants received at least 40 percent of annual appropriations.

### Urban park fund

HR 2424 (Sires). Sires introduced June 18. Would authorize HUD grants and HUD

loans to provide assistance to urban parks.

### National recreation commission.

HR 1834 (Grijalva). Grijalva introduced May 6. Would establish a national recreation commission with members appointed by Congress and the White House.

### 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), HR 2192 (Nunes), S 104 (Vitter), S 472 (Heller). House hearing April 16. Would require Congressional approval or state approval of national monuments 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 954 (Stabenow), HR 1947 (Lucas). Senate approved June 11. House approved July 11. Both would establish new farm policy for several years.

### Hunting federal lands

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

### WRDA (Everglades)

S 601 (Boxer), HR 3080 (Shuster). Senate approved May 15. House approved October 23. Both would authorize new projects, including Everglades restoration.

### Hatteras ORVs

HR 819 (Jones), S 486 (Burr). House committee approved May 15. Senate committee approved June 18. House would rescind a Park Service policy limiting off-road-vehicles on the seashore.