

# Federal Parks & Recreation

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## Congress completes 2010 money bill; Obama signs into law

Congress October 29 wrapped up a fiscal year 2010 Interior Department and related agencies appropriations bill (HR 2996) that provides a significant \$4.66 billion spending increase over fiscal 2009. President Obama signed the bill into law October 30 (PL 111-88.)

The law provides particularly large increases for the National Park System, with boosts for operations, maintenance, rec and pres, and about every other line item. (See following article on NPS.)

In other areas the law provides a major increase for the Land and Water Conservation Fund (LWCF), establishes a \$474 million emergency fire-fighting fund, and boosts spending across-the-board for the Forest Service, the Bureau of Land Management, and the Fish and Wildlife Service.

A House-Senate conference committee put the final bill together in an October 27 meeting. Acting with unusual speed the House on October 29 approved the conference bill by a 247-to-178 vote and the Senate followed suit the same day by a 72-to-28 vote. The bill was given momentum because it also extended a temporary spending resolution for other agency appropriations bills.

The comparatively large margin in the Senate didn't reflect the dogged opposition to the bill presented by Republicans who object to a 17 percent spending increase over fiscal 2009.

In total the conference bill appropriates \$32.24 billion for the Interior Department and related agencies in fiscal 2010, or \$4.66 billion more than a \$27.58 billion appropriation for fiscal 2009. The conference number is \$90

million under the President's request of \$32.33 billion.

Sen. John McCain (R-Ariz.) mounted the fiercest, most sarcastic attack against HR 2996. "I was deeply touched and moved by both the manager of the bill and the ranking minority member's lamentations about the budgetary constraints in which we are suffering - deeply moved, almost to tears, until I saw that this bill provides approximately \$32.2 billion, a 17 percent increase over last year's levels, and \$4.66 billion more," he said. "You know, the bill comes after we already gave \$10.95 billion in the stimulus bill. It is remarkable, remarkable."

Rep. Jeb Hensarling (R-Texas) presented the Republican case on the House floor. "Now we have a Department of the Interior and environment conference report that contains a 17 percent increase over last year's spending," he said. "I assure you the family budget that has to pay for this Federal budget, their budget didn't increase 17 percent. People want to know, why is Federal spending out of control?"

But Rep. Norman Dicks (D-Wash.), principal author of HR 2996, said the 17 percent gain hardly makes up for the huge cuts the Interior bill took during the Bush administration. "I again want to point out that over the last eight years, Interior's budget has been cut by 16 percent. The EPA has been cut by 29 percent, and the Forest Service by 35 percent. This budget does provide a significant increase, but it's only catch-up because these agencies have been severely damaged," said Dicks.

The Outdoor Industry Association (OIA), like many conservation groups, praised Congress. "The vast majority of outdoor recreation occurs on our magnificent public lands and in order for the recreation economy to continue to grow as well as for Americans to enjoy the health and spiritual benefits of outdoor recreation, we as a nation must invest in the management of these wonderful resources. This budget reflects that priority," said Frank Hugelmeyer, president and CEO of OIA.

To keep the government in money until all other spending bills are completed, Congress included in HR 2996 a temporary spending resolution that lasts until December 18. Congress had earlier approved another temporary spending resolution that kept the government in business through the end of October (PL 111-68 of October 1.)

Obama has signed into law two other appropriations bill with major outdoor policy implications - an Agriculture bill (PL 111-80 of October 16) and an Energy and Water bill (PL 111-85 of October 28.)

The House and Senate have approved a third rec bill for Transportation programs (HR 3288), but it has not gone to conference yet. A dispute over concealed weapons on Amtrak trains is reportedly holding things up. Transportation programs are extended until December 18 at fiscal 2009 levels by the continuing resolution, as is spending for the programs.

Before the Senate approved the Interior bill Sen. Tom Coburn (R-Okla.) had loomed as the biggest obstacle to it. He threatened to place "holds" against all appropriations conference bills on the Senate floor because Senate conferees have not stood up for amendments he inserted in spending bills when the bills first reached the floor.

For instance during Senate consideration of HR 2996 September 24 Coburn obtained passage of amendments that would have require competitive bids on all contracts authorized by the bill, would have required publication of all reports authorized by the bill and would have prohibited the spending of money that could interfere with the Department of Homeland Security's border protection activities, particularly in wilderness and other sensitive areas. The House-Senate conference committee did adopt those amendments, but in modified form.

Coburn complained about conferees tinkering with his riders. "I had several amendments in the bill," he said. "All but one of them became compromised after it came out." He also complained

about the cost of the measure, much as McCain and Hensarling had. But Coburn did not place a hold on HR 2996 and even withheld his floor remarks until after the Senate had voted to pass the bill.

Here are some of the provisions in the bill (again, see the following article for Park Service programs):

**FLAME ACT:** The conferees accepted a Senate provision that establishes a one-year version of an emergency fire-fighting fund called the Federal Land Assistance Management and Enhancement Act (FLAME.) The Senate originally transferred all the emergency fire-fighting money in the bill, or \$834 million, into the FLAME fund. But the conferees included \$474 million for it. The House had approved the FLAME act as a multi-year program in a stand-alone bill (HR 1404.) To repeat, the conference provision is just for one year.

Western senators and House members, backed by a broad base of interest groups, drafted the FLAME bill to prevent federal land management agencies from borrowing from line operations to fight emergency fires. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) was the lead sponsor of the appropriations provision. He was supported by western Republican and Democratic senators.

All told Congress put up more than \$3.5 billion for fire fighting, but that doesn't guarantee money if there is an unprecedented fire year in fiscal 2010, nor does it address out-years. Thus, summed up Bingaman, "Our wildfire funding practices have been broken for a decade, and that has negatively impacted not only the Forest Service, but also the communities, businesses, and natural resources it serves. The success of this legislation ultimately depends on the support of the Administration and Congress, but we have charted a new and clear course to that success, and that is a significant accomplishment."

**LAND AND WATER CONSERVATION FUND:** The conferees approved \$305.8 million for traditional Land and Water Conservation Fund programs and diverted another

\$144.2 million from LWCF to other programs, such as conservation easements for a Forest Legacy program run by the Forest Service and for habitat conservation plans.

Of the \$305.8 million for traditional LWCF, \$40 million would be allocated to the state-side grants program. Said Sen. Lamar Alexander (R-Tenn.), ranking Republican on the Senate subcommittee on Interior appropriations and long-time friend of LWCF, "I am glad to see the support for Land and Water Conservation Funds. Local parks, city parks, are our most popular parks, the ones down the street."

State and local officials, as represented by the National Recreation and Park Association (NRPA), were particularly pleased that Congress doubled funding for the state LWCF program. NRPA CEO Barbara Tulipane called the increase a good starting place to campaign for full funding for the program. "The parks and recreation community must continue to build momentum in its efforts to obtain full and dedicated funding, which has the potential to be 10 times the current amount of LWCF," she said.

**NATIONAL HERITAGE AREAS:** The conferees accepted a Senate amendment that would allow any private landowner to opt out of a Northern Plains National Heritage Area (NHA) in North Dakota. Supporters of NHAs have long argued against an opt-out amendment. (*See separate article on page 9.*)

The law provides \$16.8 million for NHAs, compared to a fiscal 2009 appropriation of \$15.7 million.

**STATE WILDLIFE CONSERVATION GRANTS:** The law includes \$90 million for state and tribal wildlife conservation grants, or \$15 million more than a fiscal 2009 appropriation of \$75 million. The conferees did not order states to use the money to update their conservation plans to consider climate change, but "recommended" that states use the extra \$15 million for that purpose.

**THE BREAKDOWN:** Here is a compari-

son of the conference version of the bill, compared with the Senate, the House, the administration and fiscal 2009:

\* FEDERAL LWCF: Conferees, \$265.3 million; Senate committee, \$262 million; House, \$212.4 million; administration, \$199 million; fiscal 2009, \$160 million;

\* FEDERAL LWCF BY AGENCY (with fiscal 2009 in parenthesis): Park Service, \$86.3 million (\$64.2 million in fiscal 2009); Fish and Wildlife Service, \$86.3 million (\$42.5 million in fiscal 2009); Bureau of Land Management, \$29.7 million (\$14.8 million in fiscal 2009); and Forest Service, \$63 million (\$49.8 million in fiscal 2009);

\* STATE LWCF: Conferees, \$40 million; Senate committee, \$35 million; House, \$40 million; administration, \$30 million; fiscal 2009, \$20 million;

\* STATE WILDLIFE GRANTS: Conferees, \$90 million; Senate, \$80 million; House, \$115 million; administration, \$115 million; fiscal 2009, \$75 million;

\* HERITAGE AREAS: Conferees, \$16.8 million; Senate, \$16.7 million; House, \$16.8 million; administration, \$15.8 million; fiscal 2009, \$15.7 million;

\* NATIONAL FOREST SYSTEM: Conferees, \$1.551 billion; Senate committee, \$1.556 billion; House, \$1.565 billion; administration, \$1.507 billion; fiscal 2009, \$1.510 billion;

\* NATIONAL FORESTS RECREATION: Conferees, \$292.6 million; Senate committee, \$290.1 million; House, \$292.6 million; administration, \$280.1 million; fiscal 2009, \$277.6 million;

\* FOREST TRAILS: Conferees, about \$85 million, but not precisely specified; Senate committee, \$82.2 million; House, \$85.3 million; administration \$82.1 million; fiscal 2009, \$81.2 million;

\* NATIONAL LANDSCAPE CONSERVATION SYSTEM: (not broken out but conferees did ask for \$2 million more for monuments and conservation areas than the \$28.8 million the administration requested); Senate, \$75 million; House \$74 million; fiscal 2009, \$67 million;

\* WILDLIFE REFUGE MANAGEMENT: Conferees, \$503.3 million; Senate, \$488.6 million; House, \$503 million; fiscal 2009, \$468 million;

\* FIRE FIGHTING FS: Conferees,

\$2.592 billion; Senate, \$2.587 billion; House, \$2.652 billion; fiscal 2009, \$2.137 billion. The conference total includes \$413 million in FLAME money; and

\* FIRE-FIGHTING DOI: Conferees, \$981 million; Senate, \$979.6 million; House, \$1.008 billion; fiscal 2009, \$856 million. The conference total includes \$61 million in FLAME money.

## Appropriators give NPS \$218 million boost beyond stimulus

Congress was particularly generous to the Park Service last week in completing a fiscal year 2010 Interior and related agencies appropriations bill (HR 2996.) President Obama signed it into law (PL 111-88) October 30.

For Park Service operations alone the conference bill approved \$130 million more than Congress did in fiscal 2009. The bill also provided significant hikes for recreation and preservation, land acquisition, and scores of other programs managed by NPS.

That comes on top of an economic stimulus law (PL 111-11 OF February 17) that provided the Park Service with an extra \$1 billion for a broad array of projects, including road construction.

So perhaps it is quibbling to point out that the bill includes only \$15 million for Park Service Centennial Challenge grants. The money is to be matched by nonfederal partners of the parks.

While \$15 million - on top of the \$130 million extra for operations - is nothing to sneeze at, the Centennial Challenge program as anticipated by the Bush administration would provide \$100 million per year in federal money, matched by \$100 million per year in partner money. Before the Bush administration had left office it counted more than \$300 million in promised partner contributions.

Tom Kiernan, president of the National Parks Conservation Association (NPCA), said his organization was disap-

pointed in the \$15 million for Challenge grants. "We are hopeful that the National Park Service will work effectively with partners to identify compelling projects to leverage philanthropic donations, and show Congress the value of an increased commitment to this program in the future," he said.

The principal author of the bill, Rep. Norman Dicks (D-Wash.), said the measure includes a total increase of \$218 million for the Park Service.

NPCA's Kiernan summed up, "America's national parks will greatly benefit from the operations increase of \$130 million, which will help reduce the current funding shortfall. As a result, in FY 2010, the Park Service will be able to hire more rangers, fill out the authorized boundaries of many parks, and enhance its ability to address the impacts of climate change on our national parks."

Here are a few of the Park Service provisions and appropriations:

**POINT REYES:** The conference accepted a provision from Senate subcommittee on Interior Appropriations Chairman Dianne Feinstein (D-Calif.) that allows - but does not force - the Interior Department to extend for 10 years a permit for an oyster farm in Point Reyes National Seashore. The Park Service has opposed extension of the permit because it said the farm did not conform to uses allowed in potential wilderness, even though the farm has been in operation since 1934. The House bill contained no comparable provision.

The conference provisions says, "(T)he Secretary of the Interior is authorized to issue a special use permit with the same terms and conditions as the existing authorization, except as provided herein, for a period of 10 years from November 30, 2012."

The main condition in the bill language says, "The Secretary shall take into consideration recommendations of the National Academy of Sciences Report pertaining to shellfish mariculture in Point Reyes National Seashore before

modifying any terms and conditions of the extended authorization." The academy report generally downplays the possibility of serious environmental damages from the oyster farm.

**ELK HUNT NOT NEEDED:** The conferees dropped from the bill a Senate provision from Sen. Byron Dorgan (D-N.D.) that would have authorized a public elk hunt in Theodore Roosevelt National Park in North Dakota. Dorgan said on the floor the Park Service has worked out an acceptable procedure for reducing the size of the herd in the park.

"We have an agreement in principle, to use qualified North Dakota volunteers, deputized by the National Park Service, who will, under the guidance of the Park Service, thin the elk herd," he said. "We do not need to spend a lot of money doing it. All we need to do is just use some common sense, and that is exactly what we are doing."

**THE BREAKDOWN:** Here are some Park Service numbers:

\* PARK SERVICE OPERATIONS: Conference, \$2.262 billion; Senate committee, \$2.261 billion; House, \$2.261 billion; administration request, \$2.266 billion; fiscal 2009 appropriation, \$2.132 billion;

\* NPS CENTENNIAL CHALLENGE: Conference, \$15 million; Senate committee, no money; House, \$25 million; Obama administration, \$25 million; fiscal 2009, no money;

\* NPS REC AND PRES: Conference, \$68.4 million; Senate committee, \$67.4 million; House, \$59.4 million; administration, \$53.9 million; fiscal 2009, \$59.7 million;

\* NPS CONSTRUCTION: Conference, \$233 million; Senate committee, \$219.7 million; House, \$213.7 million; administration, \$206 million; fiscal 2009, \$233.2 million;

\* SAVE AMERICA'S TREASURES: Conferees, \$25 million; Senate, \$20 million; House, \$30 million; administration, \$20 million; fiscal 2009, \$20 million; and

\* PRESERVE AMERICA: Conferees, \$4.6 million; Senate committee, \$3.2

million; House, \$6 million; administration, \$3 million; fiscal 2009, no money.

## Climate change bill begins in Senate; some money already

The Senate environment committee November 5 approved a comprehensive climate change bill (S 1733) that could have profound consequences for conservation programs on the nation's lands and waters.

But a Republican boycott of committee meetings this week indicates the committee bill will undergo major revisions in the next few weeks.

Indeed, the lead sponsor of S 1733, Sen. John Kerry (D-Mass.), was already negotiating a separate deal with Sens. Lindsey Graham (R-S.C.) and Joseph Lieberman (I-Conn.)

The mark-up version of S 1733 would not only establish a huge fund for conservation programs, but it would also revise fundamentally how federal and state lands are managed.

Much like a House-passed climate change bill (HR 2454), the draft measure before the Senate Environment and Public Works (EPW) Committee would have every federal agency or department complete a plan to comply with the bill's orders. States would have to take similar actions.

The bill would have each agency "identify and prioritize . . . the specific conservation actions that address the ongoing and expected impacts of climate change, including, where applicable, ocean acidification, drought, flooding, and wildfire on natural resources under jurisdiction of the department or agency preparing the plan."

To help do that the bill would establish a Natural Resources Climate Change Adaptation Fund that would provide billions of dollars for projects to protect natural resources. In a major difference from the House bill S 1733 would guarantee money in the fund. The House would subject distribution of the

money to appropriators in annual spending bills.

To add emphasis to the provision four senators introduced last week a stand-alone bill (S 1933) that (1) directs agencies to tackle climate change and (2) establishes a Natural Resources Climate Change Fund. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) is the principal sponsor. He acknowledged that his bill is similar to the adaptation fund provisions in S 1733.

"The legislation I am introducing today is complementary to the work that has already been done," said Bingaman October 27. "My cosponsors and I share the same goal of making sure natural resources adaptation is included in any climate change legislation that comes before the Senate."

The Obama administration largely praised the Senate committee bill October 27 in testimony from three department heads and EPA Administrator Lisa Jackson. Interest groups presented their briefs at hearings October 28 and 29.

Without specifically endorsing S 1733, Jackson urged Congress to act. "Even as the President and the members of his Cabinet move forward under existing authority, we continue urging Congress to pass a new clean-energy law," she said. "Only new legislation can bring about the comprehensive and integrated changes that are needed to restore America's economic health and keep the nation secure over the long term."

Secretary of Interior Ken Salazar told the committee that his department was already feeling climate change impacts. "At the Department of the Interior, we recognize first hand that greenhouse gas emissions are affecting our climate," he said. "The change in climate is impacting water supplies for cities, towns, and farms; leading to more severe droughts, hurricanes, and floods; contributing to more intense forest fires; putting coastal communities at risk; and shifting wildlife habitat and migration patterns."

The Senate EPW committee this week under committee chairman Barbara Boxer (D-Calif.) was unable to consider any of 80 proposed amendments to S 1733 without Republican participation. So committee Democrats approved the bill unamended, as they say committee rules allow.

Republicans, led by ranking EPW minority member James Inhofe (R-Okla.), say the bill is evil and they intend to defeat or delay it. "The bill is no doubt ambitious but it's also extremely costly and ineffective," said Inhofe at an October 27 hearing. "It is a massive new tax on consumers that will have virtually no affect on climate. This bill necessarily will raise the price of gasoline, electricity, food, and just about everything else."

The climate legislation would affect all federal agencies, with the Park Service and the Fish and Wildlife Service at the head of the pack. At a Senate EPW hearing October 28 the National Parks Conservation Association (NPCA) called climate change the "greatest challenge" to the National Park System.

Mark Wenzler, director of clean air and climate programs for NPCA, said Congress was moving in the right direction with S 1733. "Our national parks are counting on Congress to commit the resources necessary to protect them from the effects of climate change," he said. "Fortunately, climate legislation currently before Congress provides an historic opportunity to safeguard our national parks and wildlife from destructive impacts."

Separately, Congress is already addressing climate change in appropriations bills. Congress approved last week a fiscal year 2010 Interior appropriations bill (PL 111-88 of October 30) that includes \$382 million for climate change programs. President Obama signed the bill into law October 30.

Some Republicans, such as Sen. John Kyl (R-Ariz.), complained that Congress is spending money on climate problems even before the big authorizing bill is passed. He said on the Senate floor, "Finally, I would caution that

including \$382 million for climate change-related activities seems premature, given that the Senate has not yet even taken up climate legislation."

In a related development the Fish and Wildlife Service (FWS) last month proposed to make climate change the agency's top priority. To that end FWS completed a strategic plan that will guide the agency for the next 50 years. FWS said it would execute the plan via partnerships - called Landscape Conservation Cooperatives - with states, federal agencies, conservationists and others.

Under the cooperatives FWS said, "Specific landscape conservation actions will support adaptation to climate change including the promotion of habitat connectivity and integrity, management of genetic resources and reduction of the susceptibility to diseases, pathogens and pests."

Information about the report is available at the FWS website, <http://www.fws.gov>. Click on the "Climate Change" icon in the upper right hand corner of the front page.

The federal planning requirement in the Senate bill would give agencies one year to complete plans. Section 368 (a separate Section 369 would govern state plans) requires agencies to tell land managers how to cope with existing and anticipated climate change impacts. The agencies are to comply "through existing and new plans, policies, programs, activities, and actions."

Salazar is already moving in that direction with a September 14 Secretarial Order #3289 that directs his agencies to incorporate climate change into all decisions.

The (all-Republican) Western Congressional Caucus objected to the Secretarial Order, saying it would open a Pandora's Box of litigation. "By bypassing the congressional approval process, the Department of Interior has unilaterally created a new set of restrictive regulations and mandates that will allow special interest groups with narrowly focused agendas to dictate

current and future activities on federal lands – all in the name of ‘climate change,’” said the caucus in an October 28 letter to Salazar. Sen. John Barrasso (R-Wyo.) chairs the caucus.

By one estimate the House climate change bill would provide a natural resource fund with an average of \$2.6 billion per year.

The Senate bill would allocate 61.5 percent of the fund money to federal agencies and 38.5 percent to states. Of the federal money it would allocate 25 percent to the Interior Department for adaptation activities; 12 percent to the Land and Water Conservation Fund for Interior Department agencies, the Forest Service and states; five percent to Forest Service adaptation activities; seven percent to the Department of Commerce for coastal and marine adaptation; and 12.5 percent for estuarine and freshwater adaptation in programs administered by EPA and the Corps of Engineers.

## **LWCF gets a fresh boost from govs, climate legislation**

Major players around the country continue to beat the drums for the Land and Water Conservation Fund (LWCF), in the hopes that Congress may some day fully fund the program.

Congress may be hearing the drums. It provided \$125 million more for the traditional LWCF last week in a fiscal year 2010 appropriations bill than it did in fiscal 2009, \$305 million to \$180 million.

And a leading climate change bill that is receiving serious consideration in the Senate could some day provide significant assistance to the program. That bill this week was being marked up in the Senate Environment and Public Works Committee (*see previous article.*)

LWCF backers believe climate change legislation shows the most immediate promise of any initiative. “The piece of legislation that I think has the best chance is the (natural resources) adaptation fund in the climate

change bill,” said Amy Roberts, director of government affairs for the Outdoor Industry Association (OIA.)

Support for the program surfaced in a different quarter October 26 when 18 governors wrote House Natural Resources Committee leaders urging the adoption of a full funding (\$900 million) provision in a comprehensive energy bill (HR 3524.) The provision would guarantee the \$900 million allocation each year without further approval by appropriators.

“We urge the entire Committee to support full, dedicated funding for LWCF in upcoming energy legislation,” wrote the governors. “Such dedicated funding will provide measurable benefits to our states by protecting our vital natural resources and providing healthful opportunities for outdoor recreation for all Americans.”

Most of the governors were from blue states. But red state governors Brian Schweitzer (D-Mont.), Mark Parkinson (D-Kansas), M. Michael Rounds (R-S.D.) and Bill Richardson (D-N.M.) were among the signatories.

The promise of President Obama in his first budget (fiscal 2010) to eventually spend \$900 million per year on LWCF began the buzz. Secretary of Interior Ken Salazar has sustained the buzz. He is reportedly working on a major land and water initiative called Treasured Landscapes.

Salazar has said he would like to replicate at the national level a Go Outdoors Colorado program that provides park and rec with money from a Colorado state lottery. Salazar has talked about using oil and gas royalties to finance a federal program. Thus the Treasured Landscapes talk.

On a roughly parallel course the House Natural Resources Committee is giving top priority to the comprehensive energy bill that would guarantee \$900 million each year. However, at a milestone hearing on the bill September 16 Salazar began to qualify his previous support for guaranteed assistance. He sang the old song that many administra-

tions have sung over the decades - when budget deficits are high land acquisition must get the axe.

"On the one side you have the reality that we are dealing with very difficult times relative to the deficit, which we have inherited in part by this administration," Salazar told the committee. "And so that enters into the equation about how exactly we move forward with LWCF."

The energy bill (HR 3534), introduced by House committee chairman Nick Joe Rahall (D-W.Va.), would rewrite most onshore public lands energy policy. Rahall intends to move quickly on the bill. His committee held two hearings in September.

Roberts of OIA said the Rahall bill is in its infancy. "Chairman Rahall's bill is not very far along in the legislation process. And there is no Senate bill," she said. HR 3534 has not moved beyond the hearing stage.

She added, "It's not clear what a Treasured Landscapes bill will include compared to Chairman Rahall's bill, but if Rahall's bill gets through the House, they might marry up. It will also be interesting to see if Treasured Landscapes will get into the next (fiscal 2011) budget request."

The climate change legislation would establish a Climate Change Adaptation Fund that would provide billions of dollars for projects to protect natural resources. It would cut LWCF in on 12 percent of annual fund expenditures. Environmentalists estimated that a House-passed bill (HR 2454) would provide \$2.6 billion per year to the fund.

However, the House bill would subject any allocations to appropriations. The Senate bill would guarantee the money each year.

LWCF also received a boost in July from a blue ribbon Outdoor Resources Review Group (ORRG) that recommended Congress fund LWCF at \$3.2 billion per year, i.e. full funding adjusted for inflation.

A second national commission, the National Parks Second Century Commission, also recommended September 24 that Congress provide \$900 million per year for LWCF.

Here is a summary of the LWCF numbers in the fiscal 2010 appropriations bill that Obama signed into law October 30 as PL 111-88.

\* FEDERAL LWCF: Conferees, \$265.3 million; Senate committee, \$262 million; House, \$212.4 million; administration, \$199 million; fiscal 2009, \$160 million;

\* FEDERAL LWCF BY AGENCY (with fiscal 2009 in parenthesis): Park Service, \$86.3 million (\$64.2 million in fiscal 2009); Fish and Wildlife Service, \$86.3 million (\$42.5 million in fiscal 2009); Bureau of Land Management, \$29.7 million (\$14.8 million in fiscal 2009); and Forest Service, \$63 million (\$49.8 million in fiscal 2009); and

\* STATE LWCF: Conferees, \$40 million; Senate committee, \$35 million; House, \$40 million; administration, \$30 million; fiscal 2009, \$20 million.

## Appropriators add 'opt-in' and 'opt-out' to NHA laws

Congress included two national heritage area (NHA) riders in a fiscal year 2010 Interior appropriations bill (PL 111-88 of October 30) that could impact management of NHAs, now and in the future.

One provision would allow landowners to opt out of *activities* within any NHA, but not out of the NHA proper. That should have relatively little impact on management of NHAs, according to Congressional staff members.

The other rider has more potential, for good or ill. It sets a precedent by allowing private property owners for the first time to "opt in" to place their land in an NHA, this time a Northern Plains NHA in North Dakota. Sen. Byron Dorgan (D-N.D.) sponsored the rider.

A staff member on the Senate Energy Committee that writes NHA legisla-

tion acknowledged that the Dorgan provision sets a precedent. "This is the first time it has ever happened," he said. The precedence may allow Republicans, particularly in the House, to argue that if opt in is good enough for a Democratic senator, it should be good enough for any NHA.

But the Senate committee staff member said that his panel has honed private property rights protections in NHAs over many years, so the opt in language may not be needed. "In committee I think we have developed a model where we are not making anyone do what they don't want to do," the staff member said.

Republicans on the House Natural Resources Committee have been the biggest critics of NHAs, but they aren't overly excited about the Dorgan provision. "We don't think it is going to set much of a precedent," said a Republican committee staff member. "It only applies to that one area."

But the staff member did say, "It's something we can point to for all heritage areas for now."

The Congressional NHA process for years has been criticized by both Republicans and Democrats because Congress has never established a national policy for NHAs, nor national standards for new NHAs. Instead, Congress has often designated NHAs in appropriations bills and omnibus lands bills.

Most recently, Congress established ten new NHAs in an omnibus public lands law (PL 111-11 of March 30), including the Northern Plains NHA.

The new NHAs included a Sangre de Cristo National Heritage Area, Colorado; Cache La Poudre River National Heritage Area, Colorado; South Park National Heritage Area, Colorado; the Northern Plains NHA; Baltimore National Heritage Area, Maryland; Freedom's Way National Heritage Area, Massachusetts and New Hampshire; Mississippi Hills National Heritage Area; Mississippi Delta National Heritage Area; Muscle Shoals National Heritage Area, Alabama; and the

Kenai Mountains-Turnagain Arm National Forest Heritage Area in Alaska.

Heritage areas usually consist of a mix of public and private lands with striking social, economic, historical and natural features that don't in their entirety quite rise to the level of national parks. Indeed, some NHAs do actually include national park units.

Once Congress designates an NHA, the Park Service works with local public and private partners to prepare a management plan. And NPS provides technical assistance. A new fiscal year 2010 appropriations law provides \$16.8 million for NHA grants. That is \$1.1 million above a fiscal 2009 appropriation of \$15.7 million.

The broader opt-out provision in the appropriations law would allow a private property owner in any existing or new NHA to opt out of participating in any activity in the NHA, but would not allow the landowner to opt out of the NHA altogether.

Says the law, "Any owner of private property within an existing or new National Heritage Area may opt out of participating in any *plan, project, program, or activity* conducted within the National Heritage Area if the property owner provides written notice to the local coordinating entity." Our emphasis.

The Senate staff member said the provision may not have much legal effect because a private property owner already has the right to choose not to participate. "They can do that anyway," he said. "It is private property."

The NHA fight is particularly fierce in the House. For example on September 8 the House refused to pass a bill (HR 324) to designate a new NHA in the Santa Cruz Valley of Arizona. The bill was brought up under a Suspension of the Rules procedure that required a two-thirds vote to pass. The measure received 249 votes, but that was not enough for a two-thirds majority.

Sponsor Rep. Raúl Grijalva (D-

Ariz.) then brought HR 324 up September 23 under regular procedures and it was approved by a 281-to-142 margin.

On the floor September 23 ranking House Natural Resources Committee Republican Doc Hastings (Wash.) complained: "It would allow a basis for ambitious federal land managers to claim that now they have a mandate and millions of Federal dollars to interfere with local decisions affecting the private property of others."

But committee chairman Nick Joe Rahall (D-W.Va.) said, "I also rise, as I have said, and as I have done time and time and time again, to point out that the claim that national heritage areas harm the rights of private property owners is utterly false. F-A-L-S-E. Utterly false." The bill would designate a 3,300 square-mile NHA on the border between Arizona and Mexico.

Arizona Sens. John McCain (R) and Jon Kyl (R) have not introduced counterpart bills.

## **FS asks specificity in year-round ski resort rec bill**

The Forest Service is resisting a bit legislation that would give ski resorts located in national forests broad authority to host year-round recreation uses.

But the service and principal bill sponsor, Sen. Mark Udall (D-Colo.), appear to be moving toward an agreement on how to specify what uses could and could not be allowed in ski resorts in the summer. That agreement would specify uses that are clearly inappropriate - golf courses, tennis courts, amusement parks. And it would provide the service with some standards for deciding other uses on a case-by-case basis.

The Senate Energy Committee October 29 held a hearing on Udall's bill (S 607) that would expand authorized uses on ski resorts beyond skiing. Resorts want to add other uses, particularly in the summer, to make money year-round.

S 607 as written would give the Forest Service flexibility to authorize just about any use as long as it was "natural resource" related. The bill says the "Secretary may authorize the holder of a ski area permit issued pursuant to subsection (b) to provide on National Forest System land subject to the ski area permit such other seasonal or year-round natural resource-based, outdoor-developed recreational activities and associated facilities (in addition to skiing and other snow-sports) as the Secretary determines to be appropriate."

In the Senate committee hearing Joel Holtrop, deputy chief of the National Forest System, cautioned, "There clearly are some activities that would be outside the scope of what the subcommittee and the Forest Service would be interested in occurring on national forest land. We would want to make sure that the legislation addresses that appropriately."

But Udall said he thinks the legislation already provides the guidance the Forest Service needs. "I would agree that we need to have sideboards so that permitted activities are in keeping with natural resource based recreation," he said. "I do believe with pride of authorship that we have struck the right balance here, given that this is a fluid and evolving concept and specific activities need to fit into individual areas."

Despite that statement, Udall indicated he was willing to accept some specificity in bill report language. "I do have some concerns about spelling out in detail what activities can and can't be in the law," he told Holtrop. He added, "Nevertheless, would you be willing to work with us on guidance in report language?"

Holtrop appeared to agree. "Yes, we would," he answered Udall. "I don't think we can be definitive about what all those activities should be excluded at this point in time because there will be new activities and new ideas we need to respond to over time. I do think there are some that are so clearly out-

side the scope of my testimony, such as golf courses and tennis courts, we can reach resolution on fairly quickly."

The nation's ski industry says that if Congress passes legislation to ensure that ski resorts in national forests could offer the public year-round recreation, it would benefit all interests.

At the same time Rusty Gregory, the chairman of the National Ski Areas Association (NSAA), asked the Senate committee to not only grandfather existing uses but also to authorize use of those activities in other forests.

For instance, Gregory said, "Alpine slides (long chutes built on hill-sides) exist in various parts of the country on public land. However, with the exception of the Pacific Northwest, resorts in most ski states are not even allowed to submit a proposal for a new alpine slide."

Gregory is also president of the Mammoth ski resort in California. NSAA represents 121 ski areas on national forests in Arizona, California, Colorado, Idaho, Montana, Nevada, New Hampshire, New Mexico, Oregon, Utah, Vermont, Washington and Wyoming.

Most of the nation's largest ski facilities are located on national forest land. The resorts pay a complicated set of fees to the federal government for long-term permits.

Not everyone is on board. The environmental group Colorado Wild has been a persistent critic of Udall's bill. The group said that a predecessor bill last year could lead to uncontrolled uses of national forests.

Testifying for Colorado Wild last week, executive director Ryan Bidwell presented a number of objections, such as the bill provides no limits on where in national forests the activities would occur, the bill does not constrain uses to developed areas and the bill provides ski permit holders with a competitive advantage over other kinds of recreation permit holders.

Rep. Diana DeGette (D-Colo.) has introduced a counterpart House bill (HR 2476.)

## **Congress extends SAFETEA-LU again, stimulus talks go on**

The House and Senate last week extended surface transportation programs until December 18 as part of a temporary spending resolution, while continuing to disagree over how long to extend an underlying transportation law.

The extension was included in a fiscal year 2010 Interior appropriations bill (PL 111-88 of October 30.) It effectively maintains spending levels under the last surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.)

However, because SAFETEA-LU also imposed a delayed reaction rescission of \$8.7 billion, the states will actually receive \$1.5 billion less than they did for a similar seven-week period last year, according to the American Association of State Highway Transportation Officials (AASHTO.)

AASHTO in turn, with support from some important Congressional leaders and governors, is now campaigning for a mini-stimulus bill that focuses just on transportation projects. Gov. Edward Rendell (D-Pa.) reportedly is recommending that Congress spend \$150 billion from general revenues on highway projects until Congress can write a new, six-year surface transportation law.

Rendell may have help. AASHTO said that Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.), while ruling out a second comprehensive stimulus law, said Congress might be willing to accept a single-shot surface transportation bill. Boxer appeared at AASHTO's annual meeting in Palm Springs, Calif. October 26.

In addition Senate Majority Whip Richard Durbin (D-Ill.) and House Transportation Committee Chairman James Oberstar (D-Minn.) have been outspoken

advocates of a transportation-led stimulus bill. An aide to Oberstar told us that his committee could identify projects for such a stimulus bill quickly because it already did the research in preparing a first stimulus bill (PL 111-5 of February 17) at the beginning of the year.

Although Congress extended SAFETEA-LU through December 18 (and included appropriations to pay for it), the House and Senate in the last fortnight made no public progress on a longer extension.

To buy more time the House September 23 approved a bill (HR 3617) that would extend SAFETEA-LU for three more months. That would allow Congress to decide whether to accept the President's recommendation for an 18-month extension or Oberstar's recommendation for a new six-year bill.

If Congress does pass HR 3617, it would set specific three-month spending caps for some park and rec programs, such as \$60 million for national park roads, \$112 million for Indian Reservation roads, \$75 million for Public Lands Highways, \$11 million for scenic byways, \$7.5 million for forest roads and \$7 million for refuge roads.

Senate leaders, with the support of the White House, have argued for an 18-month extension of SAFETEA-LU. Boxer's committee approved legislation (S 1498) to do that July 22 but the bill hasn't moved since then.

The administration has repeatedly said that rapidly accelerating national budget deficits rule out any major new spending initiatives. Oberstar and his House colleagues are talking about a \$500 billion price tag for a six-year surface transportation law, almost double the spending in SAFETEA-LU.

Senate Democratic and Republican leaders have attempted to move HR 3617 through the Senate Environment and Public Works (EPW) Committee but those efforts have been stymied by an addendum to the bill. It would restore \$8.7 billion in rescinded surface transporta-

tion allocations from previous years.

The House subcommittee on Highways and Transits June 24 did approve a six-year, \$500 billion surface transportation bill (unnumbered), called the Surface Transportation Authorization Act of 2009.

The subcommittee bill is generally supportive of park and rec programs. The Surface Transportation Authorization Act of 2009, as it is formally called, would extend for six years such outdoor programs as transportation enhancements (still at 10 percent of total allocations for the Surface Transportation program), recreational trails, scenic byways, federal and Indian land roads, and Safe Routes to School. All the programs except enhancements would receive individual allocations of unspecified amounts.

But the bill won't move until money is found to supplement gasoline taxes that finance a Highway Trust Fund. Gas taxes now make up only about half the needed \$500 billion. House Ways and Means Committee Chairman Charlie Rangel (D-N.Y.) said that he would not let the legislation move until he is convinced the House is willing to pay for it.

## Notes

### **No fees for anyone on Vets' Day.**

The Interior Department and the Forest Service will not charge entrance fees to any visitors on Veterans Day, November 11, they announced this week. The fee-free day is designed "to thank our nation's service men and women," said Secretary of Interior Ken Salazar. The fee-free-day could also boost visitation to the national parks a bit. Three fee-free weekends over the peak summer season helped spark a modest increase in visitation to the national parks this year. The agencies that will not charge fees on Veterans Day are the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management and Bureau of Reclamation in the Interior Department, and the Forest Service in the Department of Agriculture.

**Obama signs E&W money bill.**

President Obama signed into law October 28 fiscal year 2010 Energy and Water appropriations bill (PL 111-85) as Congress neared completion of spending measures with direct park and rec implications. Obama signed an Agriculture bill into law (PL 111-80) October 21 and an Interior and related agencies bill October 30 (PL 111-88.) Still to go is a Department of Transportation bill (HR 3288.) Both the House and Senate have approved versions of the Transportation bill, but a controversy over carrying concealed weapons on Amtrak trains is holding up a conference committee. The Energy and Water appropriations bill contains significantly less money for a giant Everglades restoration project than the administration requested. But Sen. Bill Nelson (D-Fla.) said the administration has promised to finance downstream two major projects that were shorted in the bill. To refresh, 2000 Congress approved the Comprehensive Everglades Restoration Project (CERP), an overarching \$7.8 billion federal-state initiative to revive the Everglades. The cost estimate has soared since then to more than \$20 billion. In 2007 Congress authorized the first two major construction projects under CERP - a \$1.365 billion Indian River Lagoon proposal, with half of the money - \$682.5 million - coming from the feds and half from the State of Florida. Congress also authorized a \$375 million Picayune Strand project with half the money - \$187.5 million - provided by the feds and half by Florida. However, Congress must still appropriate money separately for the projects. And that's where the fiscal 2010 Energy and Water spending bill comes in, or fails to come in. PL 111-85 will provide \$34 million less than the Obama administration had requested for the first two CERP projects. Although the administration asked for \$214 million, Congress provided \$180 million in the law.

**MLK memorial given go-ahead.** Secretary of Interior Ken Salazar October 29 signed a permit that authorizes construction of a Martin Luther King, Jr. Memorial on the National Mall in Washington, D.C. Congress authorized construction of a memorial in 1998 and the groundbreaking occurred on Nov. 13,

2006. Construction is expected to begin later this month and to be completed in 2011. The memorial will be located on four acres near the Franklin Delano Roosevelt Memorial in a direct line between the Lincoln and Jefferson Memorials. Supporters have raised \$107 million of the \$120 million construction costs. The October 29 ceremony was attended by King's sister, Christine King Ferris, and members of the Black Caucus who have long backed the memorial. King is honored for his work in helping desegregate the country. He received the Nobel Peace Prize in 1964 at the age of 35. He was shot to death on April 4, 1968, in Memphis, Tenn., at the age of 39. The website for the memorial is [www.mlkmemorial.org](http://www.mlkmemorial.org)

**Gettysburg boss transferred.** The Park Service late last month transferred long-time Gettysburg National Military Park Superintendent John A. Latschar from that post to a cultural affairs job in the Washington, D.C. headquarters. The Interior Department Inspector General (IG) posted a report last month that cleared Latschar of charges of unethical behavior in the management of the park. But the *Washington Post* revived interest in the IG report October 19 when it said the IG did not mention that Latschar inappropriately viewed more than 3,400 sexually-explicit images in his office computer. October 23 was Latschar's last day as superintendent after 15 years in the post. He reportedly intends to live in Gettysburg and commute the 30 miles to Washington to his new position of assistant to the associate NPS director for cultural resources. His salary of \$145,000 per year and his pension won't be affected by the transfer. The IG assessed allegations that Latschar had dealt unethically with a private partner, called the Gettysburg Foundation, which helped manage the park. Among other things the foundation last year selected Latschar as its next president at a salary of \$245,000 per year, while he still served as superintendent. Latschar eventually did not get the job.

**Moe to retire at National Trust.** After 17 years as the major national advocate for historic properties around

the country, National Trust for Historic Preservation President Richard Moe announced November 3 he would leave his position. He said every organization needs to regenerate occasionally and that is true for the National Trust as well. In his role as a spokesman for preservation Moe, 72, carried great weight among agency officials, Congress and, particularly, the press. Moe will stay in the job until a successor is chosen, probably next spring. The National Trust is the most powerful single voice for historic preservation in the country. It was chartered by Congress in 1949 and is supported by member donations. The trust has a budget of \$55 million per year. Twenty-nine sites are designated as National Trust Historic Sites. Most are owned by the National Trust and operated by other non-profit organizations

#### **Flight 93 groundbreaking set.**

Secretary of Interior Ken Salazar and Pennsylvania politicians will break ground tomorrow (November 7) on a Flight 93 National Memorial in Shanksville, Pa. Salazar announced September 1 that the federal government had reached agreement with seven of the eight landowners at the site of the September 11, 2001, crash in Somerset County. And the eighth - and most important landowner - has agreed to allow a federal court to determine a price. At the date of the announcement Salazar and then Acting NPS Director Dan Wenk said the groundbreaking would take place November 7. The supporters project completion of the memorial by Sept. 11, 2011, on the 10<sup>th</sup> anniversary of the crash. Family members of victims, private citizens and the general public have contributed to land acquisition for and construction of the memorial. The usual bottom-line cost estimate is \$57 million for the 2,200-acre memorial. Of that \$18 million has come from federal funds. Salazar estimated federal land acquisition costs of \$9.5 million.

#### **ORRG background report available.**

A supplementary research report prepared in conjunction with an Outdoor Resources Review Group (ORRG) is now available at <http://www.rff.org/orrgpubs>. That is the website of the Resources for the

Future organization that performed staff work for the commission. The blue ribbon ORRG commission published its recommendations on July 6 and its report is available at <http://www.orrgroup.org/>. The ORRG recommended among other things "full" funding for the Land and Water Conservation Fund of \$3.2 billion. The program is currently authorized for \$900 million per year, but the commission report says inflation should increase the payout to \$3.2 billion. The ORRG also called for the study of a broader, \$5 billion per year fund to replace LWCF beginning in 2015, presumably by Congress, the White House and any new commission/conference. Sens. Jeff Bingaman (D-N.M.) and Lamar Alexander (R-Tenn.) were honorary co-chairs of the ORRG.

#### **NPS concessions board revived.**

The Park Service announced October 26 that Secretary of Interior Ken Salazar intends to reestablish a National Park Services Concessions Management Advisory Board. The advisory board was established in 1998 in the National Parks Omnibus Management Act and was to expire on Dec. 31, 2008. It was extended until Dec. 31, 2009, by an omnibus public lands law of March 30. The seven-member board includes representatives of a cross-section of interested parties including of course concessioners. (*Ed. Note.* This is one of those annoying Park Service announcements that were signed months ago - on August 26 this time - that are only now being formally published in the *Federal Register* for the general public to see.)

**Rey takes lobbying job.** The man who set forest policy for the Bush administration for eight years, Mark Rey, has joined the Livingston Group, LLC lobbying firm. Rey will specialize in energy and environmental policy, as well as Defense Technology and Homeland Security. Rey served as under secretary of Agriculture for Natural Resources in the Bush administration, overseeing the Forest Service. His tenure was marked by initiatives to undo Clinton administration restrictions on road construction in roadless areas. He formerly served as a Republican forest policy staff member on the Senate Energy Committee. Livingston is a former Republi-

can Congressman from Louisiana who rose to chairman of the House Appropriations Committee from 1995 to 1998.

**AASHTO names Brown as president.**

The American Association of State Highway Transportation Officials (AASHTO) announced October 27 that Larry L. "Butch" Brown, a Mississippi state official, will serve as its 2010 president. Brown's title now is executive director of the Mississippi Department of Transportation. His first priority is to persuade Congress to write a "well-funded" multi-year surface transportation law to replace the law that expired at the end of September 30. AASHTO also said it had selected Susan Martinovich as the first woman to serve as vice president of the association. Martinovich is the director of the Nevada Department of Transportation.

**Transmission line deal set.** Nine federal departments announced an agreement October 28 on a policy to expedite the approval of electric transmission lines on federal lands. The agreement calls for one federal point-of-contact for all transmission lines. And it calls for clear timelines and a single environmental review. The agreement was signed by the Department of the Interior, Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Environmental Protection Agency, the Council on Environmental Quality, the Federal Energy Regulatory Commission, and the Advisory Council on Historic Preservation. Environmentalists whose litigation sometimes stalls transmission lines applauded the agreement. But Sierra Club Clean Energy Solutions Campaign Director Alex Levinson said, "Any new power infrastructure that's built should be designed to support clean energy. New transmission lines should carry wind and solar power, not dirty coal."

## Conference Calendar

### NOVEMBER

10-14. **National League of Cities** annual Congress of Cities in San Antonio. Contact: National League of Cities, Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC

20004. (202) 626-3105. <http://www.nlc.org>.

### 12-15. **Council of State Governments**

state trends forum in Palm Springs, Calif. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. <http://www.csg.org>.

### DECEMBER

7-10. **America Outdoors** marketing and management conference in Reno, Nev. Contact: <http://www.americaoutdoors.org/confluence.htm>.

### 16-17. **Western Governors' Association**

winter meeting in San Diego. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202-5114. (303) 623-9378. <http://www.westgov.org>.

### JANUARY

6-9. **Archaeological Institute of America** annual meeting in Orange County, Calif. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

### 13-14. **National Ski Areas Association**

eastern conference at Mount Snow, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

### 20-22. **U.S. Conference of Mayors**

winter meeting in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

### 21-24. **Outdoor Retailer Winter Market**

in Salt Lake City. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

### FEBRUARY

### 1-4. **National Association of Conservation Districts**

annual meeting in New Orleans. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, DC 20002. (202) 547-6233. <http://www.nacdnet.org>.