

Federal Parks & Recreation

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Clinton vets predominate as Obama transition begins

President-elect Barack Obama has chosen transition advisors in the park and recreation arena with strong affiliations with the Clinton administration.

Former Interior Department Deputy Secretary David J. Hayes is heading the Interior Department transition team. He currently works as a senior fellow for the World Wildlife Fund.

The Interior team also includes former Interior Department Solicitor John Leshy. He is presently professor of law at the University of California's Hastings College of the Law in San Francisco. Both Hayes and Leshy served in the Clinton administration.

Former Deputy Secretary of Transportation Mortimer Downey, also of the Clinton administration, is a member of Obama's transportation team. He is presently a self-employed consultant on transportation matters. He is working with transportation transition head Seth Harris, whose expertise is in labor issues.

It is not unheard of for transition team members to become agency heads. Thus both Hayes and Leshy are being mentioned - if not by themselves - as candidates for Secretary of Interior.

Meanwhile, interest groups are taking their measure of the incoming Obama administration and offering advice. It may be crass, but the number one issue for park and rec projects is sure to be money.

Given a looming trillion dollar deficit in fiscal year 2009, "It's very clear to me that if we put our hopes in the traditional budget process we might as well go home," said Derrick Crandall, president of the American Recreation

Coalition. "Norm Dicks is going to be so hurting. It may be wiser to tap into new sources of revenues such as global climate change and transportation." Rep. Norman Dicks (D-Wash.) chairs the House subcommittee on Interior appropriations.

Said Douglas Wheeler, a veteran of the park and rec wars who is now a partner with the Hogan & Hartson law firm, "Our experience in recent years is unfortunately not as we would like it to be for appropriations for federal and state conservation programs. I'm encouraging people to pay more attention to programs in the farm bill, which has been enacted, and the transportation bill, on the one end. On the other end states have moved very aggressively and now outdo the federal government. The states just passed \$7.3 billion in conservation initiatives." (See related article page 9.)

Wheeler, who served eight years as California's Secretary for Resources and seven years in top positions in the Interior Department, said new initiatives may provide additional help, such as climate change legislation, offshore oil and gas royalties from new development and health programs.

"Climate change has great potential but it depends on whether Congress acts," he said. "There is a question whether open space will receive revenues from emission auctions. There is intense competition for that money, including from the Treasury Department."

Finally, Wheeler said the health implications of recreation must be emphasized. "I'm a member of the Outdoor Resources Review Group and in our meeting (November 12) we decided to give priority to the linkage among recreation, open space and health. That was not addressed in previous recreation commissions."

INTEREST GROUPS: Some interests are wary of the new administration, such as off-highway vehicle (OHV) users. "I think politically the powers-to-be are going to be more critical of OHV recreation," said Larry Smith, executive

director for Americans for Responsible Recreational Access. "We're going to have to do a better job of telling our story."

Brian Hawthorne, public lands director for the BlueRibbon Coalition said, "I think it's safe to say we have some trepidation, but we're hoping the next administration will take a balanced approach." But Hawthorne said the Bush administration was not always a friend of OHVers. "We didn't fare so well under the Bush administration either," he said.

Environmental groups such as American Rivers hope to do better by an Obama administration and a strengthened Democratic majority, particularly with legislation to require federal permits for projects in wetlands. "Congress should pass the Clean Water Restoration Act to ensure that our clean waters, health and safety enjoy the same level of protection they have since 1972," said American Rivers in a statement. (Interior transition head Hayes is a board member of American Rivers.)

Congress did not act this year on legislation (HR 2421, S 1870) that would have expanded federal permitting of projects in wetlands. Neither HR 2421 nor S 1870 moved in committee, although the bills were subjected to highly-publicized hearings. HR 2421 and S 1870 address a June 19, 2006, Supreme Court decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384. While the decision was not clear about what constitutes navigable waters, the court left no doubt that only water bodies related to navigable waters should be regulated. The bill would subject all waters to permitting.

The Earthjustice environmental law firm laid out six succinct recommendations, one of which calls on the new administration to "restore protection for America's Rivers, Streams, Lakes, and Wetlands."

Another calls for the restoration of a Clinton administration Forest Service roadless area rule, which essentially forbade road construction on 58.5 million acres of national forest. That

rule is caught up in a legal battle among two courts and a Bush administration rule.

Most immediately, the Obama team said November 9 that it is looking closely at Bush executive orders and regulations that it can quickly reverse by administrative fiat. As one example the Bush administration has written dozens of land management plans that have established conditions for OHV use. Six such management plans in southern Utah are particularly controversial. (See related article page 10.)

The southern Utah plans prompted John D. Podesta, head of the Obama transition team, to complain to *Fox News Sunday* November 9 about the impact of the plans on oil and gas development. The plans addressed energy development as well as OHV use. But there is little short-term the Obama administration can do; revision of land management plans can take years to carry out.

The Southern Utah Wilderness Alliance (SUWA) sees increased protection for wild lands from OHVs as a top priority of a new Interior Department. It said the department can begin to do that by "Reviewing disastrous last minute Bush administration decisions for legal violations, including the six awful land use plans the administration just approved, which open millions of acres of redrock wilderness to oil and gas leasing and ORVs".

OBAMA CABINET: The competition for posts in the Obama administration has already begun in earnest, as real and imaginary candidates for administration positions circulate their names, or have their names circulated. One prominent park and rec player, Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), is already mentioned as Secretary of Energy or Secretary of Interior. But an aide to Bingaman told us his boss is happy where he is.

Other names being circulated as a possible Secretary of the Interior include former Alaska Gov. Tony Knowles (D), Sen. Ken Salazar (D-Colo.), Leshy and Hayes.

Numerous western governors have held the Interior post over the years, so the possibility that Montana's Gov. Brian Schweitzer (D) and Wyoming's Gov. Dave Freudenthal (D) by that definition top the list. Other intriguing possibilities include House appropriator Dicks; Dan Beard, who has a long curriculum vitae with stops at the Interior Department, the House Natural Resources Committee and the office of Speaker of the House Nancy Pelosi (D-Calif.); and John Berry, Clinton's assistant secretary of Interior for Policy.

We asked Wheeler if he would consider an administration position. He said it's not likely he would be asked because he has served Republican administrations.

HILL POSTS: In Congress the election strengthened the Democratic majority significantly but it hasn't yet provided a super majority of 60 Senate votes that could overcome holds, i.e. filibusters. Best guesses put the Democratic edge in the Senate, when combined with two Independent senators, a couple of votes short of the magic 60. Best guesses put the Democratic edge in the House at about 80 votes. A few contests, including for Minnesota and Georgia Senate seats, are still in doubt.

As we reported in the last issue, committee and subcommittee leaders who oversee park and rec programs are expected to stay pretty much the same, although some could play musical chairs. In the House Rep. Nick Joe Rahall (D-W.Va.) is expected to continue as chairman of the House Natural Resources Committee and Rep. James Oberstar (D-Minn.) as chairman of the House Transportation Committee.

On the Republican side Rep. Don Young (Alaska), ranking natural resources committee member, will return, as will Rep. Dan Mica (R-Fla.), ranking transportation committee member.

In the House subcommittee on National Parks, Forests and Public Lands chairman Raúl Grijalva (D-N.M.) returns, as does ranking minority member Rob Bishop (R-Utah.)

In the Senate Bingaman is a good bet to continue as chairman of the Senate Energy Committee and Sen. Barbara Boxer (D-Calif.) is expected to continue to pursue climate change legislation as chairman of the Senate Environment and Public Works Committee.

A major change is due on the Republican side of the energy committee where ranking Republican Pete Domenici (N.M.) did not run for re-election. Sen. Lisa Murkowski (R-Alaska) is in line to replace Domenici. In fact we understand that Murkowski has already begun lining up staff members.

Sen. Daniel Akaka (D-Hawaii) returns as chairman of the Senate subcommittee on National Parks and Sen. Richard Burr (R-N.C.) as ranking minority member.

Senate won't act on omnibus; Reid promises January vote

Faced with increasing opposition, Senate Majority Harry Reid (D-Nev.) November 17 deferred an omnibus lands bill until next year.

But Reid warned critics of the 150-bill measure that the bill (HR 5151) will be a top priority when the new Congress meets in January with a large Democratic majority.

"One of the first things we'll do (in January) is there will be a bipartisan piece of legislation introduced that will include all the stuff that was held up these past two years, so-called lands bills," Reid said on the Senate floor. "That would be first or second thing we do when we come back in January."

The bill was tripped up by increasing hostility from a wide range of interests, beginning with western House Republicans and including the U.S. Chamber of Commerce, private property rights advocates, powered recreation advocates, and conservative think tanks.

Reid said he quit on HR 5151 because critic Sen. Tom Coburn (R-Okla.) would insist on a reading of the bill

that could take more than 24 hours. The Senate's time is limited because it was working on a short week and still had to address an economic stimulus bill. "But I think the discretion is the better part of valor and we will alert everyone that we will do this when we get back," said Reid.

The Heritage Foundation led the intellectual campaign against the bill with a widely distributed position paper. "The lands bill removes public land that would be available for recreational, commercial, and private ownership use by designating such land as wilderness areas, heritage areas, conservation areas and wild and scenic rivers," said author Nicolas Loris. "Furthermore, the bill places restrictions on existing federal property."

Loris said the cost should also be considered. "The Congressional Budget Office places an \$8 billion price tag on the omnibus lands bill: \$7.1 billion in discretionary spending and over \$915 million in mandatory spending," he said.

Like many interest groups, powered recreation users were concerned about a provision in HR 5151 (S 1139 as a stand-alone bill) that would give Congressional certification to the 26 million-acre National Landscape Conservation System managed by the Bureau of Land Management (BLM.) The House approved its version of the NLCS bill (HR 2016) on April 9.

Said Larry Smith, executive director of Americans for Responsible Recreational Access, "Attending to the pressing needs of the national economy seems to be a better use of the Senate's time rather than debating whether there is a need to have a permanent statute governing the National Landscape Conservation System."

But Sen. Dianne Feinstein (D-Calif.) and conservationists are swimming against that tide by asking the Senate to expand the NLCS by adding 6 million acres from the California Desert Conservation Area to it. The NLCS already includes 4 million acres of CDCA land, but Feinstein wants to add the

whole CDCA on the Senate floor, bringing the system to 32 million acres.

Karen Schambach, California coordinator for the environmental group Public Employees for Environmental Responsibility (PEER), sees mischief in the exclusion of the CDCA acreage from the NLCS. "The unspoken plan is for corporate conversion of large parts of the CDCA into giant energy farms and transmission corridor superhighways," she said.

The Senate Energy Committee developed the omnibus lands package based on committee-passed bills. However, not all committee bills made the cut because both Democratic and Republican committee leaders enjoy a veto.

The Senate Energy Committee included in HR 5151 bills that would designate new national parks, authorize additions to 17 NPS units, designate several national trails, designate several wild and scenic rivers, designate 10 national heritage areas, and designate a Snowy River Cave National Conservation Area in New Mexico, to name a few items.

The idea was to produce a bill that would provide something for everyone on both sides of the aisle. However, one key senator, Coburn, objected to the cost and possible land use restrictions. When we asked a Republican Senate Energy Committee staff member if he knew of any other Senate Republicans who publicly opposed the measure besides Coburn, he said, "No."

Indeed, there is considerable support for HR 5151. Twenty-four Democratic House members wrote Speaker of the House Nancy Pelosi (D-Calif.) October 30 and asked her to schedule a vote on HR 5151, if the Senate acted on it.

Similarly, the human-powered recreation industry, as represented by the Outdoor Industry Conservation Alliance, asked Pelosi in an October 27 letter to schedule a vote, if the Senate acted. Some 160 companies belong to the alliance including the heads of Patagonia, North Face and Kelty.

But the U.S. Chamber of Commerce, western House Republicans and their allies won the day, for now. Their principle objection is to the NLCS provision. Back on August 4 27 House Republicans had asked President Bush to veto HR 2016 if it came to him by itself. However, they did not mention a recommended veto of an omnibus bill.

In addition to the NLCS measure, HR 5151, as amended by Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) from committee passed bills, would:

* NEW NATIONAL PARKS: Establish a Paterson Great Falls National Historical Park in New Jersey, a William Jefferson Clinton Birthplace Home National Historic Site in Arkansas, and a River Raisin National Battlefield Park in Michigan.

* ADDITIONS TO NATIONAL PARKS: Authorize additions to 17 existing national parks.

* STUDIES OF NATIONAL PARKS: Authorize studies of 12 sites, most as possible additions to the National Park System.

* NATIONAL HERITAGE AREAS: Designate ten new national heritage areas (NHAs) and authorize studies of two NHAs. The new NHAs would be: Sangre de Cristo National Heritage Area, Colorado; Cache La Poudre River National Heritage Area, Colorado; South Park National Heritage Area, Colorado; Northern Plains National Heritage Area, North Dakota; 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 Santa Cruz Valley National Heritage Area, Arizona. The study areas are Chattahoochee Trace in Alabama and Georgia and Northern Neck in Virginia,

* PALEONTOLOGICAL: Establish stiff new penalties for disturbance of paleontological resources on federal lands.

* NATIONAL TRAILS: Designate an

Arizona National Scenic Trail; a New England National Scenic Trail; an Ice Age Floods National Geologic Trail in Montana, Idaho, Washington and Oregon; a Washington-Rochambeau Revolutionary Route National Historic Trail between Newport, Rhode Island, and Yorktown, Virginia; a Pacific Northwest National Scenic Trail from Glacier National Park, Mont., to the Pacific Ocean Coast in Olympic National Park, Wash.; and a Trail of Tears National Historic Trail in Alabama, Arkansas, Oklahoma, and Tennessee.

* TRAILS - WILLING SELLER: Extend willing seller authority to the Oregon National Historic Trail; The Mormon Pioneer National Historic Trail; the Continental Divide National Scenic Trail; the Lewis And Clark National Historic Trail; the Iditarod National Historic Trail; the North Country National Scenic Trail; And the Ice Age National Scenic Trail.

* WILD AND SCENIC RIVERS: Designate the following three, plus several in wilderness bills: Fossil Creek, Ariz.; Snake River Headwaters, Wyo.; and Taunton River, Mass.

* WILDERNESS: Designate wilderness proposed in 14 different wilderness bills, including wilderness in Sequoia and Kings Canyon National Park and in Rocky Mountain National Park.

* OWYHEE: Not only designate more than 500,000 acres of BLM-managed wilderness in central Idaho, but also establish a travel management plan for off-highway vehicles.

* CONSERVATION AREAS: Designate in BLM a Snowy River Cave National Conservation Area in New Mexico and a Prehistoric Trackways National Monument in New Mexico.

* BATTLEFIELD PROTECTION: Extend an existing American Battlefield Protection program through 2013 (it is about to expire.)

* PRESERVE AMERICA: Formally establish a Preserve America program to provide grants to communities and his-

toric preservation for "soft" preservation activities.

* SAVE AMERICA: Formally establish a Save America's Treasures program to provide grants to federal, state and local governments as well as nonprofits to physically preserve historic facilities and items.

Dems give up on economic stimulus with NPS Challenge

The grand plan of Democratic leaders for a huge economic stimulus bill with big money for park and rec programs came to a grinding halt this week as political reality set in. So hopes for both a \$2 billion Park Service Centennial Challenge act, significant new federal maintenance money and trail-building money were dashed.

At least, that is, until January 20 when a new Obama administration takes over along with a significantly strengthened Democratic majority in Congress.

No bill even made it to the floor as Democratic leaders realized they didn't have the votes. But Sen. Senate Majority Leader Harry Reid (D-Nev.) did introduce November 17 a lead economic stimulus bill (S 3688) with several major initiatives that would benefit park and recreation programs. They include a \$2 billion Park Service Centennial Challenge program,

Congressional Democratic leaders were unable to overcome the leftover Republican strength in the 110th Congress. Recalcitrant Republican senators, led by Sen. Tom Coburn (R-Okla.), headed off the economic stimulus bill containing more than \$100 billion in aid. At press time Democratic leaders had reduced the stimulus bill to possible assistance for automobile manufacturers and unemployment assistance, and even that was in trouble.

The only thing that could have revived a stimulus bill was a grand compromise on a significantly smaller bill between Democratic leaders, Con-

gressional Republicans and the Bush administration. But the Republicans were having none of it.

Democratic leaders took some comfort from the knowledge that their majority will be greatly enhanced in the 111th Congress and they may be able to advance an even more ambitious stimulus bill than they were hoping to move this month.

Park and rec advocates had hoped for these three major chunks of money in a big economic stimulus bill, and will hope to revive them:

*** PARK SERVICE CHALLENGE:** S 3688 includes a 10-year, \$2 billion Centennial Challenge program. The legislation would have Congress provide up to \$100 million per year to match a like amount of nonfederal contributions to upgrade the national parks coincident with the 2016 National Park System Centennial.

The House approved its own version of an economic stimulus bill (HR 7110) September 26 but it did not move after that. The House bill did not include the Park Service Centennial Challenge legislation.

The NPS Centennial Challenge provision does not contain a specific economic offset. All money in the stimulus would be guaranteed, effectively no-year money that would be available for a decade. No annual appropriation would be needed. The need for an offset has been the great obstacle preventing a stand-alone Challenge bill (HR 3094) from reaching the House floor.

The substance of the Senate economic stimulus provision followed HR 3094. It would give priority to projects that have a dedicated match, i.e. major parks with friends groups, but the bill would also authorize projects without matches.

The provision would allow NPS to spend money for seven kinds of projects with the only major limit that no more than 50 percent of the money could be spent on construction of facilities that cost more than \$5,000,000. The seven

areas are: education, diversity, personnel, environmental leadership, natural resource protection, cultural resource protection, and health and fitness.

The provision would authorize the transfer of \$1 billion total to the Challenge program from general funds, with annual allocations beginning in fiscal year 2009 and lasting through fiscal 2018, or two years after the Centennial.

*** FEDERAL LAND MAINTENANCE:** S 3688 would provide some \$2.165 billion for maintenance-related projects for federal land management agencies. Some of the money would be set aside for trails. The breakdown:

Corps of Engineers: \$1 billion with \$500 million for maintenance (\$25 million of that for rehabilitation of public use areas), \$400 million for construction and \$100 million for Mississippi River projects.

Interior Department: \$540 million with \$105 million for the Park Service (\$45 million for deferred maintenance, \$45 million for trails and \$15 million for abandoned mines), \$147 million for the Bureau of Land Management (with \$15 million for trails), \$88 million for the Fish and Wildlife Service deferred maintenance, and \$200 million for Bureau of Indian Affairs deferred maintenance.

Forest Service: \$425 for capitol improvements and maintenance with allocations beyond that not spelled out.

The Senate bill does NOT include some \$440 million that the National Parks Conservation Association last month recommended the House put up for Park Service roads.

*** TRANSPORTATION:** S 3688 would provide \$10 billion for transportation projects, with 100 percent of the money for projects coming from the feds. States and local governments would not have to match any of the allocations.

A House Transportation Committee staff member has told us that, if transportation money were included in a

stimulus, it would be allocated based on formulas in a current surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. That includes trail maintenance and construction.

NPS to follow new Yellowstone snowmobile court order

Under a brand new order from a federal judge in Wyoming, the Park Service said November 17 it will allow snowmobile use in Yellowstone National Park this winter to the same degree as a temporary rule did in 2004-2005, 2005-2006, and 2006-2007.

That is, up to 720 commercially-guided vehicle a day and up to 78 snowcoaches per day. The park, faced by a contrary decision by a federal judge in Washington, D.C., had expected to limit snowmobile use to 318 machines daily this winter.

"The parks will operate under this reinstated rule for this winter season, providing visitors, area businesses, and park employees with a plan they can count on for this year," said NPS in a release.

The park added, "The reinstated 2004 rule will also allow the NPS time to analyze public comment received on the temporary plan and its supporting proposed rule, in order to guide a long-term planning process for winter use in the parks as directed in the orders issued by both federal courts."

The Park Service's action was set up by a November 7 order from U.S. District Court Judge Clarence Brimmer in Wyoming. He took issue with a previous, contradictory order from U.S. District Court Judge Emmett Sullivan in the U.S. District Court for the District of Columbia. Sullivan had blocked a permanent Park Service rule to allow 540 snowmobiles per day, and told NPS to start over.

Pursuant to Sullivan's decision, NPS on September 15 proposed a new rule that would allow 318 machines daily in

Yellowstone this winter. But Brimmer said he did not have authority to veto Sullivan's order, so he did the next best thing - he directed NPS in its new rule to adopt its old interim rule.

One snowmobile advocate, Jack Welch, special projects consultant for the BlueRibbon Coalition, praised Brimmer. "The goal before opening the park this winter is to have people know what they can do," he said, "Judge Brimmer's decision provides certainty with a fix that was well received over the last three years."

Welch said the Park Service's proposed rule of September 15 with a 318-machine cap did not provide certainty for the public because there was doubt about NPS being able to issue a final rule that Sullivan would accept. Welch said guides couldn't line up parties for the winter.

Judge Brimmer acknowledged that the temporary rule in effect from 2004 into 2007 contained a sunset provision. "Nevertheless," he said, "this Court has recently recognized that it has 'full authority to grant any equitable remedy it deems proper and necessary without violating the principles of comity.'" He cited recent court decisions for that quote.

Then he ruled, "The Court finds it appropriate to reinstate the 2004 rule without the sunset provision. This will provide businesses and tourists with the certainty that is needed in this confusing litigation."

Brimmer criticized Sullivan for interfering in his court's business because "comity" requires the first court to have jurisdiction over litigation, i.e. Wyoming.

Further, he said, it only makes sense for a Wyoming court to have jurisdiction in a Wyoming case. "Not only do Wyoming residents have the privilege of having these awesome and wonderful parks in their state, many also have an economic interest in snowmobile use in the parks," he said. "The livelihood of many residents depends upon the rules

promulgated and effected by the NPS. Justice would seem to require, therefore, that a Court sitting in the same state that these parks are located be given the opportunity to decide a case of this magnitude."

Finally, Brimmer said that the Dec. 13, 2007, rule NPS prepared for this coming winter met environmental law, despite Sullivan's finding to the contrary.

"The Court believes that the NPS thoroughly reviewed and investigated the effects of the final rule on the environment of the parks," Brimmer said. "The final rule promulgated by the NPS reflects this thorough review and investigation."

Oppositely, judge Sullivan threw out the Dec. 13, 2007, NPS rule that would have authorized up to 540 snowmobiles per day in Yellowstone this winter. He said NPS didn't adequately review possible "adverse impacts" of snowmobiles on the park.

"NPS cannot circumvent this limitation through conclusory declarations that certain adverse impacts are acceptable, without explaining why those impacts are necessary and appropriate to fulfill the purposes of the park," he said. NPS failed to describe why admittedly adverse air and noise pollution caused by snowmobiles was acceptable, he said.

Based on Sullivan's order NPS proposed September 15 to allow up to 318 snowmobiles per day in Yellowstone for the next three winters, but riders would have to be commercially guided. The proposal would also authorize up to 78 commercially-guided snowcoaches per day.

The September 15 proposal for Grand Teton National Park and the John D. Rockefeller National Parkway NPS would allow up to 25 snowmobiles a day on the Grassy Lake Road and up to 40 snowmobiles a day on Jackson Lake for ice fishing. NPS would eliminate oversnow travel on the Continental Divide Snowmobile Trail between Moran Junction and Flagg Ranch.

However, under the interim rule called for by judge Brimmer NPS would allow 140 snowmobiles per day in Grand Teton and the parkway.

Voters give conservation initiatives a big boost

Voters set a new record in this year's elections by approving the largest amount of money ever in conservation ballot initiatives - \$7.3 billion, despite difficult economic times. Two years ago voters approved \$5.73 billion in such initiatives, topped by a \$2.24 billion statewide bond in California.

This year it was Minnesota's turn to lead the ballot by approving a \$5.5 billion Clean Water Land and Legacy constitutional amendment. The Minnesota measure was particularly noteworthy because voters effectively approved a new three-eighth of a cent sales tax on themselves to pay for the amendment.

That contrasts with the California bond which is to be paid back over 30 years and doesn't show up immediately on the tax roles.

The Trust for Public Lands, which tracks conservation initiatives, believed two years ago that almost all the low-hanging fruit had been picked and that future measures would struggle. But, said Ernest Cook, director of conservation finance for the Trust for Public Land, "That we had some pretty good results may belie that forecast."

Altogether voters on November 4 approved 62 of 87 conservation finance measures, or 71 percent. That compares with 99 of 128 measures in 2006, or 77 percent.

Cook said the big Democratic turnout for President-elect Barack Obama did not necessarily skew the statistics because a number of communities that either voted for Sen. John McCain (R-Ariz.), or nearly did, also approved significant initiatives.

For instance, 54 percent of voters in Cobb County, Ga., chose McCain but the county still approved a \$40 million

initiative. And Hillsborough County, Fla., home of Tampa, split the Presidential vote almost 50-50, yet approved a \$200 million bond with 79 percent of the vote.

There were rough spots, said Cook. "We had a lot of mixed results in New Jersey," he said. "New Jersey is going through terrible economic problems and communities are not receiving state assistance they once were. There were a number of open space trust fund measures that required dedicated property taxes that didn't do well. Some communities just threw them on the ballots. I wish they had been more selective and educated the public first. We were involved with four initiatives in New Jersey and all four were successful because there was forethought and a good education effort."

No doubt Minnesota was the high point, said Cook, particularly because of the challenge the ballot presented. "In Minnesota in a constitutional amendment, if voters don't vote on the amendment it is considered a no vote," he said. "And the measure was all the way at the bottom of the ballot page. For all that 54 percent of voters approved the constitutional amendment. I think the drop off was only 3-4 percent."

"Tuesday's results demonstrate sustained support among voters for new investments in land conservation, even in a very tough economic climate," said Cook.

The Trust for Public Lands, in association with other organizations, has developed a website (<http://www.landvote.org>) with a wealth of data on conservation initiatives, including those on the ballot in 2008.

NPS has concerns about huge O&G lease sale in Utah

The Park Service has set off caution alarms against a giant proposed sale of federal oil and gas leases near three national parks in southern Utah.

In what has become a national

controversy the Bureau of Land Management (BLM) said November 4 it would offer for sale December 19 359,450 acres for oil and gas development and another 146,339 acres for geothermal development in southern Utah.

Some of the tracts are located near Arches National Park, Dinosaur National Monument and Canyonlands National Park. Others are in what BLM calls "natural areas" that exhibit wilderness characteristics.

BLM made way for the sales by completing five resource management plans for southern Utah, the same plans that have created a separate controversy over off-highway vehicle use in the area.

Complicating BLM's efforts are objections of the National Park Service to the timing of the sale. NPS has asked to consult on parcels near the three parks in southern Utah before the parcels are put up for sale. BLM consulted with the Park Service in writing the plans but not in selecting sale tracts, NPS said.

To ease the Park Service's complaints BLM will meet with NPS officials and consult on each parcel by November 24. A spokesman for the Intermountain Office of the Park Service said, "In a nutshell we don't know the consequences of the proposed sale. We haven't had an opportunity to review the proposed lease tracts. That is a bit of a departure from past practices."

"The good news," the official said, "is that both BLM and the Park Service have agreed to have BLM field managers meet with the three Park Service superintendents and run the proposed leases by them parcel-by-parcel."

This is not the largest sale the Utah BLM has ever held. In May of 2006 it sold 391,692 acres. But because of the timing of next month's sale, just before the end of the Bush administration, and the quality of the lands involved, "This is the mother of all oil and gas lease sales," Stephen Bloch, conservation director for the Southern

Utah Wilderness Alliance (SUWA), told us.

President-elect Obama's aides are publicly criticizing the sale, although it is not clear what an Obama administration could do to block development if leases were issued before January 20. At any rate, John D. Podesta, head of the Obama transition team, told *Fox News Sunday* November 9, "They want to have oil and gas drilling in some of the most sensitive, fragile lands in Utah that they're going to try to do it right as they are walking out the door. I think that's a mistake."

The sale may produce as much litigation as sale bids. Congressional Democrats and environmentalists have already protested the management plans and are sure to protest much of the sale. A lawsuit against the plans is almost certain.

BLM Utah State Director Selma Sierra offered a heated defense of both the land management plans and the selection of tracts covered by those plans for sale. "No corners have been cut, no process abridged, in preparing these resource management plans," she said in a November 6 statement.

But BLM did acknowledge that, while it would not offer leases in wilderness and wilderness study areas per se, it would offer for sale tracts in natural areas with wilderness characteristics. The bureau said in announcing the lease sale, "Where these natural areas or other lands in the vicinity of national parks or monuments are available for leasing, stringent lease stipulations are applied to protect the scenic values, recreation resources, wildlife and natural areas."

SUWA complains that the sale parcels are too close to the three national parks. While the Park Service has not objected yet to any one parcel, the agency does want a look at the tracts before they are sold.

In addition tracts are included in the upcoming sale in areas environmentalists' allies in Congress have pro-

posed as wilderness (HR 1919 and S 1170.) Nineteen senators and 160 House members have introduced the bills.

BLM laid the groundwork for the upcoming sale October 31 when it approved five land use plans for southern Utah. A sixth plan from the Monticello Field Office was approved November 18, too late to make the sale. Assistant Secretary of Interior for Land and Minerals Management C. Stephen Allred signed records of decision on the five plans, also on October 31. Utah Gov. Jon Huntsman, Jr., has affirmed that the plans are consistent with state policy, BLM said. The six planning areas are Kanab, Moab, Monticello, Price, Richfield and Vernal districts.

Florida and U.S. Sugar drop buildings from E'glades deal

The State of Florida has agreed to important new terms in its bid to acquire 187,000 acres of sugar farms outside the Everglades. The state would buy only the land from U.S. Sugar Corp., and none of the buildings and facilities.

That would reduce the purchase price from \$1.7 billion to \$1.34 billion, said Florida Gov. Charlie Crist (R-Fla.) The state would not buy the company's mill, railroad lines or processing plant.

The state said the acquisition, one of the largest conservation purchases in the country's history, "will be used to reestablish a part of the historic connection between Lake Okeechobee and the fabled River of Grass through a managed system of storage and treatment."

Environmentalists praised Crist for renegotiating the agreement at a time of economic hardship. "In a time of financial meltdown, Charlie Crist is managing to pull the biggest land deal in the state's history out of the fire," said David Guest, managing attorney for the Florida office of the Earthjustice environmental law firm. "This was the hardest time imaginable to pull off a deal like this."

When Crist and U.S. Sugar first announced the deal June 25, they called for the acquisition of both land and facilities. The South Florida Water Management District would pay for the acquisition by floating bonds. The parties anticipated it would take six years to negotiate the details.

The South Florida Water Management District has said it expects few changes for the time being in the Comprehensive Everglades Restoration Project of 2000 (CERP), the overarching \$7.8 billion federal-state initiative to revive the Everglades.

The state's commitment to spend \$1.34 billion on the acquisition also puts pressure on the federal government to carry its share of the load. Under CERP the federal and state governments are to divide costs 50-50. But by 2006, the National Research Council reported, for both CERP and non-CERP projects the state had put up twice as much money as the federal government, \$4.6 billion to \$2.3 billion.

Under CERP Congress authorizes individual, major restoration projects in annual Water Resources Development Acts (WRDAs.) On Nov. 9, 2007, Congress enacted the latest WRDA bill (PL 110-114.)

The 2007 WRDA authorized a \$1.365 billion Indian River Lagoon project for CERP, with half of the money - \$682.5 million - coming from the feds and half from the State of Florida. It 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.

The announcement by Crist and U.S. Sugar comes hard on the heels of a September 29 report from the National Research Council that says CERP is behind schedule and may be losing ground. The scientists said in a biennial report that planning for the project is so complex, it delays progress even more than a lack of money.

The Picayune Strand project is one

example of the delays, said the council. In 2005 the feds and the state estimated the project would be completed in 2009. Now they estimate 2015. And the estimated cost has risen from \$46 million in 1999 to \$393 million now.

The National Research Council report, *Progress Toward Restoring The Everglades: The Second Biennial Review 2008*, is available at <http://www.nap.edu>.

Notes

Sen. Byrd vacating approps post.

Senate Appropriations Committee Chairman Robert Byrd (D-W.Va.), increasingly frail at 90, said a fortnight ago he will give up his chairmanship of the Senate Appropriations Committee next year. Ranking committee Democrat Daniel Inouye (Hawaii), who himself is 84, will take over. Byrd will continue to serve on the committee; he just won't be in charge as Congress copes with an estimated trillion-dollar debt and a new administration. At one time Byrd also chaired the subcommittee on Interior appropriations. Sen. Dianne Feinstein (D-Calif.) now chairs that panel.

Obama for alternative transportation. In the last issue of *FPR* we reported that House Transportation Committee James Oberstar intends to make "livability" a major principle of a new surface transportation law. Oberstar talks of a much-increased emphasis on bicycling and walking as an alternative to driving to improve livability of communities. Apparently, he has an important ally. President-elect Barack Obama is talking the same talk. In a position paper prepared for the election Obama said he and Vice President-elect Joe Biden (D-Del.) "believe that we must devote significantly more attention to investments that will make it easier for us to walk, bicycle and access other transportation alternatives." The current surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), expires next year and Oberstar is expected to be a lead architect of a new law. Conventional wisdom has held that Congress would emphasize road and bridge construction

in the next law to the detriment of rec programs, but Oberstar and Obama seem to believe otherwise.

AASHTO pleased with Obama election. The American Association of State Highway Transportation Officials (AASHTO) is praising the election of Barack Obama as President November 4, if only because it prevented the election of Sen. John McCain (R-Ariz.) AASHTO knows that one of McCain's main campaign themes was the elimination of earmarks. And, of course, SAFETEA-LU contains thousands of earmarks that McCain has frequently criticized. AASHTO said it feared the net result of a McCain election would be an overall decrease in transportation spending.

Denali issues major rec rule. The Park Service announced November 14 in the *Federal Register* that it has completed a new rule for Denali National Park that governs backcountry management, mountain climbing (Mount McKinley) and off-road vehicle use. The rule limits off-road vehicle use to residents for subsistence purposes, and then only on five designated roads or trails. It limits the size of groups that visit the park to 12 on the east side and six on the west side. Finally, the rule requires a permit to climb Mount McKinley and limits the number of climbers to 1,500 per year. The rule is effective December 15.

EPA nears Clean Air rule. It was widely reported this week that EPA is on the verge of implementing a regulation that could open the way to construction of power plants near national parks and wilderness areas. As *FPR* reported in the last issue, EPA sent to the Office of Management and Budget recently a proposed rule in an attempt to finalize it before an Obama administration takes over January 20. OMB apparently would like to issue a final rule by today (November 21.) The rule is one of dozens the Bush administration is attempting to complete on its watch.

FWS completes wilderness policy. The Fish and Wildlife Service (FWS) November 14 completed a new policy for managing wilderness in the National Wildlife Refuge System. The Wilderness

Society immediately blasted the policy for not considering steps FWS should take to accommodate the impact of climate change on species. "This is a serious omission when Refuge System lands will be among the first to be impacted by the temperature changes associated with global warming," said Maribeth Oakes, refuge program manager for The Wilderness Society. The society also criticized the policy for exempting refuges in Alaska from review for wilderness recommendation. Alaska refuges make up 80 percent of the system. Finally, The Wilderness Society faulted FWS for not holding a public comment period. FWS did hold a comment period on a proposed policy in 2001.

Federal land passport deal made. Federal land management agencies are offering a special deal on an annual National Parks and Federal Lands Pass. Passes purchased by the end of December will also be valid before the end of December and for one month (January 2010) after 2009. The \$80 passports can't be ordered until after December 1. Ordinarily, the pass is good for only one calendar year at a time. The passes provide access to more than 2,000 federal sites including national parks, national wildlife refuges, national forests and rec lands overseen by the Bureau of Land Management. The passes are available from <http://store.usgs.gov/pass>, by E-mail from fedrecpass@usgs.gov or by phone at (1) (888) 275-8747 Option 1.

Grave repatriation grants available. The Park Service announced November 12 the availability of two kinds of grave repatriation grants. The grants, provided since 1990, help restore remains of Native Americans to their rightful places. Consultation/documentation grants for \$5,000 to \$90,000 are to be used for researching and identifying significant items. Draft proposals are required by December 30. Repatriation grants of up to \$15,000 for transferring items are distributed on an ongoing basis. Grant applications are available at: <http://www.nps.gov/history/nagpra/grants>. More information is available at: <http://www.nps.gov/history/nagpra/GRANTS/grantsBROCHUREupdated2007.pdf>.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations Interim 2009		
HR 2638 (Price)	President Bush signed into law September 30 as PL 110-329.	Interim spending law extends fiscal 2008 spending levels until March 6.
Appropriations 2009 (DOI and FS)		
No bill number yet	House subcommittee approved June 11.	Would provide modest increases for most park and rec programs.
Appropriations 2009 (Energy & Water)		
No House bill number yet S 3258 (Dorgan)	House subcommittee approved June 25, Senate committee July 10.	Would increase Corp of Engineers and Bureau of Reclamation spending.
Appropriations 2009 (Transportation)		
No House bill number yet S 3261 (Murray)	House subcommittee approved June 20, Senate committee July 9.	Would provide funding for park are rec programs, as called for by SAFETEA-LU.
Congressional Budget 2009		
H Con Res 312 (Spratt) S Con Res 70 (Conrad)	House gave final okay June 5. Senate gave final approval June 4.	Would increase natural resources spending but mostly for Hurricane Katrina.
NPS Centennial Challenge		
S 1253 (Bingaman) HR 2959 (Rod Bishop) HR 3094 (Rahall) S 2817 (Salazar)	House committee approved HR 3094 May 7. Senate hearing Aug. 2, 2007.	S 1253 and HR 2959 would establish \$2 billion program to help the parks.
Omnibus Bill One		
S 2739 (Bingaman)	President Bush signed into law May as as PL 110-229.	Included 60 individual bills, including three new NHAs.
Omnibus Bill Two		
HR 5151 (Bingaman, Rahall)	Sen. Reid gave up on November 17.	Includes 150+ individual bills, including NLCS, new national parks.
NPS tax assistance		
HR 1731 (Baird)	Baird introduced March 28, 2007.	Would authorize NPS improvement fund financed by income tax check-off.
FLREA repeal		
S 2438 (Baucus)	Baucus introduced Dec. 10, 2007. House hearing June 18.	Would repeal most of 2004 federal agency recreation fee law.
Heritage areas national		
S 278 (Thomas) HR 1483 (Regula)	Senate committee approved July 25, 2007. House approved Oct. 25, 2007.	Would establish national standards for new NHA designations. HR 1483 Would designate six new NHAs.
Farm bill		
HR 2419 (Peterson)	Enacted May 23 as PL 110-2334 over President's veto.	Authorizes major conservation programs for five years, including new Open Fields program.
Conservation tax credits		
S 469 (Baucus) HR 1576 (Thompson)	Senate committee approved Sept. 20, 2007. Thompson introduced March 19, 2007.	Would make semi-permanent conservation tax credits Congress approved last year.
Wildlife conservation grants		
HR 3221 (Pelosi) HR 2338 (Dicks)	House approved August 4, 2007. Dicks introduced May 16, 2007.	Both would make grant program permanent, open way for new source(s) of money.
American Discovery Trail/National Discovery Trails		
HR 74 (Bartlett)	Bartlett introduced Jan. 4, 2007.	Would designate an American Discovery Trail and discovery trail system.
Trail acquisition authority		
S 169 (Allard) HR 1847 (M Udall)	Allard introduced Jan. 4, 2007. Udall introduced March 29, 2007.	Would authorize land acquisition authority for nine national trails.