

Federal Parks & Recreation

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Budget deal may spark fight over fatter money bills

Boosted by higher spending caps, House and Senate appropriators are now working together to fashion an omnibus money bill for fiscal year 2016.

The appropriations committees are facing a December 11 deadline for completing an omnibus spending bill, but a new budget agreement (PL 114-74 of November 2) gives them more money to play with.

A House Appropriations Committee staff member confirmed this week the House and Senate will not attempt to move single bills through Congress, opting to go with one big omnibus bill, "The committee is currently crafting and negotiating an omnibus," said the staff member.

As for spending caps, the staff member said, "Each subcommittee has unofficial, provisional numbers from which to work." When the omnibus is completed there will be no formal mark-up, said the staff member. The omnibus bill will go directly to leadership. The House was not in session this past week, although the Senate was.

The Senate Appropriations Committee is working under a similar procedure, although it did push through the Senate November 10 one of the 12 spending bills, a measure (HR 2029) to fund military construction and veterans affairs. But Senate action on that single bill does not preclude appropriators working on an omnibus bill at the same time.

It is no secret that House and Senate appropriations subcommittees are right now negotiating bills with flexible spending ceilings. Said a Senate Appropriations Committee staff member, "House

and Senate Appropriations subcommittees are working to resolve the thousands of differences between their bills before government funding expires. We expect to enact fiscal 2016 appropriations legislation by the December 11 deadline."

So it is more than likely the House and Senate appropriators will agree informally on one giant omnibus bill and try to complete it before the December 11 deadline.

Meanwhile, Senate Democrats are demanding that appropriators strip numerous riders from the legislation. Senate Minority Leader Harry Reid (D-Nev.) October 29 led the way.

He said on the Senate floor, "I just say to my friends, my Republican friends, let's do the appropriations bill, and let's get rid of these foolish riders. They stick on appropriations bills. We need to understand there's a time and place for doing that. There's authorization. Do the bills, authorize stuff. But don't mess up the appropriations process."

Then on November 5, 25 Democratic senators asked the Obama administration to reject all riders involving the Endangered Species Act. Lead park and rec appropriations bills (HR 2822 S 1645) include a dozen such amendments.

Congressional leaders and the White House October 27 broke a long-standing budget impasse by agreeing on increased overall spending ceilings for the next two years. The House and Senate immediately approved the legislation (HR 1314) and President Obama signed it into law November 2.

The agreement authorizes appropriations committees to rewrite fiscal year 2016 spending bills with an additional \$20 billion or so for domestic programs.

The committees have until December 11 to complete the appropriations bills.

If appropriators follow the Obama administration's recommendations for a fiscal 2016 Interior and Related Agencies appropriations bill - and that is unlikely - it could yield a cornucopia of

conservation and outdoor spending.

There will be differences of opinion on specific programs. For instance, the Obama administration budget asks for full funding for the Land and Water Conservation Fund of \$900 million.

But the House Appropriations Committee approved its version of an Interior bill (HR 2822) June 18 that would appropriate just \$139 million for the traditional federal land acquisition and state grants. The Senate Appropriations Committee June 23 sent to the floor a counterpart bill (S 1645) with \$212.5 million for LWCF. (*See separate article page 4.*)

Similarly, for the Park Service Centennial in 2016 the administration asked for an extra \$326.3 million in appropriations (not counting an additional \$500 million in authorizations). But the House committee approved just a \$52 million increase for NPS operations and the Senate committee \$57 million. (*See separate article page 7.*)

Then there is the nettlesome issue of riders. The House and Senate bills include a laundry list of amendments that are unacceptable to the administration. Prominently, a proposed House floor amendment would authorize the flying of the Confederate flag over cemeteries within the National Park System; the amendment has yet to come to a vote after it was proposed July 8.

So the political landscape is scattered with potential landmines.

The Interior and Related Agencies bill faces two major funding complications that may demand the lion's share of any Interior bill increase - emergency fire suppression and a county assistance program called payments-in-lieu of taxes (PIILT).

The House Appropriations Committee version of an Interior spending bill in sum would sharply reduce funding for LWCF, allocate token money for the Park Service Centennial and, at best, maintain existing spending levels before inflation for most land management agencies.

For Park Service operations the House bill includes a \$52 million increase, primarily for the agency's Centennial. The House would appropriate \$2.328 billion for operations, compared to a fiscal 2015 appropriation of \$2.276 billion.

The Senate Appropriations Committee's counterpart bill (S 1645) would spend \$5 million more for NPS operations than the House, \$2.323 billion. The Senate committee said it approved \$110 million in total for the Park Service Centennial; however, the two panels did not provide analogous breakdowns to allow direct comparisons.

The most prominent controversy facing the House bill is the proposed amendment that would authorize the flying of the Confederate flag over cemeteries that are part of the National Park System.

But the measure is ensnared in other, major policy disputes as well. Among them are amendments to block the designation of national monuments, to bar national parks from banning bottled water and to encourage the sale of federal lands.

Complicating the House bill is its approach to funding PILT and emergency fire fighting. HR 2822 would pay for both programs from money in the bill.

Heretofore Congress has usually paid for PILT with money outside the appropriations bill, leaving room for assistance for other programs. The House bill contains \$450 million for PILT.

On the fire front both the House and Senate are moving to shift a portion of emergency fire fighting money out of appropriations bills and into disaster spending. In approving a counterpart Interior spending bill (S 1645) to the House measure the Senate Appropriations Committee June 18 approved such legislation.

Although HR 2822 doesn't contain similar legislative language, the House did approve a stand-alone bill (HR 2647) July 9 that would authorize the transfer of some emergency fire-fighting costs

out of a regular appropriations bill and into disaster spending.

DoE, NPS formally establish Manhattan Project Park

The big hitters came out November 10 to take the last formal step on toward the designation of a Manhattan Project National Historical Park.

With four senators looking on Secretary of the Interior Sally Jewell and Secretary of Energy Ernest Moniz signed a memorandum of agreement that formally establishes the national park unit.

The agreement describes the different jobs the Park Service and Department of Energy will have in managing the facility in three states and their roles in welcoming visitors to the sites.

The memo carries out a provision of an omnibus public lands bill (PL 113-291 of Dec. 19, 2014) that ordered the establishment of a Manhattan Project National Historical Park to commemorate the development of the Atomic Bomb. Congress directed the agencies and departments to complete an agreement by December 19.

Said Jewell, "Through the preservation and interpretation of the Manhattan Project, the National Park Service will share with the world the story of one of America's most transformative scientific discoveries that fundamentally altered the course of the 20th Century."

Four senators who represent the sites - Sens. Lamar Alexander (R-Tenn.), Maria Cantwell (D-Wash.) and Martin Heinrich (D-N.M.) and Tom Udall (D-N.M.) - attended the ceremony.

Said Alexander, "Today, we celebrate the Manhattan Project as a unique period in our history. But it's also part of our future because from that effort arose many of the country's great national laboratories—our secret weapon as we look to the future of keeping our country competitive in the world."

On July 28 NPS and the Department of Energy published a draft memo that

would guide the delicate business of parsing out who does what in overseeing a Manhattan Project National Historical Park.

The memorandum "formally describe(s) how the National Park Service and the Department of Energy will work together to preserve, protect, and provide access to the historic resources associated with the Manhattan Project."

Under the agreement NPS will write a management plan for the three-site park and be responsible for protecting historic resources. The Department of Energy will protect all "sites, structures, and landscapes included in the Park," while retaining ownership of all sites.

Among many points the agreement says NPS will:

"Have decision-making authority for the content of interpretation of the Manhattan Project for purposes of administering the Park;" and

"Complete management plans for the Park in consultation and collaboration with the Site Representatives and, with respect to DOE-administered facilities and lands, with the concurrence of the Secretary of Energy."

Among many points the agreement says DoE will:

"Ensure that public access and work undertaken pursuant to this Agreement protect public safety, national security, and other aspects of DoE's ongoing mission;" and

"Retain responsibility, in accordance with applicable law, for any environmental remediation or activities relating to structural safety that may be necessary in or around DOE-administered Park facilities and areas."

The park will be located in three areas that played crucial roles in developing the bomb - Los Alamos, N.M.; Oak Ridge, Tenn.; and Hanford, Wash.

All three cities vied to host the superintendent and his or her staff, but

NPS has said Denver, Colo., will likely be the headquarters site, perhaps avoiding an unpleasant competition among the cities.

However, the Park Service has said it will place a site manager in each of the three cities where the bomb was developed with similar levels of staffing at each location. The managers will of course report to the superintendent.

NPS said in October that the memorandum of agreement is just the beginning of the planning for the park. Said NPS, "The agreement will not include details about the park's interpretive themes, visitor contact stations, staffing, management, or specifics about what eligible properties outside the Department of Energy properties should be included in the park. Those issues will be addressed in future phases of the planning efforts."

Former House Natural Resources Committee Chairman Doc Hastings (R-Wash.) and Sen. Cantwell were the lead sponsors of the legislation that led to the approval of the site by Congress.

Legislation to commemorate the Atomic Bomb was not without controversy. Some liberal Democrats objected to memorializing weapons of mass destruction. And some conservative Republicans objected to spending the \$21 million the Congressional Budget Office estimates it would cost the Park Service to manage the site over 15 years.

The draft memo is at:
http://www.atomicheritage.org/sites/default/files/MPNHP_DraftMOA_July2015.pdf

Bishop promotes state LWCF; would slash federal side

To the dismay of conservationists, House Natural Resources Committee Chairman Rob Bishop (R-Utah) November 5 took an axe to the federal side of the Land and Water Conservation Fund (LWCF) in proposed legislation to revise the underlying law.

At the same time Bishop offered great support for the state side of

LWCF. It traditionally receives a small fraction of the total LWCF pie; the draft Bishop bill would guarantee states 45 percent. In addition Bishop would allocate five percent of LWCF to an urban recreation fund, sort of a follow-on to an Urban Parks and Recreation Recovery program.

He would allocate just 3.5 percent to federal land acquisition.

Bishop has scheduled a hearing on the legislation, Protecting America's Recreation and Conservation Act, for next Wednesday, November 18.

At a press conference Bishop said a central tenet of the original LWCF law 50 years ago was to improve local recreation opportunities. But, he said, environmentalists had succeeded in persuading Congress to reverse priority to emphasize federal land acquisition.

"Today just 12.5 percent of the annual appropriation goes to the state side program that everyone likes and appreciates," he said. "Where it has vastly expanded is on the federal side, where it has negative impact on states through the loss of local tax revenues and federal land encroachment."

He added, "Even more troubling on the federal side, the money is being spent (on land acquisition) when we have a \$20 billion federal land management maintenance backlog with no transparency, scant oversight and minimal local input."

The Bishop draft would not guarantee LWCF \$900 million per year, as program supporters advocate. Instead it would require appropriators to allocate the money each year, as was done under the old LWCF law.

However, within that appropriation the draft would require appropriators to allocate money to nine different programs, with specific allocations. That includes 20 percent of the money going back to offshore oil and gas development, whence the fund draws its revenues.

es Committee Democrat Raúl M. Grijalva (D-Ariz.) blasted Bishop and the bill. "His new bill would destroy the fundamental conservation and recreation purposes of the program in order to solve problems that don't exist and give Big Oil yet another tax break. This proposal is untimely, unhelpful and unpopular with Americans everywhere who support a clean reauthorization," Grijalva said.

The National Parks Conservation Association said the bill would damage the national parks. John Garder, director of budget and appropriations for the association, said, "We're alarmed this bill will only further threaten America's national parks. It would effectively dismantle one of America's most successful conservation tools on the cusp of the Park System Centennial."

The Wilderness Society agreed, saying in a statement, "Bishop's bill would twist and pervert the program, bending it in ways that reflect the congressman's disdain for our national parks and other public lands, which reflect our shared history, drive our local economies and are owned by all Americans."

Bishop's bill would extend LWCF for seven years through Sept. 30, 2022. Bishop said there was "nothing magical" about seven years, just that it was House policy, giving a program long enough to prove itself but also allowing an opportunity for revision.

Given the large number of Republican and Democratic House and Senate members who advocate making LWCF permanent without change, Bishop was asked if he expected his bill would just be a negotiating tool. The Congressman said, "I never had that expectation. It would be my hope that we could authorize things, perhaps even this year."

On his behalf Bishop said he has some support from Pennsylvania Governor Tom Wolf (D), who, he said, asked Congress 'to rebalance funding toward the states' and 'renew the Act with a restored commitment to an equitable share for state grants.'

Wildlife Conservation Partners "called on Congress to 'modernize LWCF to address contemporary issues' and secure funding for programs that 'continue its legacy of success.'" Among the partners in the group are the Boone and Crocket Club and the Safari Club.

The renewal of LWCF has caught President Obama's eye. He devoted his weekly address October 24 to the program, demanding that Congress reauthorize it "without delay."

It is not technically true that the fund has been shut down, as the President alleged in his address. Congress still has the authority to appropriate money for the program in spending bills and the fund has a \$20 billion surplus, at least on paper.

Besides, Republicans in both the House and Senate have begun to write legislation to revise or extend the law. However, there is a significant snag. Bishop would like to revise the law so as to divert some of the program money to federal land management agency maintenance, in particular for the Park Service. The administration wants a straight extension.

Senate situation: For all the back-and-forth in the House, the Senate has been more active on the issue, although problems remain there.

Four times this fall supporters of LWCF have asked the Senate to approve bills (S 338, S 2101) or amendments under a unanimous consent procedure to reauthorize the program as is. But each time western Republican senators have objected, saying the Senate Energy Committee and Bishop's committee should be given time to write legislation first.

Most recently Republican Sen. Richard Burr (R-N.C.) on October 21 asked the Senate to extend LWCF. During Senate consideration of a cybersecurity bill (S 754) Burr said, "It is no surprise to the Senate that I have had a deep desire to add the (LWCF) reauthorization, which has expired, as an amendment to this bill."

But Sen. Mike Lee (R-Utah), who

shares Bishop's antipathy to federal land acquisition, objected, preventing passage. Lee faulted the use of most LWCF money for acquisition. "Let's work together to make sure that the federal government only acquires such land as it can adequately manage," he said.

Besides, said Lee in another recent Senate speech, the fund enjoys a \$20 billion surplus. "If you assume the current rate of appropriations is roughly \$300 million per year, it would take around 60 years before that fund is exhausted," he said.

Program supporters were particularly upset that a short-term fiscal year 2016 spending resolution enacted September 30 did not include LWCF reauthorization.

After a 50-year run the LWCF Act expired on September 30, although Congress can still appropriate money for it in annual spending bills, such as the fiscal 2016 Interior approps bills.

To reauthorize the law the Senate Energy Committee approved legislation (S 2012) July 30 that would extend LWCF permanently. The bill, from chairman Lisa Murkowski (R-Alaska) and ranking Democrat Maria Cantwell (D-Wash.), would also establish a \$150 million per year Park Service maintenance account.

Murkowski and Cantwell would specify minimum annual allocations within LWCF, such as at least 40 percent per year for federal land acquisition and at least 1.5 percent per year for access to federal land for recreational purposes.

S 2012 would require expenditure of at least 40 percent of annual LWCF appropriations for a combination of state LWCF grants, Forest Legacy, endangered species grants and an American Battlefield Protection Program.

Numerous stand-alone bills have been introduced in the Senate to reauthorize LWCF including S 338 from Burr, S 890 from Sen. Maria Cantwell (D-Wash.), S 1925 from Sen. Martin Heinrich (D-N.M.) and S 2165 from Cantwell.

The House has not been as active

as the Senate. One bill to reauthorize LWCF (HR 1814) has been introduced, albeit with more than 140 cosponsors from both parties, led by Grijalva.

As for fiscal year 2016 appropriations for the program in June the Senate Appropriations Committee in an appropriations bill (S 1645) approved an expenditure of \$157.5 million for federal land acquisition and \$55 million for state grants.

A counterpart House spending bill (HR 2822) that is now stalled on the floor would appropriate \$91 million for the federal side and \$48 million for state grants. The fiscal 2015 appropriation for state grants was \$48 million.

The Bishop bill: The draft would extend LWCF for seven years with an authorization of \$900 million per year, leaving it up to appropriators to decide how much of the \$900 million to set aside each year for LWCF. But the bill would require appropriators to follow these nine percentage allocations therein:

- * 45 percent - stateside of LWCF
- * 5 percent - urban fund
- * 3.5 percent - federal land acquisition
- * 3.5 percent - deferred federal land maintenance
- * 3.5 percent - Forest Legacy (Forest Service)
- * 3.5 percent - Endangered Species Act fund
- * 1 percent - battlefield acquisition
- * 20 percent - offshore energy development
- * 15 percent - payments-in-lieu of taxes

Park and rec maintain footing in new House highway bill

The House roughly met the desires of the recreation community November 5 in approving a six-year surface transportation bill (HR 3763).

In a week of contentious debate on the floor House leaders refused to take up three amendments that would

have barred in various ways spending on trails in general and the Recreational Trails Program in particular.

Trails advocates mounted a vigorous campaign against the three amendments and the House Rules Committee listened, not clearing any of the three for floor action.

The House bill now goes to a House-Senate conference with a bill (HR 22) the Senate approved July 30. They must move quickly because the current law expires a week from today on November 20.

Just before HR 3673 came to the floor, the Rails-to-Trails Conservancy told its members, "These programs help build the trails, protected bike ways, safe routes to schools pathways and more that help people like you and me to stay healthy and get to work, to school, and around communities."

According to the conservancy, one amendment from Rep. John Carter (R-Texas) and Ted Yoho (R-Fla.) would eliminate the \$85 million per year Recreational Trails Program. Another Carter amendment would bar spending from a Surface Transportation Block Grant Program, the source of most rec money, to build trails and bikeways. A third Carter amendment would bar spending urban areas money on walking and biking trails.

As passed by the House then, HR 3763 would extend existing park and rec programs at roughly the same level of existing funding, including Transportation Enhancements, a Recreational Trails Program and Federal Lands Roads, with room for modest increases in out years.

For all the positives in the House committee action, there is one fly in the ointment - money, or a lack thereof. The Highway Trust Fund is the lead mechanism to pay for surface transportation programs, but it contributes only \$34 billion per year of the needed \$46 billion. So Congress must come up with \$13 billion or more per year from other sources of revenue, or increase gasoline taxes.

To that end the House proposed a

group of strategies, such as the sale of oil from the National Petroleum Reserve, to make up the difference. Even there the House only identified three years worth of money for the six-year bill.

Rep. Earl Blumenauer (D-Ore.), a leading bicycling advocate in the House, has introduced a bill (HR 680) that would increase the gasoline tax, now 18.4 cents per gallon, by 15 cents per gallon over the next three years. House leaders did not allow that proposal to come to the floor.

On the House floor Blumenauer said, "It is disappointing, however, that the bill flatlines important bike and pedestrian funding, something that is vitally needed in Houston, Indianapolis, Seattle, here in our National Capital, in suburban Maryland, and communities all across the country."

"The lack of balance in this transportation funding is unfortunate. But I am hoping, through the amendment process and the work between the two Chambers, if it proceeds, that we will be able to correct it."

The House and Senate were forced to extend the existing surface transportation law beyond its looming October 29 expiration date until November 20 (PL 114-73 of October 29). The existing law is known as Moving Ahead for Progress in the 21st Century Act (MAP-21).

The Senate approved its six-year bill (HR 22) July 30 and House Democrats introduced an Obama administration bill August 18 (HR 2410). Both would keep the outdoor programs alive and healthy under an umbrella initiative called the Transportation Alternative Program (TAP).

More than a dozen times in the last few years Congress has resorted to temporary extensions to keep surface transportation programs in money.

House bill: HR 3763, drafted under the lead of House Transportation Committee Chairman Bill Shuster (R-Pa.), would set up a TAP-like fund under which Transportation Enhancements, Scenic Byways and Safe Routes to School

would compete for money. Called a Surface Transportation Block Grant Program, it would allocate \$819 million in fiscal year 2016 for the TAP-like fund and increase that each year, climbing to more than \$1 billion by fiscal 2021.

Eligible programs include recreational trails, pedestrian and bicycle projects and Safe Routes to School.

The committee bill would retain the Recreational Trails Program as a set-aside with a guaranteed allocation of \$85 million per year for six years. However, the bill retains a provision of MAP-21 that would allow states to opt out of the program.

For federal lands roads the House committee bill would allocate \$575 million per year, with \$260 million for National Park Service roads in fiscal 2016 (increasing to \$400 million in fiscal 2021), \$15 million for Forest Service roads in fiscal 2016 (climbing to \$20 million by fiscal 2021) and \$30 million for the Fish and Wildlife Service each year.

Included in the \$575 million is a federal access program beginning at \$250 million in fiscal 2016. The Federal Highway Administration describes the access program this way: "The Access Program supplements State and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators."

Just before the October 22 markup an alliance called the National Parks Second Century Action Coalition wrote committee leaders praising the legislation.

"Federal lands and their transportation systems are wholly dependent upon federal funding; they do not have the benefit of support from state or local funding mechanisms," wrote the coalition. "However, the funding levels for federal lands transportation programs have largely remained unchanged for nearly twenty years."

The coalition includes the National Parks Conservation Association, the

National Park Hospitality Association, the Outdoor Industry Association and 17 other groups.

Obama bill: The administration bill (HR 2410) called Grow America recommends that Congress allocate \$847 million to the TAP program in fiscal year 2016, up \$27 million from a fiscal 2015 allocation of \$820 million.

The bill would have the TAP allocation, which would receive two percent of highway account money from the Highway Trust Fund, increase marginally each year after that.

Under the existing MAP-21 law the umbrella TAP finances such individual programs as Recreational Trails, Transportation Enhancements, Scenic Byways, and Safe Routes to School.

The bill also recommends a \$277 million increase in spending on federal agency and Indian roads for fiscal year 2016, from \$1 billion in fiscal 2015 to \$1.277 billion in fiscal 2016. Much of that increase would be used for large, expensive projects.

By category the Indian and federal agency account would distribute \$507 million to tribal roads, \$370 million to federal lands (80 percent Interior Department, 15 percent Forest Service and five percent Corps of Engineers), \$250 million to a federal lands access program and \$150 million for nationally significant federal land tribal projects. The last nationally significant project program is new.

Senate bill: The bill (HR 22) the Senate approved July 30 called DRIVE, as in Developing a Reliable and Innovative Vision for the Economy Act, would extend the existing TAP program. In total for TAP the bill would allocate \$850 million per year for the next six years.

For the other park and rec half of traditional surface transportation laws - federal lands roads - the Senate bill would allocate \$560 million for fiscal year 2016, broken down as follows: \$305 million for federal land roads, with \$240 million of that set aside for the National Park Service and \$30 mil-

lion for the Fish and Wildlife Service (FWS). A federal lands access program would receive an additional \$255 million for major projects.

By fiscal 2021 the DRIVE Act would increase the ante for Federal Lands Roads to \$330 million, with the same set-asides for NPS and FWS, and \$280 million for access.

Cantwell repeats her interest in NPS Centennial legislation

On introducing a bill (S 2257) the Obama administration requested asking for more than \$800 million for the Park Service Centennial, Sen. Maria Cantwell (D-Wash.) hinted that she would introduce a Centennial measure of her own.

The Cantwell bill would presumably attempt to implement a central piece of the administration's request - a \$100 million per year Centennial Challenge Fund.

Said Cantwell, "I will continue to work with other Senators on both sides of the aisle to develop a bipartisan consensus on a national park centennial bill so that the Senate can consider and pass a bill before the National Park Service's centennial anniversary next year."

Cantwell has said several times this year that she is working with Senate Republicans on a Centennial bill. For instance on September 17 she said, "It is also worth nothing that next year will make the 100th anniversary of the National Park System and the Park Service collects more than \$100 million in fees. Several of us have been working to develop a National Park Centennial bill. We certainly want to work with the chairman on that. This bill will provide the Park Service in the Second Century with additional tools to manage our national parks."

The chairman is Senate Energy Committee Chairman Lisa Murkowski (R-Alaska). As we noted in September, an aide to Murkowski told us her boss is "not directly involved" with Cantwell's effort. Sen. Rob Portman (R-Ohio) said

earlier this year he hoped to help write a Centennial bill.

In the House six Democrats introduced the administration Centennial bill (HR 3556), led by ranking House Natural Resources Committee Democrat Raúl Grijalva (D-Ariz.)

Cantwell, who is ranking Democrat on the Senate Energy Committee, had no cosponsors.

The administration bill would have Congressional *authorizing* committees approve an additional \$500 million per year in new legislative authority for the Centennial, broken down into \$100 million for the new Centennial Challenge Fund, \$300 million for deferred maintenance in a new Second Century Infrastructure Investment and \$100 million for a new competitive Public Lands Centennial Fund.

Money in the last category would be available for other Interior Department land management agencies, as well as the Forest Service.

In addition to the new authorizations, the administration requested an extra \$326 million in *appropriations* for fiscal year 2016.

As described above, about half the Park Service's requests for hundreds of millions of dollars from Congress for its Centennial in 2016 would come from appropriations under existing authorities and half would come from the new legislation.

On the *appropriations* side the administration asked Congress to ante up an extra \$326.3 million over fiscal 2015 under existing authorities, as it recommended in a fiscal year 2016 budget request in February. That includes \$242.8 million more for deferred maintenance and \$40 million more for Centennial Challenge grants.

However, the House Appropriations Committee June 16 approved much less than that in a fiscal 2016 spending bill (HR 2822). The committee included only a \$52 million increase for Park Service

operations, or \$2.328 billion total.

And it included just \$20 million for a Centennial Challenge grant program compared to a \$50 million total request from the administration. (The fiscal 2015 appropriation for Challenge grants was \$10 million.)

The Senate Appropriations Committee approved a counterpart spending bill (S 1645) June 18 that would spend \$5 million more for NPS operations than the House, \$2.323 billion. The Senate committee said it approved \$110 million in total for the Park Service Centennial; however, the two panels did not provide analogous breakdowns to allow direct comparisons.

The Senate committee did say it recommended \$10 million for Challenge grants, or \$40 million less than the administration request.

The House and Senate are moving by fits and starts on the authorizing requests. In the House key subcommittee chairmen are reportedly working on legislation that would address the Centennial, federal lands recreation fees and Park Service concessions reform.

Reps. Tom McClintock (R-Calif.), chairman of the House Federal Lands subcommittee, and Cynthia Lummis (R-Wyo.), chairman of the House subcommittee on Interior of the House Oversight Committee, held separate hearings on those issues July 23.

In the Senate the Senate Energy Committee approved legislation (S 1012) July 30 that would establish a \$150 million per year Park Service maintenance account from offshore oil and gas royalties. The bill, an omnibus energy measure, was developed by chairman Lisa Murkowski (R-Alaska) and Cantwell.

Separately, Cantwell and Portman have been writing legislation to authorize a multi-year Centennial Challenge program, as Cantwell noted. To lay the groundwork they persuaded the Senate this spring to recommend a matching grant program in a fiscal year 2016 Congressional budget.

Greens hope Utah state law will block RS 2477 claims

The Utah Supreme Court is expected to rule next year in a novel case that could head off literally thousands of state and county claims to ways across public lands, including national parks.

Briefings were submitted to the court early this month and oral argument is expected in the spring.

Two federal courts have asked the state court to decide if the so-called RS 2477 rights-of-way requests have been filed in a timely manner. Environmentalists argue state law requires that the assertions had to be filed by 1983. That law of repose is designed to prevent property rights claims from being brought more than seven years after a dispute was begun.

Last month the Coalition to Protect America's National Parks and the Park Rangers for Our Lands filed an amicus brief with the Utah Supreme Court arguing that the seven-year deadline in a "statute of repose" should be invoked. The groups said after decades of management by federal land agencies, the public has come to accept that management.

"It is the position of the defendants that recognition of R.S. 2477 rights after many years of federal management within NPS, BLM, and U.S. Forest Service jurisdictions would unsettle the public's expectations and interfere with respective agency mandates under which the roads and trails have been managed all of these years," said the groups in a position paper.

But the State of Utah in its filing before the Utah Supreme Court argues that the state statute of repose does not apply. First, it says that the repose law has been modified by a separate statute exempting states property claims versus the federal government.

"Section 78B-2-118 (the new law) specifically exempts suits filed by the State against the United States under the (Quiet Title Act) from any limitations period in section 78B-2-201 (the

repose law)," the state asserted.

The state also said that even if the statute of repose does apply, it should not be invoked until seven years after the federal government interferes with a state's right to use an RS 2477 right-of-way (ROW), in other words seven years from now.

"Interpreted in this manner, section 78B-2-201 places a seven-year limitations period on the state's ability to commence an action from the time its right or title to the property is disputed, i.e. the time period begins when the cause of action accrues," the state argued. "To hold otherwise places the State at a significant disadvantage."

Environmentalists led by the Southern Utah Wilderness Alliance (SUWA) originally invoked the statute of repose argument to counter claims to RS 2477 ROWs filed by Kane County and Garfield County and the State of Utah.

Three U.S. District Court judges seated in Utah asked the Utah Supreme Court to rule on the repose question. On May 20 the Utah Court ordered itself to consider the question posed by the three federal judges.

If the Utah court finds that state law forbids property claims more than seven years old, said the three judges in their petition, "then the R.S. 2477 Road Cases pending before this court would be barred."

The federal law involved - the Federal Land Policy and Management Act of 1976 - touched off this massive legal debate when it terminated an older, RS 2477 law that allowed state and local governments to control ROWs across public lands, called RS 2477 ROWs. If state and local governments can prove the ROWs had been maintained and used prior to the 1976, they would have grandfathered rights to them. That is, unless Utah state law bars such claims as untimely.

The State of Utah and Utah counties have been particularly aggressive in filing thousands of claims to RS 2477 ROWs. The Tenth U.S. Circuit Court of

Appeals said it currently is considering 20 different cases with claims to some 12,000 roads.

In a major ruling the Tenth Circuit on Sept. 9, 2005, said that federal land managers in the person of the Bureau of Land Management do not have authority to decide if a way constitutes an RS 2477 ROW or not. Only a federal court does under the Quiet Title Act, held the appeals court.

So the State of Utah and Utah counties have filed thousands of assertions in federal courts under the Quiet Title Act. But now the Tenth Circuit at SUWA's bidding has raised another legal question - do the state and counties have a right under state law to even assert the claims?

To that end the three federal judges hearing the Utah assertions in April asked the Utah Supreme Court to answer the question. At issue are two provisions of state law - a statute of limitations and a statute of repose.

If the RS 2477 claims are subject to the Utah statute of limitations, then the state and counties are entitled to file their claims based on a "cause of action", i.e. the date they asserted rights to the RS 2477 ROWs.

But if the claims are subject to Utah's statute of repose the cause of action must have been asserted long before now. That Utah statute says the state may not claim property unless "the right or title to the property accrued within seven years before any action or other proceeding is commenced."

The State of Utah, Utah counties and SUWA have been dueling in federal court over the status of RS 2477 ROWs over the last decade.

In addition to the RS 2477 ROW battle, the State of Utah is attempting to obtain more than 31 million acres of public lands.

The Transfer of Public Lands Act, HB 142, signed into law on March 23, 2012, by Utah Gov. Gary Herbert (R-Utah), demands the transfer of most fed-

eral lands in the state, excepting only national parks (save for portions of Glen Canyon National Recreation Area), national monuments and wilderness areas.

The three judge's nine-page petition to the Utah Supreme Court is here: <http://suwa.org/wp-content/uploads/UTSC-Certification.pdf>.

Crested Butte tries out FS summer ski resort expansion

The Forest Service said last week it will prepare an EIS to evaluate a proposed expansion of the Crested Butte Mountain Resort ski facility in Colorado, including new summer activities.

In 2011 Congress approved legislation (PL 112-46 of Nov. 7, 2011) that authorizes ski resorts that operate on national forest land to provide off-season recreation uses.

The main law that governs skiing in national forests, the 1986 National Forest Ski Area Permit Act, only authorized Nordic and alpine skiing.

So on April 16 Crested Butte sought the approval of the Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) for a major expansion of its resort in Gunnison County, including the addition of summer recreation facilities.

The company said it "believes the summer components of this proposal, including enhanced mountain biking trail offerings and multi-use trails are fully consistent with both the spirit and letter of this important legislation." The letter to the GMUG forests was signed by Crested Butte Mountain Resort General Manager Michael Kraatz.

He said the project would include 15 miles of "multi-use and mountain biking trails" within the forests.

The summer recreation projects are a small portion of the proposed Crested Butte project that the company says is envisioned in a Master Development Plan of 2013. The company wrote the plan, which the forests accepted.

The proposal would expand intermediate and advanced skiable terrain into new areas and would add lift-served terrain.

The company said the resort's intermediate and advanced skiable terrain now occasionally becomes overcrowded and skiers would welcome a new skiing challenge.

"The Teo Park and Drainage areas would provide an additional terrain pod for intermediate and advanced skiers looking for a new experience," the company told the Forest Service. "Realigning North Face Lift would also relieve pressure from the Paradise Express and, along with enhanced snowmaking coverage, will enable better circulation of guests to both the existing and proposed terrain."

GMUG forests have accepted the proposal and on November 5 announced that they would prepare an EIS to analyze it further before giving final approval. The forests are asking for public comment until December 7 to: *Scott Armentrout, Forest Supervisor, c/o Aaron Drendel, Recreation Staff Officer, Gunnison Ranger District, Grand Mesa, Uncompahgre, and Gunnison National Forests, 216 N. Colorado St., Gunnison, CO 81230* or by e-mail to cbmr@fs.fed.us.

The 2011 Ski Area Recreational Opportunity Enhancement Act was backed by both Republicans and Democrats. Indeed the House passed the bill Oct. 3, 2011, by a unanimous 394-to-0 vote. The Senate passed the bill Oct. 18, 2011, by unanimous consent. Former Sen. Mark Udall (D-Colo.) and Rep. Rob Bishop (R-Utah) were the chief sponsors.

The Forest Service predicted the new law would be an economic engine in the summer for such famed resorts as Aspen and Vail in Colorado and Jackson Hole in Wyoming. The service estimated it would produce 600,000 additional visits that would in turn produce 600 jobs and \$40 million in direct spending.

Under the law:

WILL BE ALLOWED: It specifically authorizes "(A) zip lines; (B) mountain

bike terrain parks and trails; (C) frisbee golf courses; and (D) ropes courses." The law does allow other uses "as the Secretary determines to be appropriate."

WON'T BE ALLOWED: It specifically forbids "(A) tennis courts; (B) water slides and water parks; (C) swimming pools; (D) golf courses; and (E) amusement parks."

Senate trying to block wetland permit rule again

The Senate last week approved a resolution that would prevent EPA from implementing regulations that expand the kinds of water bodies requiring wetlands protection permits.

If the House follows suit - and it likely will, the resolution would go to the President. The White House has promised a veto. In that the Senate resolution directing the President to withdraw the rule only received 53 votes November 4, the veto would likely be sustained.

Separately, the Senate on November 3 failed to muster sufficient votes to break a filibuster against a closely-related bill (S 1140) that would have required the agencies to withdraw and rewrite the rules. The bill needed 60 votes to break the filibuster; the vote was 57-to-41.

The House approved a version of the stronger bill (HR 2028) May 1.

The rule, published by EPA and the Corps of Engineers May 27, would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

Two federal courts have already ruled against the rule, preventing implementation. The Sixth U.S. Circuit Court of Appeals stayed the regulation nationwide on October 10.

That followed up on an August 27 injunction from Chief U.S. District Court Judge Ralph R. Erickson in North Dakota, that blocked the rule in 13

states, most of them in the West.

In the more recent circuit court decision, the panel took particular issue with provisions of the regulation that define what waters adjacent to, or involved with, navigable waters should require a permit. Section 404 of the Clean Water Act requires permits for the disturbance of wetlands.

The Sixth Circuit said EPA and the Corps when soliciting public opinion did not define what activities a certain distance from navigable waters would require a permit. And the final rule did establish such distances.

The sponsor of the defeated Senate wetlands bill (S 1140), Sen. John Barrasso (R-Wyo.), said Congress should act because the court actions are not guaranteed.

On the Senate floor Barrasso frequently quoted from the court holdings and said, "What the Courts have done is basically say let Congress have time to act. We don't have to sit on the sidelines and watch this rule slowly crumble under legal scrutiny."

EPA and the Corps put out a statement saying they will follow the appeals court's order not to implement the rule and said they would continue to litigate the matter.

The National Wildlife Federation, along with dozens of other sportsmen's groups, argues the expansive EPA/Corps definition of waters requiring a permit is necessary to protect conservation lands, especially wildfowl breeding grounds.

In threatening a veto of the resolution November 3 the Office of Management and Budget said, "More than one in three Americans get their drinking water from rivers, lakes, and reservoirs that are at risk of pollution from upstream sources. The protection of wetlands is also vital for hunting and fishing."

Notes

Grand Canyon bill introduced.

Rep. Raúl M. Grijalva (D-Ariz.) Novem-

ber 3 formally introduced legislation (HR 3882) to designate 1.7 million acres of public lands adjacent to Grand Canyon National Park as a national monument. The Grand Canyon National Heritage Monument would include the one million acres of public lands the Obama administration withdrew from mining in January 2012. That withdrawal is good for 20 years; Grijalva would make it permanent. Grijalva announced his intention to introduce the bill at an event in Flagstaff, Ariz., a month ago. The Havasupai, Hualapai, and Hopi tribes endorsed the bill. If Congress does not act on a Grijalva bill, as is likely, advocates say the 1.7 million-acre area would be a good candidate for designation as a national monument by President Obama. Former Secretary of Interior Ken Salazar withdrew the million acres of Bureau of Land Management (BLM) and Kaibab National Forest land in January 2012. The mining industry has filed at least two major lawsuits against the withdrawal.

Senators: Feds should study rec impact. A Democratic senator and a Republican senator teamed up to introduce legislation (S 2219) last month that would have the federal government measure the economic impact of outdoor recreation. The Outdoor Industry Association said in a seminal report a few years ago that outdoor recreation generates \$646 billion per year in consumer spending. But Sens. Jeanne Shaheen (D-N.H.) and Cory Gardner (R-Colo.) said the federal Bureau of Economic Analysis should conduct its own report to give heft to recreation in the policy arena. Said Gardner, "This bill would allow lawmakers to make informed policy decisions to further enhance the industry by understanding the impact recreation has on our economy, and I look forward to working to ensure this commonsense bill moves through the legislative process. Congress could use a little fresh air, and this bill shows the value of it." Outdoor Industry Association Executive Director Amy Roberts echoed the thought. "We know through our own research of the outdoor recreation economy and the millions of associated jobs here in the United States that the outdoor industry is major economic driver," she said. "It will be extremely important and helpful, however, for the federal gov-

ernment to quantify the economic importance of our industry and use that data to inform the decisions that affect our businesses and the 142 million Americans who recreate outside each year."

Rec industry anticipates big year.

With the Centennial of the Park Service as an added spur in 2016, the outdoor recreation industry anticipates significant increases in the sale of machines and equipment. In a new Outdoor Recreation Outlook 2016, industry leaders detail the anticipated results of sales for 2015 and the potential for sales in 2016. For instance boat sales are expected to increase by six percent this year and by another six percent in 2016, approaching the 250,000 per-year level of new boats sold pre-recession. The bicycle industry anticipates sales of bikes and equipment of \$7 billion this year as bicycle riding has doubled in large U.S. cities over the last 15 years. One industry - ski resorts - had a down year in the winter of 2014-2015, in large part because of weather. In 2014-2015 ski areas estimated 53.6 million visits, down five percent from the previous winter. A 28 percent decrease in snowfall nationally may have contributed. But overall, the American Recreation Coalition was looking ahead to a boost from the Centennial. It said, "And renewed interest in outreach and promotion by federal land and water management agencies - based around the National Park Service's Centennial Celebration - is creating new opportunities for Americans everywhere to enjoy their great outdoors." The industry report is available at: <http://www.funoutdoors.com/node/view/3296>.

GOP updates monuments objections.

Twenty-six House Republicans introduced legislation (HR 3946) November 5 that consolidates various Congressional objections to unilateral designation of national monuments on federal lands in one place. The measure, as introduced by lead sponsor Rep. Paul Gosar (R-Ariz.), would require local concurrence in any monument and would limit monument designations to 5,000 acres or less. Gosar attacked President Obama for designating 19 national monuments this year, and said he expects many more. "Shamefully, President Obama has exceed-

ed the intent of this law more than any other American president, designating or expanding 19 national monuments and locking up more than 1.25 million acres of land," he said. "Unfortunately, he isn't done yet, and I expect several more overreaching declarations in the next 14 months." Gosar said he was particularly worried about a national monument adjacent to Grand Canyon National Park. "I will continue to do everything in my power to oppose the misguided effort to lock up 1.7 million acres in the Grand Canyon Watershed," he said. "The strong showing of support for this bill provides further evidence that the American people agree." As noted above, Rep. Raúl M. Grijalva (D-Ariz.) November 3 formally introduced legislation (HR 3882) to designate 1.7 million acres of public lands adjacent to Grand Canyon National Park as a national monument. And monument backers anticipate Congress will not act on the bill, so they are asking the President to designate a national monument. More broadly, The Wilderness Society October 21 published a new report calling for increased spending by Congress on BLM-managed conservation lands. And Jamie Williams, president of The Wilderness Society, promoted an expansion of protected areas managed by BLM. "We are calling on Congress and the administration to provide adequate funding so that the Bureau can do its job," said Williams. "We are also calling on Congress and the administration to continue to expand the National Conservation Lands to include all of the important and spectacular lands and waters managed by the Bureau of Land Management by creating and expanding Wilderness Areas, National Monuments, National Conservation Areas, Wild and Scenic Rivers, National Scenic and Historic Trails and other designations to complete the system."

Boxscore of legislation

Fiscal year 2016 temporary spending

HR 719. President Obama signed into law (PL 114-53) September 30. Keeps the government in money through December 11, extends FLREA, repays FS emergency fire-fighting costs.

Fiscal year 2016 appropriations

HR 2822 (Calvert), S 1645 (Murkowski). House was considering July 9. Senate committee approved June 18. Both would retain spending levels. Senate committee would take PILT and some fire costs out of bill. House committee would not. Lots of riders in both bills.

Appropriations Fiscal 2016 Energy and Water

HR 2208 (Simpson). House approved May 1. Senate committee reported May 21. Would provide mild increase for Corps, mild decrease for Bureau of Reclamation. House would block EPA/Corps wetlands rule.

Appropriations Fiscal 2016 Transportation

HR 2577 (Diaz-Balart). House approved June 9. Senate subcommittee approved June 23. Would roughly maintain surface transportation spending at fiscal 2015 levels.

Fiscal year 2016 budget

HR 1314 (Meehan). President signed into law November 2 as PL 114-74. Increases overall domestic spending cap by \$20 billion.

Land and Water Conservation Fund

S 338 (Burr), S 890 (Cantwell), HR 1814 (Grijalva), S 2012 (Murkowski), S 1925 (Heinrich), S 2165 (Cantwell), unnumbered draft (Bishop). Grijalva introduced April 15. Senate committee approved Murkowski bill July 30. Bishop posted draft November 5. All but Bishop would extend program at \$900 million per year in perpetuity. Bishop would extend for seven years. S 890, HR 1814 and S 1925 would guarantee the money each year.

Urban park fund

HR 201 (Sires). Sires introduced January 7. Would authorize HUD grants and HUD loans to provide assistance to urban parks.

NPS Centennial

HR 3556 (Grijalva), S 2257 (Cantwell). Grijalva introduced September 18. Cantwell introduced November 5. Administration bills. Would have Congress put up an additional \$800 million for the Park Service Centennial in 2016.

Federal land recreation fees

HR 1991 (Bishop), HR 2822 (Calvert), S 1645 (Murkowski). House committee approved April 29. Senate hearing September 17. Bishop would extend existing law year through Sept. 30, 2017. Calvert and Murkowski included extension in fiscal 2016 appropriations bills (above.)

Emergency fire spending

HR 167 (Simpson), S 235 (Wyden), S 508 (McCain), S 1645 (Murkowski), HR 2647 (Westerman). Simpson introduced January 6. Wyden introduced January 22. McCain introduced February 12. Senate committee approved S 1645 June 18. House approved HR 2647 July 9. All would shift emergency fire fighting costs out of line appropriations and into disaster spending. McCain would also increase timber harvests.

Monument restrictions

HR 330 (Young), HR 488 (Amodei), S 437 (Murkowski), HR 900 (Labrador), S 228 (Crapo), HR 3946 (Gosar). Young introduced January 13. Amodei introduced January 22. Murkowski introduced February 10. Labrador introduced February 11. Crapo introduced January 21. Gosar introduced November 5. All would require Congressional or state approval of national monuments.

Wetlands regulations

HR 594 (Gosar), HR 2028 (Simpson), S 1140 (Barrasso). House approved HR 2028 May 1. Barrasso introduced April 30. Would forbid completion by EPA of regulations expanding kinds of water bodies requiring wetlands protection permit. 141 cosponsors. Also included in House and Senate spending bills.

Surface transportation

S 1647 (Inhofe), HR 22 (Davis), HR 3763 (Shuster). Senate approved HR 22 (substitute for S 1647) July 30. House approved HR 3763 November 5. Inhofe and Shuster would revise law for next six years.

Fed lands open in government closure

S 146 (Flake). Flake introduced January 12. Would allow states to operate national parks, national refuges and national forests in the event of a government shutdown.