

# Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 32 Number 22, November 21, 2014

In this issue. . .

**Spending pact in danger already.**

*GOP threatens government shutdown next month over immigration. Staff readying money bill... Page 1*

**Murkowski may risk land bills.**

*By bringing them to Senate floor come what may. Dems have preferred to wait for grand deal.. Page 4*

**Parks gearing up for fee hikes.**

*Half-dozen big ones have proposed already. Some major hikes.. Page 6*

**Green ballot votes were expected.**

*Conservationists said voters of all politics have backed.... Page 7*

**Lame-duck progress hard to find.**

*Congress is halfway through the session without acting ..... Page 9*

**Grand Canyon flight gift on table.**

*NPS, FAA propose trade-off if operators use quiet tech.... Page 10*

**Bill would keep fed lands open.**

*Senate committee approves measure to let states, locals pay... Page 11*

**Grand Canyon injunction asked.**

*Concessioner Xanterra requests court order on big contract. Page 12*

**Cities, counties hit wetland rule.**

*Nominal Obama allies say Corps, EPA proposal is unclear..... Page 13*

**Tax easement provision is alive.**

*In 'extenders' bills. House leaders want it to pass..... Page 14*

**Notes..... Page 15**

**Conference calendar..... Page 16**

**Approps aides write money bill; solons may end truce**

The November 4 election effectively ended the pact Democrats and Republicans shared over fiscal year 2015 appropriations. That truce set an overall spending ceiling and a tacit agreement to produce an omnibus spending bill for the full fiscal year by December 11.

The truce ended last week after the White House said it would reform immigration policy administratively without Congressional input. Speaker of the House John Boehner (R-Ohio) quickly threatened to shut down the government.

However, Boehner didn't make that threat explicit, although many Tea Party members have. He just said that "all options are on the table."

The Boehner statement doesn't square with this statement of Senate Minority Leader Mitch McConnell, to wit, "We'll not be shutting the government down or threatening to default on the national debt."

Meanwhile, House and Senate Appropriations Committee staff members have begun drafting the details of a full-year appropriations bill. Congress has already passed a temporary spending law that keeps the government in money through December 11 (PL 113-164 of September 19).

Said a House Appropriations Committee staff member November 14, "Yes, we are negotiating a full, 12-bill omnibus for the entire FY2015 with the Senate. It will likely be on the floor the week of December 8." A Senate Appropriations Committee staff member confirmed that the omnibus was in transit.

House Minority Whip Steny Hoyer (D-Md.) prodded House Majority Leader Kevin McCarthy (R-Calif.) on the status of the omnibus November 14 on the House floor. Said Hoyer, "It is not on the schedule for next week. My presumption is it would be, therefore, hopefully on the schedule for the first week in December when we get back so that we can send it to the Senate to be adopted."

McCarthy was noncommittal. "No decisions are made," he said, "but there is a possibility that we could end on an omnibus in December."

That the appropriators intend to write one giant, 12-bill omnibus by definition limits the number and kind of riders and restrictions House and Senate appropriators can add to it.

As for the details of a fiscal 2015 Interior and Related Agencies portion of a money bill, much will depend on appropriators' final approach to two crucial issues - emergency fire fighting and payments-in-lieu of taxes (PILT). A preliminary Senate approach would set aside more than \$900 million for other programs than a House approach by not including those two items in a bill.

The leaders of the Senate subcommittee on Interior and Related Agencies August 1 published a discussion draft of a fiscal year 2015 spending bill that differs on fire and PILT with a bill (HR 5171) the House Appropriations Committee approved July 15.

The Senate drafters - Senate subcommittee on Interior Chairman Jack Reed (D-R.I.) and ranking subcommittee Republican Lisa Murkowski (R-Alaska) - did not include in their proposal \$470 million to pay back fiscal 2014 fire fighting costs. The House subcommittee did include the \$470 million.

As for PILT the Senate draft does not include money for the program in fiscal 2015, again unlike the House Appropriations Committee. The House panel would extend PILT by a year through Sept. 30, 2015, and put up \$442 million for it. Again, the Senate approach would give appropriators more than \$900 million extrato spend.

Some House members are searching for an alternative strategy to attack the administration's immigration initiative, short of shutting the entire government down. Those House members, led by Reps. Matt Salmon (R-Ariz.) and Bill Posey (R-Fla.), wrote appropriators November 14 recommending they simply cut off funding for the immigration action.

**Three other bills:** In addition to the Interior and Related Agencies bill Congress has failed to move these other outdoor-related measures:

**ENERGY AND WATER:** The House approved its bill (HR 4923) July 10 and included a provision that would bar implementation of a June 2 proposed Obama administration rule on waters that should be subject to Section 404 wetland permits. The administration proposal would broaden substantially the kinds of water bodies subject to the permit requirement. No Senate bill has begun to move yet. (*See related article page 13.*)

**TRANSPORTATION:** The House approved its bill (HR 4575) June 10 that would bar the use of regional grant money called TIGER for recreation and trails projects. The Senate Appropriations Committee approved its version of a bill (S 2438) June 5 without the trails limitation.

**AGRICULTURE:** The House Appropriations Committee approved its bill (HR 4800) June 4 and the Senate Appropriations Committee approved its bill (S 2389) May 22. Neither bill has progressed beyond that.

Here is a summary of the Interior bill, as approved by the House committee and as proposed by the Senate subcommittee leaders.

**Centennial:** Like the Republican-dominated House Appropriations Committee the senators recommended extra money for the Park Service in anticipation of its Centennial in 2016, as requested by the Obama administration.

However, the House committee approved \$5 million more - \$30 million for NPS operations and \$10 million

for matching endowment grants compared to the senators' \$25 million for NPS operations and \$10 million for endowments.

In addition to the appropriations the administration asked authorizing committees to pony up more than \$600 million in new money for the Park Service Centennial.

**Riders:** Sens. Reed and Murkowski did not include in their discussion draft several riders approved by the House Appropriations Committee in HR 5171.

The senators excluded from their bill House riders that would: forbid EPA from completing a proposed June 2 rule that would reduce carbon emissions from existing power plants, a plan that environmentalists say would be a boon to the national parks; forbid EPA from completing a proposed May 29 rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act; forbid any federal agency from attempting to transfer water rights to the federal government on renewal of a permit; and block implementation of an administration National Ocean Policy.

However, the subcommittee leaders did include one rider not in the House bill - designation of a Blackstone River Valley National Heritage Area in Rhode Island. Subcommittee chairman Reed is from Rhode Island.

**Some numbers:** The following numbers compare the Senate subcommittee recommendations for fiscal 2015 with the House committee's HR 5171 and fiscal 2014.

**LWCF FEDERAL:** In total the senators recommended \$186 million for federal land acquisition, compared to \$49 million by the House committee and \$187 million in a fiscal 2014 appropriations law.

**LWCF STATE:** The senators recommended \$48 million, compared to \$46 million by the House panel and \$48 million in the 2014 appropriations law.

**PARK SERVICE OPERATIONS:** The senators recommended \$2.279 billion, compared to \$2.269 billion by the House committee and \$2.237 billion in fiscal 2014.

**PARK SERVICE RECREATION AND PRESERVATION:** The senators recommended \$63.1 million, compared to \$52 million by the House committee and \$52 million in fiscal 2014. (The big difference lies in National Heritage Area spending, a subset of rec and pres, as follows.)

**NATIONAL HERITAGE AREAS:** The senators recommended \$20.3 million, compared to \$9.2 million by the House committee and \$18.4 million in the fiscal 2014 appropriation.

Said explanatory notes accompanying the Senate draft, "The recommendation once again emphatically rejects the administration's proposal to reduce funding for national heritage areas. This proposed funding reduction would have a particularly acute impact since the Service is in the process of approving management plans for newer areas which allow them access to additional funding to implement their restoration and recreation programs." The administration had recommended the \$9.2 million favored by the House committee.

**PARK SERVICE CONSTRUCTION:** The senators recommended \$138 million, compared to \$138 million by the House committee and \$138 million in fiscal 2014.

**PARK SERVICE HISTORIC PRESERVATION:** The senators recommended \$66.4 million, compared to \$56 million by the House committee and \$56 million in fiscal 2014.

**STATE WILDLIFE CONSERVATION GRANTS:** The senators recommended \$58.7 million, compared to \$58.7 million by the House committee and \$58.7 million in fiscal 2014.

**NATIONAL FOREST SYSTEM:** The senators recommended \$1.464 billion, compared to \$1.497 billion by the House committee and \$1.497 billion in fiscal 2014.

NATIONAL FOREST RECREATION: The senators recommended \$259 million, compared to \$263.9 million by the House committee and \$261.7 in fiscal 2014.

NATIONAL FOREST TRAILS MAINTENANCE AND CONSTRUCTION: The senators recommended \$77.5 million, compared to \$86.8 million in the House committee bill and \$75 million in fiscal 2014.

BLM RESOURCE MANAGEMENT: The senators recommended \$957 million, compared to \$957 million by the House committee and \$957 million in fiscal 2014.

BLM RECREATION: The senators recommended \$68.5 million, compared to \$63.9 million by the House committee and \$66.9 million in fiscal 2014.

BLM LANDSCAPE SYSTEM MANAGEMENT: The senators recommended \$34 million, compared to \$30.8 million by the House committee and \$31.8 million in fiscal 2014.

WILDLIFE REFUGE MANAGEMENT: The senators recommended \$475 million, compared to \$477 million by the House committee and \$477 million in FY 2014.

## **Murkowski may move land bills to floor, come what may**

She hasn't formally taken over as Senate Energy Committee chair yet, but the almost-certain 2015 Senate Energy Committee Chair Lisa Murkowski (R-Alaska) is already offering broad clues to her agenda.

To no one's surprise her number one priority will be increased energy development from the public lands. More specifically for the outdoors, a Murkowski staff member said last week the senator intends to move individual land bills to the Senate floor.

Murkowski aide Robert Dillon told us that Murkowski would attempt to send the bills up under procedures that would allow amendments, and let those chips fall where they may. The present Democratic majority prefers to take up bills only under unanimous consent (i.e.

when all senators agree) with minimal debate.

"While a Republican majority will have priorities that never saw the light of day under Democratic leadership, the current gridlock on the Senate floor means there are going to be bills left over from this Congress that could get bipartisan support if they were processed under regular order and members were allowed to have their amendments considered and voted upon," Dillon said. "Those bills are candidates for early consideration."

Murkowski is in position to become committee chair of course because the Republican Party won a majority in the Senate in the November 4 elections. The GOP will control at least 53 seats next year. One seat is still undecided, that of incumbent Senate Energy Committee Chair Mary Landrieu, which is headed for a run-off election December 6.

There is a qualification to Republican control. Senate rules most of the time require 60 votes to move partisan legislation. So Democrats with at least 46 seats will still have a veto-by-filibuster available to slow or stop individual land bills they disagree with.

Murkowski will not only head the Senate Energy Committee she will also likely become chair of the Senate subcommittee on Interior Appropriations, giving her control not only of public lands policy in the Senate but also of the public lands purse.

Murkowski has long been a thorn in the administration's side. She was, and is, particularly angry about a Dec. 23, 2013, Interior Department decision to deny a permit to construct a road in Alaska across the Izembek National Wildlife Refuge. The road would give the community of King Cove a new link to medical help in Cold Bay.

Ever since, Murkowski has attacked Obama initiatives. Most prominently she led the opposition to the failed nomination of Rhea Suh as assistant secretary of Interior for Fish and Wildlife and Parks. Although the energy

committee approved Suh's nomination on March 27 by a 12-to-10 vote, there was little chance it could get through the full Senate.

On September 17 the Natural Resources Defense Council announced Suh will leave the Interior Department and become its president in January.

At the subcommittee level of the Senate Energy Committee, Sen. Rob Portman (R-Ohio), a moderate and friend of the national parks, is ranking minority member of the Senate subcommittee on National Parks and thus is in line to become chairman.

He would succeed Sen. Mark Udall (D-Colo.) as subcommittee chairman. In fact Udall won't be back next year, having been defeated by Rep. Cory Gardner (R-Colo.)

Also of note, Portman and Murkowski have actively participated in a Senate Energy Committee debate over the last two years about major legislation to rejuvenate the National Park System. And they have talked about methods of paying for the Park Service maintenance backlog while at the same time rewriting the Land and Water Conservation Fund.

At the subcommittee on Public lands, Sen. John Barrasso (R-Wyo.) is the ranking minority member, followed by Sen. James E. Risch (R-Idaho). However, Barrasso may be more interested in chairing the Senate subcommittee on Energy, given his state's prodigious production of energy from the public lands.

**House moves:** On the other side of the Hill, although the Republican Party will still be in charge, the House Natural Resources Committee is in for a major shake-up. Committee chairman Doc Hastings (R-Wash.) is stepping down at the end of the year.

His logical successor is Rep. Rob Bishop (R-Utah), chairman of the House Public Lands subcommittee. That in turn could touch off a game of musical chairs for the Public Lands subcommittee chairmanship. One possibility would

have Rep. Doug Lamborn (R-Colo.) move over from his chairmanship of the House subcommittee on Energy. But Lamborn may want to stick with energy and minerals.

Other senior committee members from the West who might be candidates for the Public Lands subcommittee job include Rep Tom McClintock (R-Calif.), who represents Yosemite National Park, and Rep. Cynthia Lummis (R-Wyo.), who represents Yellowstone National Park.

Substantively, the House committee changes may not produce much difference in park and rec policy. Bishop, Lamborn, McClintock and Lummis are all staunch conservatives who oppose the expansion of the nation's conservation base through such things as national monument designations.

However, Bishop has worked closely with the park and rec community (with the exception of backcountry visitors) to fashion legislation (HR 5204) that would revise and extend an existing federal land recreation fee law. The full committee approved the bill July 30.

On the Democratic side of the committee there has already been a shake-up. Current ranking Democrat Peter DeFazio (D-Ore.) has chosen to seek ranking member status on the House Transportation Committee. In his stead committee Democrats chose Rep. Raúl Grijalva (D-Ariz.) to fill the position. He had been ranking minority member of the House subcommittee on Public Lands.

In the House Appropriations Committee Rep. Ken Calvert (R-Calif.), a moderate, is expected to retain that position as chairman of the subcommittee on Interior and Related Agencies. However, appropriations bosses frequently switch subcommittee chairmanships to funnel more money to their districts.

House Transportation Committee Chairman Bill Shuster (R-Pa.) will continue in that position. The House Republican Conference November 19 renewed his chairmanship. Shuster said he intends to write a massive new surface transportation bill next year.

In the Senate Shuster's counterpart at the Senate Environment and Public Works Committee, Sen. Barbara Boxer (D-Calif.), will likely yield the gavel to Sen. James Inhofe (R-Okla.) That could portend major changes in park and rec transportation policy because Boxer is a staunch defender of outdoor programs and Vitter is a sometimes critic of trail spending.

## National Parks begin to gear up for entrance fee hikes

National park units around the country have begun to broach to the public their plans for increasing entrance fees - and other fees - for the first time in eight years.

Among the parks formally proposing fee increases - or talking to the public about possible increases - are Acadia, Grand Canyon, Olympic, Yellowstone and Yosemite.

The parks offer a bewildering range of fees, but for a standard, seven-day pass for a vehicle most would increase fees about 20 percent. However, Yellowstone would double its 7-day pass (combined with Grand Teton National Park) from \$25 to \$50.

As *FPR* first reported September 8, NPS Director Jonathan B. Jarvis directed field offices to consider fee increases in an August 19 memo. At the same time *FPR* obtained a spread sheet containing projected fee increases for all park units.

The proposed schedule anticipates most units will increase fees next year, but if the public objects parks may phase in increases over three years.

Individual parks are taking different approaches. Most simply tell the public they are *proposing* a suite of fee increases and ask for public comment. But others such as Acadia kind of go at it sideways, asking the public to discuss possible fee increases, beginning in 2015.

Again, each park is proposing its own suite of fees. For instance

Yellowstone proposed: the doubling of a 7-day pass to it and Grand Teton from \$25 to \$50; a new three-day Yellowstone-only pass for \$30; an individual non-automobile visitor 7-day pass increase from \$12 to \$25 (for both parks), with an option of a 1-to-3 day pass in Yellowstone only of \$15.

Acadia is talking of an annual pass increase from \$40 to \$50, a 7-day vehicle fee increase from \$20 to \$25 and a 7-day per person fee increase from \$5 to \$12. At the same time Acadia is contemplating across-the-board camping fee increases for tents and small RV sites from \$20 to \$30.

The new fee proposals surface at a politically difficult time, because Congress at the moment is rewriting the underlying entrance fee authority in the Federal Lands Recreation Enhancements Act of 2004. And elected officials don't like new levies on the populace.

Led by the House subcommittee on Public Lands and its chair Rep. Rob Bishop (R-Utah), the House Natural Resources Committee July 30 approved a five-year rec fee extension bill (HR 5204).

In addition the House Appropriations Committee July 15 approved a one-year extension of the fee law through fiscal year 2016 in a fiscal 2015 spending bill (HR 5171). That could be put at risk by the fee hikes.

Although Jarvis's memo assumes parks will begin implementing higher fees next year, he would allow for some procrastination. "Once approved by the Director, the parks may implement the entrance fee rate changes all at once or in phases," says his memo. "Each park's implementation timeline may vary, depending on the public feedback received. If there is significant public controversy, a park may choose not to implement new fees, may phase in the new rates over three years, or delay the new rates until 2016 or 2017."

The proposed fee schedule places park units in groups one through four with group four the most expensive parks, such as Grand Canyon, and group

one the least expensive units.

## **Green ballot votes were expected; implementation next**

A fortnight after voters across the country approved unprecedented amounts of money for conservation, supporters were saying the votes were not a fluke. They argued that the American public - Republican leaning or Democratic leaning or Independent - supports conservation ballot initiatives.

The "results were not surprising," said Will Rogers, president of the Trust for Public Land. "For more than 20 years, The Trust for Public Land has seen that support from Democratic, Republican and independent voters alike. Whether voters are 'red' or 'blue,' they are both 'green' and they are willing to vote with their pocketbooks to protect special places."

Altogether voters across the country approved some \$16 billion in conservation initiatives in a time of political retrenchment.

Florida won the sweepstakes, with voters approving November 4 a \$9 billion conservation amendment to the state constitution. The measure needed 60 percent of the vote to succeed. It received almost 75 percent. The final numbers were 4,231,426 votes for and only 1,414,208 votes against. (Note, of the \$5.8 million raised in support of the amendment, the Trust for Public Land gave \$458,157.)

Will Abberger, campaign manager for Florida's Water and Land Legacy, the lead proponent of the amendment, was confident the governor and state legislature would faithfully implement the amendment.

"Florida's Water and Land Legacy, the Vote Yes on Amendment 1 coalition, looks forward to working with Governor (Rick) Scott (R) and the Florida Legislature to implement Amendment 1 in a manner that is consistent with the intent of the voters," he said. "Given the overwhelming popular

mandate demonstrated across our state, particularly with a more conservative mid-term electorate, we know that the governor and legislature will seek to faithfully implement the will of the voters."

There was no organized opposition to the Florida amendment but House Speaker Will Weatherford and Senate President Don Gaetz, both Republicans, criticized it.

New Jersey voters approved another big conservation amendment - a \$2,150,000,000 open space program - and it too may face a test in the state legislature and in the office of Gov. Chris Christie (R-N.J.) The governor opposed the amendment.

Said the New Jersey Conservation Foundation in a post-election statement, "The Legislature must now write enabling legislation to put the approved plan into action. A thoughtful process will be needed to ensure that funding is allocated for park development, improvements and stewardship - all in addition to land preservation."

One major defeat of a conservation measure came in North Dakota, where voters rejected a \$1,875,000,000 clean water, wildlife and parks constitutional amendment. However, the governor promised to seek more money for state parks and recreation.

A second major defeat came in Los Angeles County where 62 percent of voters supported the renewal of a \$1.3 billion Los Angeles County program that allocates money for parks, recreation, and open space. A vote of 66 percent was required to pass.

All told the 39 major state and local conservation measures on the ballot represented an ambitious agenda. The Trust for Public Lands called November 4 "the most important election for land conservation and restoration in America's history." The trust keeps tracks of ballot measures at [www.landvote.org](http://www.landvote.org).

In the last set of national conservation initiatives in November

2012 voters across the country approved 53 of 68 such measures for a total of \$2.3 billion. So the 2014 initiatives are four times as large.

**FLORIDA:** If implemented as the voters anticipated, Amendment 1 would allocate one-third of the revenues from an existing real estate transfer tax to land conservation, outdoor recreation, management of existing lands and protection of lands critical to the water supply. Sixty percent of the Florida voters had to approve the initiative because it would amend the state constitution.

The program would kick in on July 1, 2015, and would ante up \$642 million in year one. Florida Water and Land Legacy says the amendment is needed because Gov. Scott and the Florida legislature have stripped existing conservation programs of money, leaving at risk 2 million acres of natural areas.

The amendment would allocate the real estate tax revenues to a Land Acquisition Trust Fund.

Said Abberger, campaign manager for the amendment, "The intent of the Water and Land Conservation Amendment, as ratified by the voters, is to restore spending for a highly successful group of long-standing programs authorized in Florida statutes. The amendment was drafted so that no implementing legislation is required; the Legislature could simply appropriate funds to existing water and land conservation programs." Securing appropriations, however, is always a tricky business.

The amendment says the money is to be used *"to finance or refinance: the acquisition and improvement of land, water areas, and related property interests, including conservation easements, and resources for conservation lands including wetlands, forests, and fish and wildlife habitat; wildlife management areas; lands that protect water resources and drinking water sources, including lands protecting the water quality and quantity of rivers, lakes, streams, springsheds, and lands providing*

*recharge for groundwater and aquifer systems; lands in the Everglades Agricultural Area and the Everglades Protection Area, as defined in Article II, Section 7(b); beaches and shores; outdoor recreation lands, including recreational trails, parks, and urban open space; rural landscapes; working farms and ranches; historic or geologic sites; together with management, restoration of natural systems, and the enhancement of public access or recreational enjoyment of conservation lands."*

**NEW JERSEY:** Passed by a vote of 894,942 for, or 64.6 percent, and 490,502 against, or 35.4 percent. The New Jersey initiative would generate \$2.8 billion, of which \$2.15 billion would be used for conservation. The NJ Keep It Green coalition of more than 185 organizations supports the use of the conservation money for open space, parks, waterways and historic sites.

However, the environmental group Public Employees for Environmental Responsibility charged that the ballot measure would shift money from needed operations to favored real estate groups for open space acquisitions. PEER said the measure would transfer more than \$30 million per year out of conservation agency operations and maintenance and into land acquisition.

PEER said, "Some Keep It Green members are also focused on the green in their wallets."

New Jersey voters approved the measure even though Gov. Christie opposed it.

**NORTH DAKOTA:** Defeated by a vote of 196,596 against, or 79.4 percent, and only 51,578 for, or 20.6 percent. This constitutional amendment would have taken advantage of an explosive increase in energy development in the state by allocating five percent of revenues from a state oil extraction tax to conservation. The program would have generated about \$45 million per year for various projects.

The money would have been used to protect clean water; preserve natural

areas like the Badlands; establish new parks and recreation areas; prevent flooding; and educate the young about the outdoors.

Significant opposition came from the Greater North Dakota Chamber of Commerce and related groups.

Gov. Jack Dalrymple (R-N.D.) did promise he would seek an additional \$50 million for the state's Outdoor Heritage Fund over the next three years and allocate \$30.4 million of that to improving state parks, North Dakota newspapers reported.

Background information from supporters is available at <http://cleanwaterwildlifeparks.org/>.

**CALIFORNIA:** Approved by a final vote of 4,528,239 for, or 67 percent, and 2,215,245 against, or 33 percent. A \$7.5 billion Proposition 1 water bond would allocate \$1.5 billion to conservation projects. The state legislature and Gov. Jerry Brown (D-Calif.) put together this compromise to replace an initial, proposed \$11 billion-plus bond that was criticized for containing too much pork.

The money would be used for watershed restoration, forest health and wetland habitat.

**LOS ANGELES COUNTY: Renewal:** Defeated with a vote of 680,463 for, or 62 percent, with a two-thirds vote needed for passage. A total of 416,739, or 38 percent, voted no. County voters were asked to vote on Proposition P that would renew funding for parks, recreation, beaches, open space etc. It would put up about \$54 million per year from a \$23 parcel tax for 30 years. Of the more than \$1.6 billion, more than \$1.3 billion would have been set aside for conservation.

**LARIMER COUNTY, COLORADO: Renewal:** Approved with a vote of 116,039 for, or 82 percent, and 26,091 against, or 18 percent. County voters were asked to renew an open space program financed by a one-quarter of a cent sales tax. The program began 20 years ago. Of the \$262,500,000 the tax would generate

half, or \$131,250,000, would be used to acquire open space in the county.

## Congress has made little visible lame-duck progress

Two weeks into the lame-duck session of Congress - or roughly halfway through - the House and Senate have yet to address significant park and rec issues.

And the chances of Congress addressing such things as a rewrite of the Land and Water Conservation Fund and an omnibus lands bill are increasingly slim.

About the only outdoor legislation still at the front of House and Senate agendas is an omnibus fiscal year 2015 appropriations bill. And some Tea Party Republicans would like to block that bill to prevent President Obama from instituting a new immigration policy. *(See related article page one.)*

The Republican Party is of course on line to take over the Senate in 2015, so it has little or no incentive to act on anything beyond the bare necessities.

By definition Senate Minority Leader - soon to be Senate Majority Leader - Mitch McConnell (R-Ky.) will do all in his power to prevent the Senate from acting on any Democratic priorities. The lame-duck session is scheduled to run through December 11, or at that is when a temporary appropriations bill expires and the government is scheduled to run out of money.

Here's what may be on the table in the lame-duck session:

**Appropriations:** When House and Senate appropriators do begin negotiating the details of a fiscal year 2015 Interior and Related Agencies appropriations bill, they will start far apart on two crucial issues - emergency fire fighting and payments-in-lieu of taxes (PILT) that affect park and rec fundamentally.

The different approaches mean

the Senate would set aside more than \$900 million for other programs than the House. (*Again, see appropriations article on page one.*)

On September 19 Congress approved a temporary spending bill (PL 113-164) that provides all government agencies with money through December 11, the deadline Congress now faces.

**LWCF extension:** Senate Finance Committee Chairman Ron Wyden (D-Ore.) said in September he will introduce two bills to keep the Land and Water Conservation Fund (LWCF) going.

One bill would extend LWCF for one year to give Congress time to pass a second, more comprehensive public lands policy bill that would reauthorize the program for a longer period. Wyden won't be able to introduce any legislation until after Congress comes back November 12.

Wyden cosponsored legislation last year (S 338) that would guarantee \$900 million per year for LWCF permanently.

A package of public lands legislation would presumably gain strength because of the addition of two county assistance programs - Secure Rural Schools and PILT. But those programs would also increase the cost of a bill. The Obama administration has requested \$442 million in fiscal 2015 for PILT and \$251 million for Secure Rural Schools.

By itself LWCF stands little chance in the House, where western Republican critics of the program hold sway in the House Natural Resources Committee. However, those LWCF critics, such as House Natural Resources Committee Chairman Doc Hastings (R-Wash.), are strong supporters of the Secure Rural Schools and PILT programs and might swallow an extension of LWCF in return for secure county money.

**Omnibus lands bills:** A number of individual park and outdoor recreation bills might provide a powerful engine to pull an omnibus lands bills. They include a measure (HR 5476) that would reduce fees levied by the Forest Service

on 14,000 owners of private cabins within the National Forest System. The House Natural Resources Committee approved the bill September 18.

Other possibilities include legislation (HR 1208, S 507) that would designate a Manhattan Project National Park to commemorate the development of the Atomic Bomb; a bill (HR 819, S 486) that would place restrictions on a plan to manage Cape Hatteras National Seashore; a bill (HR 445) to establish a national policy for National Heritage Areas; and a bill (HR 1513, S 782) to expand Gettysburg National Military Park.

HR 5476, the cabin fee bill, would replace an existing law - the Cabin User Fee Fairness Act of 2000 - that bases fees on Forest Service appraisals set at five percent of the market value. In 2007 the Forest Service began reappraising cabins, and, because some cabins had not been appraised for as much as 30 years, the appraisals went through the roof.

HR 5476 would establish 11 tiers of fees from \$600 up to \$5,600. The Senate Energy Committee approved a counterpart bill (S 1341) on Dec. 19, 2013.

**FLREA extension:** In a full-year appropriations bill Congress is expected to extend the federal recreation fee law called the Federal Lands Recreation Enhancements Act of 2004 (FLREA) into December 2016. That would allow federal land management agencies to charge for annual visitation passes next year.

There is a slimmer possibility the House and Senate will reach agreement on a multi-year revision to FLREA, like the bill (HR 5204) approved by the House Natural Resources Committee July 30. Again, that is a long shot.

## **Feds would give bonus to quiet Grand Canyon aircraft**

NPS and the Federal Aviation Administration (FAA) proposed last week to give air tour companies that use quiet technology in flights over Grand

Canyon National Park a major bonus.

NPS and FAA said that all flights that use the technology in the slow first quarter of next year would not count against companies' annual maximum allocations. Sen. John McCain (R-Ariz.), a supporter of air tour companies, says the provision could give operators an extra 3,700 flights per year over the park.

NPS and FAA proposed the rule in response to direction from Congress in the big surface transportation law Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21). President Obama signed it into law (PL 112-241 on July 6, 2012.

MAP-21, at the request of McCain and with the backing of Senate Majority Leader Harry Reid (D-Nev.), directed the two agencies to give air tour companies that flew quiet planes and helicopters additional flights.

That the agencies proposed to do November 10 by authorizing aircraft with quiet technology to fly over the popular Dragon and Zoni Point corridors from January 1 to March 31 of next year, without the flights counting against operators' annual allocations.

"This is a major step forward for promoting tourism jobs in northern Arizona and enhancing the soundscape at Grand Canyon National Park," McCain said. "Air tours provide a unique sightseeing experience for people who might otherwise not be able to visit the Grand Canyon, particularly the elderly and the disabled."

McCain was criticized in July 2012 by conservationists when MAP-21 was being completed for freezing the natural quiet standard in Grand Canyon at 75 percent of each day that is 50 percent free of sound. But at the same time McCain wrote another provision that orders FAA and NPS to require all aircraft over the park to have quiet technology within 15 years.

Meantime, NPS and FAA are moving to implement the separate provision of MAP-21 that encourages the agencies to

increase flight allocations to air tour operators that employ quiet aircraft technology.

In their proposal NPS and FAA would in the first quarter of 2015 exempt operators with quiet technology from being counted toward annual allocations. That means such operators with flights from January through March would receive higher allocations the rest of the year.

If the quiet technology works for the first quarter of 2015 by reducing noise below a baseline, NPS and FAA may extend the provision to the rest of the year, they said.

"In 2015, the more that increased QT (quiet technology) use reduces the noise level below the noise baseline described in the following paragraph, the greater the prospect for operators to have additional seasonal relief from allocations in 2016," the agencies said in a *Federal Register* notice.

Comment by December 10 by e-mail to docket number FA-2014-0782 at <http://www.regulations.gov>. By mail send comments to: *Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue S.E., Room W12-140, West Building Ground Floor, Washington, D.C. 20590-0001.*

## Senate panel would let locals pay to open NPS units

The Senate Energy Committee November 13 approved legislation (S 1750) to authorize state and local governments to pay for the operation of national parks and other public lands in the event of a government shutdown.

The possibility of a shutdown by newly rambunctious Republican Congressional majorities is quite real, with House leaders already threatening government closures next month because of Obama administration immigration policies. And some members are threatening repeated government closures next year.

So the Senate committee passed S 1750 from Sen. Jeff Flake (R-Ariz.) that

would allow state and local governments to pay for the operation of national parks, national forests and/or national wildlife refuges in the event of a federal government closure. Again, the state and local governments would not actually manage the lands, just put up money.

The bill then calls for remuneration by the federal government on passage of an appropriations bill after a closure.

The measure is a little confusing. On the one hand it says the feds "shall" enter agreements with state or local governments, if the governments offered to manage the federal lands. On the other hand it appears to give federal agencies an opportunity to reject an agreement when it says the federal government "may" accept the money.

Flake summed up his intent when he introduced S 1750: "Closures of federal lands affect not just campers, recreational hunters and those who love the outdoors, but also those who protect communities from catastrophic wildfires, veterans trying to visit war memorials and the economic wellbeing of many towns that rely on tourism. If public or private funds are offered to help keep national parks and other public lands open in the event of a government shutdown, the federal government ought to accept them, and quickly."

Rep. Paul Gosar (R-Ariz.) introduced a counterpart bill (HR 3661) last December that has not moved in the House.

In addition several related House bills are in various stages. The House Natural Resources Committee Dec. 4, 2013, approved a measure (HR 3286) from Rep. Steve Daines (R-Mont.) that would allow states to pay to keep units of the National Park System only operating in the event of a federal government shutdown. In the most recent government shutdown in October 2013 five states paid to keep 12 national park units open.

Rep. Chris Stewart (R-Utah) has introduced a bill (HR 3311) that would allow state and local governments to

keep national parks only going, but just for activities that would have "a direct economic impact on tourism, mining, timber, or general transportation."

Finally, Rep. Don Young (R-Alaska) has introduced a bill (HR 3294) that would allow states to manage federal lands. HR 3294 would establish a procedure for states to identify lands it wished to manage that are now managed by the Bureau of Land Management, the Forest Service, the National Park Service, and the Fish and Wildlife Service.

The Park Service and concessioners estimated that the last government shutdown from October 1 to October 16 of 2013 set the parks back at least \$7 million and the concessioners some \$50 million. That's fees the Park Service would have collected and revenues the concessioners would have received.

But there may have been an upside in heightened awareness among the American people of the importance of the National Park System. The closures also set back other federal land management agencies, but the closures of the national parks gained national headlines, with Congressional Republicans protesting an overly aggressive administration closure policy.

## **Xanterra asks court to extend old Grand Canyon contract**

The present big Grand Canyon National Park concessioner asked a federal court November 19 to force the park to keep its contract in place beyond the end of the year.

Grand Canyon is seeking bids for a huge, multi-facility contract to replace Xanterra Parks & Resorts. The company sued the Park Service in October, objecting to requirements in the bid.

Now Xanterra is building on that lawsuit and asking the United States District Court for the District of Colorado to order NPS to keep its old contract in place next year.

Warned the company in the injunction request, "Unless the Court grants the preliminary injunction that Xanterra seeks in this motion, most visitor services at the South Rim of Grand Canyon National Park will likely shut down at the end of this year, resulting in irreparable harm not only to Xanterra and its more than 1,000 employees, but to the public at large."

In its original lawsuit Xanterra objected to numerous provisions in the Park Service's bid, such as franchise fees, leasehold surrender interest (LSI) and employee housing. In the injunction request Xanterra repeats those complaints.

Among other things it says the LSI (improvements made to Xanterra's facilities) assigned to the contract is so large that no company can afford to bid. "If NPS awards the new 001 Contract to another company, either NPS or that company must reimburse Xanterra for its investments, which now amount to just under \$200 million," says the injunction request.

When NPS first put the contract out for bid last year it asked bidders to pay more than \$150 million for LSI. When it received no bids NPS decided to reduce the LSI payment to \$57 million, and to make up the difference out of Park Service money.

The situation in Grand Canyon blew up October 8 when Xanterra sued NPS over the new contract proposal. On the same day NPS received no bids on the contract, the third time NPS has put it out on the street. NPS then extended the bid deadline for the contract until October 22. It has not announced yet if it received any bids.

Park Service concessioners say the big fight over the concessions contract at Grand Canyon National Park is symptomatic of a national disagreement between concessioners and the Park Service.

The Park Service in its defense did not directly address the LSI issue, but did say it was making progress in bringing down deferred maintenance in

concessioner facilities.

Xanterra summed up in its injunction request this way: "The Court therefore should issue a preliminary injunction directing NPS, until this case is resolved on its merits: (1) to proceed no further with Solicitation No. CC-GRCA001-15B as amended, or any other procurement for a non-temporary contract to replace the services now provided under Concession Contract CC-GRCA001-02, as amended; (2) not to enter into, deliver or perform under the proposed Concession Contract No. CC-GRCA003-15; and (3) to maintain the status quo by procuring concessions services under the terms and conditions of Concession Contract CC-GRCA001-02, as amended, and Concession Contract CC-GRCA003-97, as amended, including without limitation such contracts' franchise fees and housing allocations, using NPS's authority to extend such contracts or to issue temporary contracts under 36 C.F.R § 51.24."

## **Local governments join in criticism of wetlands rule**

The National League of Cities, the National Association of Counties and other local governments November 14 asked the Obama administration to substantially revise a proposed wetlands permit rule.

Their action is different than the usual criticism because local governments are often allies of the administration. But they complained the proposal could expose local governments to a wave of lawsuits over implementation of the rule because of unclear definitions.

This fight is of course over a proposed May 29 EPA and Corps rule that would extend a Section 404 permit requirement beyond an existing mandate to protect navigable waters. The administration would also require permits for seasonal streams, wetlands near navigable waters and other waters. The comment period ended November 17.

Said the local governments in a letter to EPA and the Corps of

Engineers, "As currently drafted, there are many examples where the language of the proposed rule is ambiguous and would create more confusion, not less, for local governments and ultimately for agency field staff responsible for making jurisdictional determinations. Overall, this lack of clarity and uncertainty within the language opens the door unfairly to litigation and citizen suits against local governments. To avoid such scenarios, setting a clear definition and understanding of what constitutes a 'waters of the U.S.' is critical."

The local governments went on, "Key terms used in the proposed rule such as 'uplands,' 'tributary,' 'floodplain,' 'significant nexus,' 'adjacent,' and 'neighboring' will be used to define what waters are jurisdictional under the proposed rule. However, since these terms are either broadly defined, or not defined at all, this will lead to further confusion over what waters fall under federal jurisdiction, not less as the proposed rule aims to accomplish."

Signing the letter were representatives of the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties and the National Association of Regional Councils, among others.

As we reported in the last issue of *FPR*, interested parties from all sides are playing a numbers game in commenting on a proposed Obama administration rule to expand the definition of a water body requiring a Section Clean Water Act permit.

Republican senators cited the figure 24. That is the number of them who signed a letter charging the proposal would extend the authority of EPA and the Corps of Engineers to regulate virtually every water body, no matter how small.

Sportsmen cited the figure 185. That's the number of fish and wildlife groups that signed a letter backing the proposed rule and asserting it is essential to the preservation of conservation lands.

Congress has already acted in several pieces of legislation to attempt to prevent completion of the rule. Notably the House on September 9 approved a stand-alone bill (HR 5078) that would stop the rule. The vote was 262-to-152. The House had earlier approved similar legislation June 17 in a fiscal year 2015 Energy and Water appropriations bill (HR 4923).

In addition, the House Appropriations Committee on July 15 included a like-provision to block the rule in a fiscal 2015 Interior and Related Agencies appropriations bill (HR 5171). The Obama administration opposed the House-passed, stand-alone bill, HR 5078 and promised a veto September 8.

The local government letter is available here: <http://www.nlc.org/Documents/WOTUS%20comment%20letter%2011%2014%2014.pdf>.

## **House hopes to pass tax easement provision this year**

Legislation to extend for two years tax incentives for conservation easements stands at least a fair chance of enactment in the lame-duck session of Congress now under way.

The full House and the Senate Finance Committee have each approved bills (HR 4719, S 2260) that would extend the conservation incentives that are supported by both conservationists and farmers.

Giving impetus to the legislation is the perceived Congressional need to pass a package of politically popular tax breaks that are due to expire at the end of the year. The conservation incentives are but one piece of the package.

House Minority Whip Steny Hoyer (D-Md.) took to the floor November 14 to urge House Minority Leader Kevin McCarthy (R-Calif.) to "get to agreement pretty soon because if we are going to give some certainty to the business community, as well as individuals, we need to act on that, and we have some approximately maybe 10 days, if we

count 3 days for each one of the weeks that is remaining, 10 days in order to accomplish that through the House and the Senate."

McCarthy responded, "Negotiations are still going on with the Senate, but it is our intention to have that done before the end of the year. . . ."

If this 113<sup>th</sup> Congress fails to move a bill, the next 114<sup>th</sup> Congress could feasibly do so, but companies and individuals need to know how to handle their investments before December 31.

The Senate provision would reapprove a former conservation easement incentive for two years - calendar 2014 and calendar 2015. The House would make the incentive permanent on the grounds it would help farmers and other landowners plan their tax programs years ahead.

After the Senate Finance Committee approved S 2260 by voice vote April 28 chairman Ron Wyden (D-Ore.) immediately attempted to bring it to the Senate floor. But Senate leaders pulled the bill because a huge number of amendments were offered, many of them nongermane. The measure contained 55 or more tax provisions.

The full House approved a much slimmer HR 4719 July 17 by a 277-to-130 vote. It contained just a half-dozen provisions such as an expansion of a charitable deduction for food contributions and the conservation easement incentive.

The Land Trust Alliance said that when the provision was in effect from 2006 through December 2013, farmers and other landowners protected as much as 1 million acres per year.

The old provision allowed landowners to deduct up to 50 percent of their adjusted gross income from taxes each year if they donated a conservation easement. The new provision in HR 4719 and S 2260 would not affect the substance of the old provision.

House bill sponsor James Gerlach

(R-Pa.) said that the legislation would raise "the maximum deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income (AGI) in any year to 50%"; allow "qualified farmers and ranchers to deduct up to 100% of their AGI"; and increase "the number of years over which a donor can take deductions from 6 to 16 years."

Still in place is an even older law that allows donations of up to 30 percent of adjusted gross income.

## Notes

### **Grijalva awarded key Hill post.**

Rep. Raúl Grijalva (D-Ariz.) will serve as the ranking Democrat on the House Natural Resources Committee next year. His colleagues selected him for the post November 19. His main competitor, Rep. Grace Napolitano (D-Calif.), said November 11 that she would not seek the position. She then endorsed Grijalva. And on November 18 Grijalva said he had received an endorsement from 180 conservation groups and other progressive organizations. Grijalva promised to side with laws that protect natural resources. "So many of these benchmark laws took generations to achieve - it is only fitting that Democrats have a leader as committed to protecting them as Republicans are to cutting them down. I will live up to that challenge, and partner with anyone willing work in good faith to keep Americans healthy and our natural treasures secure," he said. Current ranking committee Democrat Peter DeFazio (D-Ore.) chose to seek ranking member status on the House Transportation Committee in 2015, opening up the resources committee position.

### **Grijalva seeks diversity at DoI.**

Rep. Raúl Grijalva (D-Ariz.) gave the Interior Department a little taste of his priorities November 14. Grijalva will serve as ranking Democrat on the House Natural Resources Committee next year (*see above*). He - and 12 of his colleagues - wrote Secretary of Interior Sally Jewell asking her to emphasize diversity in the department. Grijalva didn't fault Jewell in the letter but he

did say times are changing and diverse groups are becoming more interested in the environment. "Recently, we have seen growing interest and involvement from African Americans, Asian Americans, Latinos, Native Americans, Pacific Islanders and other underrepresented populations in the environmental fields," he said, and added, "It is time for our Federal workforce to reflect the growing diversity of the environmental movement and the American public." He asked Jewell to, among other things, attempt to hire more qualified "underrepresented individuals."

#### **PEER objects to Yellowstone cells.**

The environmental group Public Employees for Environmental Responsibility (PEER) November 13 resumed its old battle with Yellowstone National Park over cell phone usage in the park. This time PEER faulted Yellowstone managers for not establishing enough cell-free zones. PEER said a 2009 wireless plan anticipated as many as 50 cell-free zones but the park has put up signs for only seven. "People are asked to turn off or silence their electronic devices in church, in a theater and even on the golf course but not in the cathedrals of nature," said PEER Executive Director Jeff Ruch. "The relationship between the Park Service and the telecom industry has been decidedly one-sided - all give and with each door converted into a walkway." However, the Park Service and its concessioners have long maintained that the public demands connectivity. At an October 20 discussion on marketing the national parks hosted by the National Park Hospitality Association, marketing experts said that the millennial generation demands cell phone service in national parks, or else they won't visit the parks. Said Dave Bratton, managing partner of Destination Analysts, Inc., "I'm sure there are purists in this room that probably think that connectivity and the experience of a national park are antithetical, that they don't go hand-in-hand. But I'm telling you if you want to market to this generation you are going to have to throw that way of thinking out." NPS Director Jon Jarvis hosted the Park Service marketing event.

## Conference calendar

### DECEMBER

3-5. **America Outdoors Marketing and Management Conference** in Daytona Beach, Fla. Contact: <http://www.americaoutdoors.org/>.

### JANUARY

8-11. **Archaeological Institute of America Annual Meeting** in New Orleans, La. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

20-21. **National Ski Areas Association Eastern Conference** in Killington, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

21-23. **U.S. Conference of Mayors Winter Meeting** in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, D.C. 20006. (202) 293-7330. <http://www.usmayors.org>.

21-24. **Outdoor Retailer Winter Market** in Salt Lake City, Utah. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

### FEBRUARY

1-4. **National Association of Conservation Districts Annual Meeting** in New Orleans, La. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.

10-12. **National Ski Areas Association Western Winter Conference** in Snowbird, Utah. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

16-20. **Association of Partners for Public Lands 2015 Partnership Convention & Trade Show** in Atlanta, Ga. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.