

Federal Parks & Recreation

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Volume 32 Number 21, November 7, 2014

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GOP to control park and rec policy next year on Hill

Pollsters were close to the money in the November 4 elections, predicting correctly that control of the Senate will transfer to the Republican Party in 2015.

The GOP will control at least 52 seats next year; however, Senate rules most of the time require 60 votes to move partisan legislation. So Democrats with at least 45 seats will still have the veto by filibuster available. Three are still undecided.

The transfer of Senate power in the park and rec world will be most felt in the person of Sen. Lisa Murkowski (R-Alaska). She is almost certain to become chair of the Senate Energy Committee as well as chair of the Senate subcommittee on Interior Appropriations. In those positions she would control not only policy but also the purse.

Murkowski has long disagreed with elements of the Obama administration's outdoor policy. 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 opposed the nomination of Rhea Suh as assistant secretary of Interior for Fish and Wildlife and Parks. Although the energy committee approved Suh's nomination March 27 by a 12-to-10 vote, there was little chance it could get through the full Senate. Suh subsequently abdicated to become president of the Natural Resources Defense Council in January.

For all that it should be noted that Murkowski has signed off on draft Interior appropriations subcommittee discussion bills the last two years that incorporate most Obama administration recommendations. They include significant spending increases for park and rec programs. Particularly when compared to spending bills prepared by House Republicans.

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.

For instance, at a June 6, 2013, committee hearing Portman was among the senators from both parties who backed public-private partnerships as a means of providing significant new revenues for the system. He said he and Udall were seeking support for legislation to establish an endowment with matched dollar-for-dollar public-private contributions to the parks. Past such proposals recommended as much as \$1 billion per year.

Portman asked Secretary of Interior Sally Jewell at the hearing, "Do you have a plan to try to encourage more public-private partnerships to start this (Centennial of the Park Service) initiative? The notion was to challenge the private sector dollar-for-dollar . . . We are trying to encourage that."

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.

Sportsmen are painting the November 4 election results as an opportunity to press the restart button on legislation, even though some of their champions, such as Udall, were defeated. Said Theodore Roosevelt Conservation Partnership President Whit Fosburgh, "America's 37 million hunters and anglers are just as unwilling as the broader electorate to accept gridlock as the status quo. Issues like conservation funding, habitat restoration and enhanced public access are fundamentally bipartisan - they must not be derailed by the political bickering that has plagued Washington in recent years."

On the other side of the bill, 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 lead to 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 expect a shake-up. Current ranking Democrat Peter DeFazio (D-Ore.) has chosen to seek ranking member status on the House Transportation Committee. Rep. Raúl Grijalva (D-Ariz.), ranking minority member of the House subcommittee on Public Lands, is already campaigning for the number one Democratic spot on the committee.

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.) sounds like he intends to renew his position because he talks frequently of his ambition 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.

Florida leads country in approving green initiatives

Florida voters approved November 4 a \$9 billion conservation amendment

to the state constitution, headlining a successful day for such initiatives around the country.

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

Florida Water and Land Legacy, lead proponents of the Florida amendment, said, "Passage of Amendment 1, the Water and Land Conservation Amendment, is a historic victory for protection of Florida's drinking water sources, the water quality of our rivers, lakes, and springs, and conservation of our state's wildlife habitat, beaches, and natural areas."

Other approved initiatives included a \$2,150,000,000 open space program in New Jersey; a \$1.5 billion water bond in California; and the renewal of a \$131 million open space program in Larimer County, Colo.

The major defeat of a conservation measure came in North Dakota, but there was even a sliver lining to that cloud. On the downside voters rejected a \$1,875,000,000 clean water, wildlife and parks constitutional amendment. On the upside the governor promised to seek more money for state parks and recreation.

A second major defeat may have come in Los Angeles County where only 62 percent of voters appeared to have voted for 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. Before the vote the Trust for Public Lands called November 4 "the most important election for land conservation and restoration in America's history."

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: Passed with roughly 75 percent of the vote. 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 the Florida governor and Florida legislature have stripped existing conservation programs of money, leaving at risk 2 million acres of natural areas.

Florida newspapers reported significant opposition to the amendment from House Speaker Will Weatherford and Senate President Don Gaetz, both Republicans.

Supporters of the amendment lined up \$4.6 million for their campaign. The amendment would allocate the real estate tax revenues to a Land Acquisition Trust Fund.

Said Florida Water and Land Legacy, "Floridians overwhelmingly voted Yes on Amendment 1, clearly showing that Florida voters understand the importance of water and land conservation to our state's environment and to its economy. This should send a clear message to the Governor and Legislature that Florida voters overwhelmingly support increased state funding for water and land conservation, management, and restoration."

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 with 64.5 percent of the vote. 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 (PEER) charged October 6 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. Chris Christie (R) opposed it.

NORTH DAKOTA: Defeated with more than 75 percent of voters against. 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 spending. The program would have generated about \$45 million

per year for various projects.

The money would be 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.

There was a silver lining. Gov. Jack Dalrymple (R-N.D.) said 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, with vote running 2-to-1 for. 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. About 62 percent of voters were in favor in incomplete voting, but at least a 66 percent vote was needed to pass. 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 be set aside for conservation.

LARIMER COUNTY, COLORADO: Renewal: Approved overwhelmingly with 80 percent for. 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.

The Trust for Public Lands assembled the data. The data is available at <https://www.quickbase.com/db/bbqna2qct?a=dbpage&pageID=10>.

Mulholland out at NPS foundation at crucial time

National Park Foundation President Neil Mulholland resigned his position October 31, just as the foundation was waging an intense fund-raising campaign in anticipation of the Park Service's 2016 Centennial.

He was replaced November 3 by Yellowstone National Park Superintendent Dan Wenk. Wenk will act in Mulholland's stead for the next six months while foundation trustees search for a full-time replacement.

No reason was given for Mulholland's resignation, which came on a Friday afternoon, prime time for federal agencies to release less-than-good news.

Secretary of Interior Sally Jewell, who serves as chair of the board of trustees, did not comment on the removal of Mulholland, which came as a surprise to most players. However, Mulholland was seen as former Secretary of Interior Ken Salazar's man, becoming president of the foundation in 2009.

With tens of millions of dollars, if not hundreds of millions of dollars at stake in fundraising, Jewell may have wanted her own person in the position. Still, the timing was not propitious.

Foundation vice chair Ellen Alberding did laud Mulholland. She said in a press release, "Neil Mulholland has demonstrated a true passion for engaging the American people in their national parks and protecting these special places so that generations to come can discover their beauty. Neil has also set the Foundation on an exciting and ambitious course to celebrate the National Park Service's Centennial in 2016, and we are grateful for his leadership and vision."

The foundation is one of the three key support groups for the Park Service as it approaches the 2016 Centennial, along with the National Parks Conservation Association and the National Park Hospitality Association.

Mulholland's foundation biography says, "Mulholland is committed to growing philanthropy at the local level and supporting Friends Groups and philanthropic park partners through the Foundation's Park Partners Project, which provides strategic consulting and training on best practices for planning, fundraising and marketing to build more effective and stronger local support groups."

NPS Director Jon Jarvis has repeatedly said the agency needs outside help to attract visitors and to improve park resources for the Centennial, and decades after. On Aug. 25, 2011, NPS got the Centennial ball rolling with a report titled *A Call to Action*.

At one time Congress was pitching in to help promote the parks for the Centennial but that interest appears to have waned. Sen. Ron Wyden (D-Ore.) and his staff were considering legislation when he chaired the Senate Energy Committee earlier this year.

While they did not identify specific pieces of a proposal, logical candidates were a large endowment and, perhaps, a penny-in-the-parks gasoline tax.

In a press release the National Park Foundation said Wenk has experience working with nonprofits. It said he helped raise \$100 million for Yellowstone and Mount Rushmore National Memorial. Wenk is expected to return to Yellowstone after the foundation selects a new president.

GOP will likely take a pass on legislation in lame duck

Now that the Republican Party is on line to take over the Senate in 2015, Congressional Republicans in the upcoming lame-duck session have little

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 begin Wednesday (November 12).

The bare necessities at this point consist of one major park and rec measure - a full-year, fiscal year 2015 appropriations bill. On September 19 Congress approved a temporary spending bill (PL 113-164) that provides all government agencies with money through December 11.

Senate Appropriations Committee Chair Barbara Mikulski (D-Md.) said that during the lame-duck session Congress would wrap all 12 individual appropriations bills into one giant omnibus appropriations law.

That strategy matters because it will limit the number and kinds of riders and instructions appropriators can put in a bill.

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 (PIILT) 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.

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 PIILT 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.

Here are some more pending outdoor items that will be before the lame-duck session:

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.

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.

Money to restore Gulf after spill approved by trustees

Sportsmen last month followed up on the approval of \$627 million in Deepwater Horizon restoration projects in the Gulf of Mexico by recommending recovery initiatives complementary to those projects.

The Natural Resources Damage Assessment Trustees on October 3 gave final approval to 44 projects for the \$627 million. The trustees said that \$230 million of the \$627 million would be used for recreation projects; the other \$397 million would be used for ecological projects.

Then on October 24 the Theodore Roosevelt Conservation Partnership (TRCP) identified complimentary projects that would improve sportfishing in the Gulf.

In addition on October 29 the National Oceanic and Atmospheric Association (NOAA) published a draft plan for the science to be used in restoration of the Gulf.

Chris Macaluso of the Center for Marine Fisheries explained the relationship between the Deepwater Horizon recovery projects and the sportsmen recommendations, "Our list (includes) additional projects that the recreational fishing community in the Gulf would like the states/Feds to invest in in addition to the early NRDA work." The center is part of TRCP.

He added, "The projects can be paid for with RESTORE act dollars, NRDA funds or with other settlement dollars being handled by the National Fish and Wildlife Foundation. In general, we like the projects in the \$627 million announcement."

However, Macaluso said sportsmen would in general prefer a focus on "habitat restoration, better science and data for fisheries and better access to the resource." He said they are "not too excited about the big infrastructure and convention center projects."

Although the Natural Resources Damage Assessment Trustees are picking and choosing restoration projects, the Department of the Interior was the lead agency in writing a programmatic EIS to cover the spending plan. The department is one of the trustees.

Gulf State Park in Alabama would receive the largest single park and recreation apportionment, \$85.5 million. The park in the city of Gulf Shores extends over 6,150 acres and includes two miles of sand beaches and the largest fishing pier in the Gulf of Mexico.

On the federal side Gulf Islands National Seashore in Florida would receive a significant grant, about \$15 million for a beach reinforcement project (\$10.8 million) and a ferry project (\$4 million).

To settle various lawsuits filed after the Deepwater Horizon explosion and oil spill, BP agreed to pay as much as \$9.6 billion. Included in that was a \$2.39 billion allocation to the National Fish and Wildlife Foundation (NFWF) to help Louisiana, Alabama, Florida, Mississippi and Texas recover.

Some of the \$2.39 billion is to be allocated to land acquisition, raising the possibility annual payments to NFWF will exceed annual appropriations for federal land acquisition for all agencies from the Land and Water Conservation Fund. The fiscal year 2012 appropriation for federal land acquisition was \$186.7 million.

But a \$1 billion natural resources recovery project is a separate allocation from the NFWF money. The \$1 billion is being distributed by the Natural Resources Damage Assessment Trustees.

The \$627 million approved October 3 represents the third phase, and by far the largest, from the natural resources fund. On April 18, 2011, the trustees approved eight projects in phase one for a total of \$60 million, with two each in Louisiana, Mississippi, Alabama and Florida.

Phase two was even smaller - two

projects at \$9 million total to help restore nesting habitat for birds and turtles.

Separately, Congress authorized NOAA to establish and administer the Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology Program, also known as the NOAA RESTORE Act Science Program.

The NOAA program is funded with 2.5 percent of the Gulf Coast Restoration Trust Fund, established by the RESTORE Act, which comprises 80 percent of Clean Water Act civil penalties recovered from parties responsible for the Deepwater Horizon oil spill.

The phase three plan, EIS and list of projects are available at www.gulfspillrestoration.noaa.gov.

Utah officials and interest groups strike Daggett deal

Utah politicians reached an extraordinary agreement with environmentalists, sportsmen and other parties last month on a half-dozen thorny public land management issues in Daggett County, Utah.

The agreed-to principles for Daggett County - one piece of a projected massive land use compromise in the state - include a land exchange with the state to open up 10,000 acres to energy development, the designation of wilderness areas, the designation of a conservation area, the exchange of land to open the way for a resort, and, perhaps most important, an approach to resolving disputes over RS 2477 rights-of-way (ROW) claims.

It should be noted that the parties only agreed to "principles." For example they did not say specifically which disputed RS 2477 ROWs - routes across public lands - that the county should or should not control. The public lands at issue are managed by the Bureau of Land Management (BLM) and the Forest Service.

Meanwhile, on a considerably less collegial Utah public lands note, two

University of Utah officials published a "white paper" October 27 that rejects the legal basis for the Utah state government's claim to almost all public lands within the state.

That state law, which directs the federal government to transfer the lands by December 31, is the point man for demands throughout the West for local control of public lands. (See following article.)

As for the Daggett County agreement, the lead architect, House subcommittee on Public Lands Chairman Rob Bishop (R-Utah), said October 21 the total agreement on principles represents an "important milestone" in his campaign to write legislation on management of public lands in seven Utah counties. They are Daggett, Grand, Emery, San Juan, Wayne, Caron and Uintah. Negotiations are ongoing in all of the counties.

"The draft proposal that will be included in the final PLI (Public Lands Initiative) legislation includes some key components such as economic development for the county, economic opportunities for SITLA, land and water conservation, increased opportunities for motorized and non-motorized recreation, and advancements for the sportsmen's community," said Bishop.

Congress must certify any deal because only it has power to designate wilderness and carry out other provisions of the projected agreements.

A spokeswoman for Bishop said the Utah Republicans intend to wait for agreements from all counties before introducing a bill. Said spokeswoman Melissa Subbotin, "For now, the plan is to wait for all counties to complete their proposals or ultimately determine they cannot proceed before the drafting of the full PLI legislation is undertaken."

Several environmental groups including the Southern Utah Wilderness Alliance (SUWA) - a long-time Bishop adversary - endorsed the principles. "Although the acreage figures are small here when compared to many other

counties in the state, the impact is huge," said SUWA in a statement. "This agreement will protect the lion's share of lands proposed for wilderness in America's Red Rock Wilderness Act in this region and, hopefully, it lays the groundwork for substantial protection moving forward. Rep. Bishop will now move his Public Lands Initiative to the next county, using this agreement as a model."

Said Tim Peterson, Utah wildlands program director for the Grand Canyon Trust, "We are delighted by the addition of these pristine lands to the nation's designated conservation landscape. This proposal will protect a wide array of remarkable environs: from alpine peaks in the High Uintas to the sandstone-speckled hills along the Green River in Browns Park."

Daggett County is situated in the northeast corner of Utah adjacent to Wyoming and Colorado. It is Utah's least populated state and contains wild lands much treasured by environmentalists.

Bishop, Utah Gov. Gary Herbert (R-Utah) and Daggett County Commissioners joined with conservationists and sportsmen October 21 in Salt Lake City to announce the agreement on principles. Details of the principles are available at <http://suwa.org/wp-content/uploads/Daggett-County-Principles-FINAL.pdf>.

Bishop, Rep. Jason Chaffetz (R-Utah) and Rep. Chris Stewart (R-Utah) are attempting to complete the Utah PLI. This spring they hinted strongly where they stood on specific areas in a letter to interested parties when they listed 21 sites for possible economic development or transfer to local management and 21 sites for conservation or wilderness. The list is on page two of the letter here: http://robbishop.house.gov/uploadedfiles/050714_pli_update.pdf.

Driving the Republican Congressmen in part is the possibility that the Obama administration will designate large national monuments in eastern Utah. Conservationists have often

recommended designation of a 1.4 million-acre Canyonlands National Monument on BLM-managed land in southern Utah.

Some 12.7 million acres of federal land in Utah are reserved for conservation purposes, including national parks, wilderness, wilderness study areas, wild and scenic rivers, and national monuments. In addition Congressional Democrats are pushing for the designation of 9.1 million acres of new wilderness, mostly from BLM-managed lands.

While Bishop is looking for common ground, he is definitely not on board with the environmentalists' 9.1 million-acre wilderness bill. Rep. Rush Holt (D-N.J.) and Sen. Richard Durbin (D-Ill.) introduced that measure (HR 1630, S 769). The Daggett County agreement would remove from the legislation all public land in the county.

Here is a brief summary of some of the Daggett County proposal provisions:

ENERGY EXCHANGE: The proposal would transfer 4,546 acres of BLM land and 5,505 acres of Forest Service land to the Utah School and Institutional Trust Lands Administration (SITLA). The lands have high energy development potential. In return SITLA would transfer 13,010 acres of inholdings to the federal government that are scattered within conservation areas.

CONSERVATION DESIGNATION: The proposal would designate as wilderness 33,524 acres of BLM land and 49,154 acres of Forest Service land. It would also designate a 31,083-acre conservation area from BLM land and designate a 14-mile portion of the Green River as wild and scenic.

RS 2477 ROWS: The proposal sets forth principles for negotiating a final deal on disputed RS 2477 ROWs but does not itself delineate contested areas as RS 2477 ROWs or reject applications for RS 2477 ROWs.

The proposal would keep open for powered vehicle ROW travel areas outside

conservation areas already designated as open under BLM resource management plans. It would close claimed RS 2477 ROWs within wilderness areas and the conservation area. And it would have the parties work together to resolve disputed RS 2477 ROWs on BLM land that is currently closed to motorized vehicles.

Says the proposal, "The parties agree to work in good faith to resolve the R.S. 2477 claims and related interests in Daggett County through legislation, settlement of the pending litigation, administrative processes, a combination thereof, or other means."

Utah scholars take issue with state claim to federal land

Two University of Utah officials published a "white paper" October 27 that rejects the legal basis for the Utah state government's claim to almost all public lands within the state.

That state law, which directs the federal government to transfer the lands by December 31, is the point man for demands throughout the West for local control of public lands.

But the white paper says that a number of legal precedents, individually and collectively, forbid the wholesale transfer of federal lands to a state at the request of a state. Those legal precedents include the Property Clause of the U.S. Constitution, the equal footing legal doctrine, the Federal Land Policy and Management Act, and the enabling acts that established western states.

Concluded the authors, "As the owner of the public lands, the United States holds the public lands 'in trust for the people of the whole country,' not solely for the benefit of adjacent landowners. Stated simply, Congress has discretion to decide how much of the public domain to retain and how much to dispose of. State legislation cannot displace that discretion."

The preceding statement in the paper refers to a 1917 Supreme Court

decision, *Light v. United States*, holding that the federal government owns public lands and only Congress can dispose of them.

The authors are University Distinguished Professor Bob Keiter, director of the Stegner Center, and John Ruple, Stegner Center Fellow and Research Associate.

Utah Gov. Gary Herbert (R-Utah) launched this debate on March 23, 2012, when he signed into Utah law the Transfer of Public Lands Act (TPLA). It demanded the transfer of 30 million acres of federal land, excepting only national parks, national monuments and wilderness areas.

There has been at least one previous legal analysis that cast doubt on the constitutionality of TPLA. The Utah Office of Legislative Research said shortly before Herbert signed the law, "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain.

"Under the Gibson case, that requirement would interfere with Congress' power to dispose of public lands," the office continued. "Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

However, other scholars have endorsed the legislation, although acknowledging that legality would be difficult to prove. Donald J. Kochan, a law professor at Chapman University School of Law in Orange, Calif., published a somewhat supportive analysis of the TPLA in January 2013.

Kochan concluded, "However, even if the TPLA's enforceability were determined non-justiciable, the inability to use the federal courts to enforce a duty does not eviscerate the existence of the duty itself. The federal government would still have an independent obligation to live up to its commitments, but it would require political will on

the part of legislators and pressure applied and accountability demanded by the electorate. There are many obligations in our constitutional scheme that require self-enforcement by political actors out of their oath and constitutional duties, irrespective of whether a court order can compel the action."

The Kochan study was published by the Federalist Society for Law and Public Policy Studies. It is available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2200471.

In their critique of the TPLA the University of Utah officials concluded, "The federal government has absolute control over federal public lands, including the constitutional authority to retain lands in federal ownership. Statutes authorizing Western states to join the Union required those same states to disclaim the right to additional lands and that disclaimer cannot be spun into a federal duty to dispose. Statehood enabling acts' guarantee of equal political rights also cannot be spun into a promise of equal land ownership. Furthermore, though statehood enabling acts guarantee states a share of the proceeds resulting from federal land sales, that guarantee is not an obligation to sell."

Of the equal footing doctrine that in some quarters is believed to give states parity with the federal government, Keiter and Ruple said, "The equal footing doctrine therefore does not require uniform disposal of federally owned lands. Rather, it guarantees that each state will have equivalent political rights. Retention of public lands in federal ownership is consistent with the equal footing doctrine, and as Gardner makes clear, the doctrine provides no tangible support for the Transfer Movement."

Gardner is a Supreme Court decision of 1996, *U.S. v. Gardner*, which held that a rancher on the public lands can't use the equal footing doctrine to argue that the federal government does not hold public lands in trust.

The University of Utah white paper

is available at http://content.lib.utah.edu:81/cdm4/item_viewer.php?CISOROOT=/utlawrev&CISOPTR=9160.

Senators, sportsmen square off over Obama wetland rule

Interested parties 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, such as duck breeding habitat.

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

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. It promised a veto September 8. In so doing the Office of Management and Budget (OMB) said the proposed rule would benefit hunting and fishing.

"The protection of wetlands is vital for hunting and fishing. When Congress passed the CWA in 1972, to restore the Nation's waters, it recognized that to have healthy communities downstream, we need to protect the smaller streams and wetlands upstream," said OMB in a Statement of Administration Policy. "Clarifying the scope of the CWA helps to protect clean water, safeguard public health, and strengthen the economy."

But the 24 Republican senators October 23 said the rule would harm small businesses by requiring permits for almost all waters of the country. "With few exceptions, it would give the agencies virtually unlimited regulatory authority over all state and local waters, no matter how remote or isolated such waters may be from truly navigable waters," they wrote EPA Administrator Gina McCarthy and Assistant Secretary of the Army Jo-Ellen Darcy.

The senators listed five "bias" factors leading up to the rule, including EPA and Corps statements that the rule would have minimal economic impacts. They countered, "That such statements have come from EPA and the Corps suggests that the agencies either don't appreciate the real-world impacts of the law they're charged with administering, or they are intentionally trying to minimize the effect of the proposed rule."

They marshaled for evidence Small Business Administration comments of October 1 that recommend withdrawal of the proposal because it "would have direct, significant effects on small businesses."

The 24 senators included Senate Minority Leader Mitch McConnell (R-Ky.), who will become the Senate Majority Leader next year; ranking Senate Environment and Public Works Committee member David Vitter (R-La.), who will

likely become committee chairman next year; and Sen. John Barrasso (R-Wyo.)

On October 21 185 sportsmen groups repeated their support not only for the proposed rule, but for a stronger final rule. "We commend your administration's proposed Clean Water Act rule for the protections it restores to headwaters streams and adjacent wetlands, and ask that the final rule offer similar protections for other important yet presently unprotected waters," they wrote the heads of EPA and the Corps. By other waters they mean prairie potholes, which the proposed rule mostly deferred action on.

The 185 groups also noted that the proposal contains important exceptions that the Republican senators didn't mention. "We also support your administration's efforts to preserve longstanding Clean Water Act exemptions for farmers and foresters that encourage wise stewardship of land and water resources," they said.

Finally, they said the rule would have important economic benefits. "When wetlands are drained and streams are polluted, it imperils America's hunting and fishing economy -- which accounts for over \$200 billion in economic activity each year and 1.5 million jobs," they wrote EPA and the Corps. "These impacts are felt by rural communities in particular."

The Supreme Court was evenly divided in a June 19, 2006, decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*, which muddied the regulatory waters. On the one hand the court did uphold the authority of the Corps and EPA to regulate water bodies. But crucially it also limited the definition of a water body to navigable waters without clearly defining navigable waters.

The Bush administration relied on the court decision to limit permitting to navigable bodies. The Obama proposal would expand that.

EPA and the Corps of Engineers in their proposal said that the rule should go beyond the existing regulation that

only requires a Section 404 Clean Water Act permit for navigable waters.

Notes

DoI updates climate plans. As part of the Obama administration's campaign to combat the impacts of global warming, the Interior Department October 31 posted updated plans. The department said global warming has already impacted substantially the public lands, and in the future will "fundamentally alter iconic features of national parks." As an example the department said Glacier National Park has already lost most of its glaciers. In 2013 the department adopted a *Climate Change Adaptation Plan for 2013* that poses a soup-to-nuts approach to reducing green house gases. The Forest Service has also undertaken a number of initiative to adapt to climate change, led perhaps by an Integrated Resource Restoration (IRR) plan to combine a timber sale line item with line items addressing 1) vegetation and watershed management, (2) wildlife and fisheries, (3) urban interface of wildland fuels reduction, (4) Legacy Roads and Trails, and (5) road decommissioning. However, Congress thus far has only agreed to extend a pilot IRR program now underway in Regions 1, 3 and 4. The upgraded department of Interior plan is available at <http://www.doi.gov/greening/sustainability/plan/index.cfm>.

Calif. Desert protection bill due. Sen. Dianne Feinstein (D-Calif.) said November 3 she will restart next year her old campaign to designate hundreds of thousands of acres of national monuments in the California Desert. The legislation, expected to be introduced in January, would also expand the Joshua Tree National Park, the Death Valley National Park and the Mojave National Preserve. In that Feinstein has struggled to move the legislation with a Democratic Senate over the last four years, the outlook for the next Congress in a Republican Senate is not rosy. Still, Feinstein said November 3 at a celebration of the 20th anniversary of the California Desert Protection Act that she intends to try again to expand on the act. The 1994 law, signed by President Clinton on Oct. 31, 1994,

established the Death Valley and Joshua Tree parks and the Mojave preserve, protecting more than 7.6 million acres of the California Desert. "The 1994 law was a great first step, but there is broad consensus that more needs to be done," Feinstein said October 30. "I plan to introduce an updated bill in the new Congress that will balance the needs of this land, protecting the most fragile regions, setting aside other land for recreation use and allowing the state and local communities to benefit from this bill." The 2010 iteration of a desert expansion bill (S 2921) would have designated two national monuments - a 941,000-acre Mojave Trails monument on Bureau of Land Management (BLM) land and a 134,000-acre Sand-to-Snow monument, again on BLM land.

Outdoor goods outlook good. The recreation industry said October 24 that 2014 has been an improving year for outdoor recreation equipment sales and 2015 looks even more promising. Industry said increased visitation to federal park and rec areas and state park and rec areas is a leading factor in the increase, as industry recovers from the 2008 recession. "A core strength of outdoor recreation in America is the lure of America's public lands and waters covering nearly one in three acres of the nation's surface," said the American Recreation Coalition (ARC). The coalition reported growth in winter sport equipment sales, camping equipment sales, campground visitation, and powered-recreation vehicle sales. ARC's report is available at <http://www.funoutdoors.com/files/Outdoor%20Recreation%20Trends%202015%20final.pdf>.

Court endorses Southwest air plan. A federal appeals court last month upheld a three-state plan to limit haze across federal conservation lands on the Colorado Plateau, including Grand Canyon National Park. The plan, authorized by EPA, establishes a cap-and-trade program to limit sulfur dioxide emissions over New Mexico, Utah, Wyoming, the City of Albuquerque and Bernalillo County, N.M. (The plan was developed pursuant to a different chapter of the Clean Air Act than the one requiring individual states to prepare plans to limit haze across Class

I federal areas.) Environmentalists brought the lawsuit against the regional plan prepared by a Western Regional Air Partnership, charging that it would allow eight coal-fired power plants to emit too much sulfur dioxide across the Colorado Plateau. But a three-judge panel of the Tenth U.S. Circuit Court of Appeals ruled that the EPA-approved plan is not only legal but also would better the standards required by best available retrofit technology (BART). "We conclude that EPA's decision was neither arbitrary nor capricious," the court said. Environmentalists disagreed with the court. "Allowing some of the dirtiest coal plants in the West a free pass to pollute our air and mire our views isn't fair," said Amy Hojnowski, senior campaign representative for the Sierra Club's Beyond Coal campaign. "We will continue to fight to hold utilities like Rocky Mountain Power accountable." The regional Colorado Plateau provision is but one part of the Clean Air Act's broad charge to protect visibility over Class I areas - all national parks and wilderness areas of more than 5,000 acres.

Multi-park vandalism suspect.

The Park Service October 29 identified a 21-year-old New York State woman as a suspect in vandalism in eight national parks in the West. NPS said it was still investigating paintings by the alleged suspect Casey Nocket in Canyonlands National Park, Colorado National Park, Crater Lake National Park, Death Valley National Park, Joshua Tree National Park, Rocky Mountain National Park, Yosemite National Park and Zion National Park. NPS said the paintings have been removed in a couple of the parks.

Rec industry seeks NPS 100 roles.

The National Marine Manufacturers Association and the Recreation Vehicle Industry last week asked the Park Service to work with them in preparation for the agency's Centennial in 2016. The industries want to collaborate with the Park Service. The National Marine Manufacturers Association wrote NPS Director Jon Jarvis October 28 and requested that the agency cooperate with the manufacturers in their Discover Boating campaign. "Specifically, we

offer to explore incorporation of your Centennial messaging into our industry's multi-million dollar per annum promotion and marketing efforts. Water is a recreation magnet," wrote association President Thomas J. Dammrich. Similarly, the Recreation Vehicle Industry Association asked Jarvis to cooperate with its GO RVing campaign. "Now it is time to once again bring Go RVing into a conversation with your team, so that we can support your Find Your Park efforts and leverage our expenditures," association President Richard A. Coon wrote Jarvis.

Fire discrepancies explained.

The Forest Service told us a fortnight ago that its latest estimate of above-appropriations fire costs in fiscal year 2014 varies from previous estimates because it used extra money it had on-hand to fight fires. The accounting matters because the Obama administration must go hat in hand to Congress to ask for extra money to repay fiscal 2014 fire-fighting costs. On May 1 the Forest Service and the Interior Department projected to Congress that they would spend \$470 million "more than is available" to fight fires in fiscal 2014. On July 8 President Obama in a supplemental emergency appropriations request asked Congress for "\$615 million for emergency wildfire suppression activities for FY 2014." However, on October 14 the Forest Service said it "spent slightly more than \$200 million above what was appropriated to fight wildfires this year." So we asked the Forest Service why the difference among the \$200 million, \$470 million and \$615 million figures. The reply from Larry Chambers in the Forest Service press office was this: "The \$200 million estimate represented the amount spent above our FY14 appropriation level. The other estimates represent the projected shortfall between the FY14 appropriation and the July 2014 Flame forecast or the projected shortfall between the FY14 appropriation plus all available funds (reserve/fire repayment) and the July 2014 Flame forecast." No matter the precise accounting procedure, the Forest Service and the Interior Department were whacked once again in fiscal 2014 (which ended October 1), with extra fire-fighting costs. And the money to fight the fires

came out of line programs. The House and Senate have different ideas about how to pay back the Forest Service. The House Appropriations Committee July 15 approved a fiscal 2015 appropriations bill (HR 5171) that included \$470 million in fiscal 2014 repayments. But that would have to come out of the hide of other fiscal 2015 programs. Senate appropriators would have \$615 million in repayments come out of disaster funding so that the money would not be drawn from regular spending bills.

Boxscore of Legislation

Interim appropriations Fiscal 2015

HJ Res 124 (Rogers). President Obama signed into law September 19 as PL 113-164. Keeps the government in money through December 11.

Appropriations fiscal 2015 (DoI)

HR 5171 (Calvert). House committee approved July 15. Senate subcommittee leaders posted draft bill August 1. House panel would limit conservation and land management funding by including extra fire and PILT money in its bill. Senate subcommittee leaders do not include extra fire money and PILT.

Congressional Budget Fiscal 2015

H Con Res 96 (Ryan). House approved April 10. Would stick with December budget agreement. Opposes LWCF guarantee. Opposes emergency fire-fighting account.

Federal land recreation fees

HR 5204 (Bishop). House committee approved July 30. No Senate action. Bishop would continue entrance fees, user fees and passes. Obama budget asks Congress to approve permanent law.

Land and Water Conservation Fund

S 338 (Baucus), HR 2727 (McKinley). Baucus introduced Feb. 14, 2013. McKinley introduced July 18, 2013. Baucus would guarantee \$900 million per year to program in perpetuity. McKinley would guarantee state grants received at least 40 percent of annual appropriations.

Urban park fund

HR 2424 (Sires). Sires introduced June 18, 2013. Would authorize HUD grants

and HUD loans to provide assistance to urban parks.

National recreation commission.

HR 1834 (Grijalva). Grijalva introduced May 6, 2013. Would establish a national rec commission with members appointed by Congress and the White House.

National monuments

HR 250 (Chaffetz), HR 382 (Foxx), HR 432 (Amodei), HR 1434 (Daines), HR 1439 (Labrador), HR 151 (Pearce), HR 757 (Stewart), HR 1459 (Bishop), HR 1495 (Gosar), HR 2192 (Nunes), S 104 (Vitter), S 472 (Heller) and S 2608 (Mikulski). House hearing April 16, 2013. Would variously require Congressional approval or state approval of national monuments.

National heritage areas

HR 445 (Dent). Dent introduced Feb. 1, 2013. Would establish national policy and national standards for heritage areas.

Montana wilderness/recreation areas

S 37 (Tester). Senate committee approved Dec. 19, 2013. Would designate 666,260 acres of wilderness, six recreation areas totaling 288,780 acres and special management areas totaling 80,720 acres.

Farm bill

S 954 (Stabenow), HR 2642 (Lucas). President Obama signed into law (PL 113-79) February 7. Establishes new farm policy for five years and finances conservation programs.

Sportsmen's packages

HR 3590 (Latta), S 1996 (Hagan), S 2363 (Hagan). House approved February 5. Hagan introduced February 4. S 2363 now on Senate floor. Measures include numerous individual bills, including designation of public lands as open-unless-closed to hunting and fishing, use of LWCF for sportsmen's access.

Hunting federal lands

S 170 (Murkowski), HR 1825 (Benishak). Murkowski introduced Jan. 23, 2013. Included in sportsmen's packages above. House approved February 4. Would declare BLM and FS lands open to hunting and fishing unless specifically closed.