

Federal Parks & Recreation

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In this issue. . .

Approps bills near the finish.

Congress has until the end of the month. DoI conference may settle Point Reyes Oyster war. House, Senate disagree on Centennial Challenge money . . . Page 1

Hill buys time on SAFETEA-LU.

Congress extends old law for one month while it considers still another interim extension .. Page 3

Three reports boost rec spending.

Rec planners join ORRG and NPS commission in recommending new money, but with a twist . . . Page 4

Yosemite to begin planning anew.

Per agreement that settles green lawsuit. Some activities .. Page 6

Schwarzenegger backs off, a bit.

He will keep Calif. parks open. Supporters still worried ... Page 7

Energy & Water leads money bills.

Approps bill almost enacted. Ag next, followed by roads . . . Page 8

Outdoors in Senate climate bill.

Proposal breaks with House by guaranteeing outdoor aid ... Page 9

Court rejects CDCA OHV plan.

Says BLM didn't justify new miles of trails in Mojave plan ... Page 11

DoI IG faults BLM NLCS people.

Says on three occasions were too friendly with supporters ... Page 12

Notes Page 13

Conference calendar Page 16

Congress buys some time to complete DoI money bill

President Obama signed a law October 1 (PL 111-68) that extends all remaining appropriations bills through the end of the month, ostensibly to give Congress time to complete remaining money bills.

The extension applies to a fiscal year 2010 Interior and related agencies appropriations bill (HR 2996,) among other spending measures. Both the Senate and House have passed versions of HR 2996. The bill is now waiting for a conference committee to begin.

"I don't see anything that is going to block it," said one lobbyist. "The thing that may trip it up is the distraction of senators by other legislation, such as health care, climate control and international. A lot of the senators on the appropriations subcommittee are involved with those debates."

Three other appropriations bills with outdoor connotations are moving along as fast or faster than the Interior bill: Conferees have completed an Energy and Water bill and the House approved it October 1; conferees have also completed an Agriculture bill and the House approved it October 7; and a Transportation bill is awaiting a House-Senate conference. (See related article page 8.)

The breakthrough that set up a House-Senate conference on the Interior bill came September 24 when the Senate approved the measure 77-to-21.

During consideration of HR 2996 the Senate approved one important park and rec amendment that would extend a permit for an oyster farm in Point Reyes National Seashore. It also rejected one important amendment that would have

shifted all federal land acquisition money to agency maintenance.

A dispute over the oyster farm permit has for a long time stuck in the craw of Sen. Dianne Feinstein (D-Calif.), chairman of the Senate subcommittee on Interior appropriations. She supports the permit. It was even reported that Feinstein held up the nomination of Jon Jarvis as NPS director because he had approved the termination of the oyster farm.

The version of HR 2996 that came out of the Senate Appropriations Committee was explicit about extending the permit: The bill said NPS "shall" extend the permit for 10 years when it expires on Nov. 30, 2012. The Senate-approved language is less demanding: It simply says NPS "is authorized" to extend the permit.

The Park Service has opposed extension of the permit because it said the farm does not conform to uses allowed in potential wilderness, although the farm has been in operation since 1934.

Feinstein has countered that the Park Service (and Jarvis who was in charge of the Pacific West Region of NPS at the time) ignored sound science, as described in a study of the National Academy of Sciences.

Sen. Tom Coburn (R-Okla.) offered the amendment that would have barred federal land acquisition with money from the Land and Water Conservation Fund. Coburn would have diverted the money to reduce the maintenance backlog of individual agencies. The amendment was defeated decisively by a 79-to-19 margin.

Said Coburn, referring to the Senate Appropriations Committee version of HR 2996, "The committee says the priority is to buy more land. This amendment says the priority is to repair and take care of the land we have. It specifically directs this money to the National Park Service to help with a backlog of falling down structures and the increased risk of safety for both

park employees and visitors."

Feinstein rejoined that the government must buy land when it can. "The fact is, we would lose opportunities to conserve valuable lands because within national parks there are inholdings, and inholdings, when they become available - these are private properties that people own - the federal Government buys them and adds to the public land," she said.

Coburn also prepared - but did not offer - an amendment that would have allowed any private landowner to remove his or her land from a National Heritage Area (NHA.) He later withdrew the amendment.

Coburn and western Republicans in general have objected to possible intrusion on private property rights by NHAs. House western Republicans invariably propose floor amendments with the "opt out" provision. But NHA supporters say the opt-out amendment would kill any NHA bill.

The last time the Senate approved a stand-alone Interior spending bill was in calendar 2005, when it approved a fiscal 2006 bill. Congress has passed all other recent money bills in omnibus continuing resolutions, without the Senate taking up the bills on the floor.

The fiscal 2010 Senate spending ceiling for HR 2996 is \$32.1 billion, compared to a House ceiling of \$32.3 billion. While that is a \$200 million difference, the Senate cap is still \$4.5 billion more than a fiscal 2009 appropriation of \$27.6 billion.

After the Senate approved HR 2996 with the \$4.5 billion boost Alan Rowsome, an appropriations analyst for The Wilderness Society, said, "There's a trend taking hold in the halls of Congress. The starvation budgets of the past are disappearing as Democrats and Republicans in the House and Senate are consistently making thoughtful investments to protect our natural resources and environment."

The White House "strongly supports" the Senate bill, according to the

Office of Management and Budget (OMB.) "The bill makes efficient and effective investments that protect and enhance America's natural and historical treasures, from our forests to our lakes and our monuments," said OMB is a Statement of Administration Policy. "It also funds critical activities to protect the health of the American people, the environment in which we live, and the modernized 21st Century infrastructure that is vital to our economy."

Despite the Senate's progress on HR 2996, the pressure is on the appropriators. No one likes a yearlong continuing resolution because it doesn't provide specific direction to federal agencies.

The House approved its version of HR 2996 June 26. The Senate Appropriations Committee passed its version June 25 and the full Senate September 24.

While the Senate Appropriations Committee and the full House are not far apart on the numbers in the Interior bill, there are some differences.

Most prominently the Senate committee would provide no money for the Park Service Centennial Challenge partnership program, in contrast to \$25 million approved by the House committee and \$25 million requested by the Obama administration.

Money-wise, the Senate committee would spend significantly less for Save America and Preserve America grants administered by NPS than the House, but it would spend significantly more for recreation and preservation in NPS than the House.

Senate, House give country another month of SAFETEA-LU

To no one's satisfaction, Congress last week extended the current surface transportation law to the end of October to buy time to work out a still longer extension.

The Senate was dissatisfied because it wanted to pass a three-month extension with a restoration of \$8.7

billion in rescinded past years' surface transportation allocations. Senate leaders eventually want to put together an 18-month extension of the existing law.

The House was dissatisfied because it wanted a clean three-month extension, followed by an all-out effort to write a new six-year surface transportation law by the end of the calendar year.

Now the Senate, led by Senate Environment and Public Works (EPW) Committee Chairman Barbara Boxer (D-Calif.), will attempt to strike a deal this month with the House, led by House Transportation Committee Chairman James Oberstar (D-Minn.) The problem here is Boxer and her committee are totally occupied with the writing of a climate change bill.

Still, an aide to Oberstar put the onus on the Senate. "What we do next is up to the Senate," he said. "They could take up a three-month extension bill and have until the end of the year to decide if they want a six-year bill or a lowball for 18 months."

There has been little motion in the last few days, the Oberstar staff member said. "As far as I know there has been no deal worked out. Any movement depends on how dug in the Senate is on the rescission money. Mr. Oberstar is dug in on wanting to make progress on a six-year bill."

Congress did extend for a month the old surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), in PL 111-68 on October 1 (PL 111-68.)

The failure by Congress to cancel the \$8.7 billion rescission will have immediate impacts, according to the American Association of State Highway Transportation Officials (AASHTO.) Combined with earlier rescissions it means states will have \$1 billion less to spend on highway programs this October than they did last October.

"This rescission will amount to real dollar losses to programs and

projects, and will impact many state departments of transportation," said John Horsley, executive director of AASHTO. "It will reverse some of the positive gains brought about by the highway spending provided for by the (economic stimulus law.)"

Boxer and ranking EPW Republican James Inhofe (Okla.) did attempt to kill the rescission on the Senate floor September 30 by first offering to make up the money from a bank bailout law and then from the economic stimulus law. Both offers were met by objections from other senators that stymied the two proposals.

Besides, the House could not have accepted the rescission cancellation because its pay-as-you-go rules don't allow it. Oberstar asked the Senate to accept a bill (HR 3617) the House approved September 23.

Oberstar said September 30, "Last week, the House passed H.R. 3617, the 'Surface Transportation Extension Act of 2009', a clean, three-month extension of the Federal highway, highway safety, and transit programs, by an overwhelming vote of 335-85. . . I urge the Senate to follow the House's lead, and clear H.R. 3617 for the President. . ."

Inhofe blamed Oberstar, but not by name, for the failed rescission. "Our attempts to set a prudent length for the highway extension has been plagued by some peoples' unrealistic expectation that we can complete a six-year transformational highway bill and plug a \$150 billion shortfall in the next three months if we 'keep the pressure' on," he said. "After twelve short-term extensions during the development of SAFETEA in 2003-2005, I have learned the hard way, that strategy does not work."

The House subcommittee on Highways and Transits June 24 approved the six-year, \$500 billion bill - the Surface Transportation Authorization Act of 2009 - that Inhofe derided.

The subcommittee bill is generally supportive of park and rec programs. The Surface Transportation Authorization

Act of 2009 would extend for six years such outdoor programs as transportation enhancements (still at 10 percent of total allocations for the Surface Transportation program), recreational trails, scenic byways, federal and Indian land roads, and Safe Routes to School. All the programs except enhancements would receive individual allocations of unspecified amounts. The subcommittee has not filled in program allocations yet.

In addition the subcommittee bill contains a new concept that could boost outdoor programs - "livability." It is backed by both President Obama and Oberstar. The bill would create a new Office of Livability that would oversee transportation enhancements, recreational trails, scenic byways, Safe Routes to School and a new U.S. bicycle route system.

The bike route program would in turn provide grants to states and Indian tribes (80 percent federal money) to establish a national system. The money would be used for construction (at least half of all expenditures), planning, mapping, signage and promotions.

Two commissions, rec planners weigh in on outdoor money

The recommendations last month from a national commission on the National Park System for new funding sources roughly parallel recommendations from two other high-level study groups.

A second blue ribbon commission - the Outdoor Resources Review Group (ORRG) - submitted similar recommendations in July and a third study group - the National Association of Recreation Resources Planners (NARRP) submitted its own recommendations last week.

The Parks Commission recommended that Congress establish three big funds to provide more money for the National Park System. The funds would provide \$900 million per year for the Land and Water Conservation Fund (LWCF), revenues for the Historic Preservation Fund, and revenues to pay for park operations and maintenance. Presumably, the money

would be guaranteed for each fund.

In addition, the commission recommended two other fund-raising initiatives: (1) a commission of Americans to campaign for voluntary contributions, and (2) a new Parks Centennial Committee to provide an endowment for the parks from private contributions.

The National Parks Second Century Commission, chaired jointly by former Sens. J. Bennett Johnston, Jr. (D-La.) and Howard H. Baker, Jr. (R-Tenn.), presented its report to Secretary of the Interior Ken Salazar at a ceremony at the Interior Department.

An aide to Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) said his boss has not addressed the reports yet because he has been tied up with health care legislation since July. But, the staff member said, "I wouldn't be surprised that when things cool down we'll take a look at it."

The aide cautioned that the money recommendations will face tough sledding. "It's hard to put in legislation recommendations for more money (for LWCF)," he said. "We have tried for a long time to provide dedicated money and that's very hard to do."

ORRG RECOMMENDATIONS SIMILAR: The ORRG submitted recommendations July 6 to Salazar and Congress that parallel the NPS commission report. However, the ORRG looked at the big picture of recreation needs for all agencies and at all levels of government, not just NPS.

The ORRG recommended among other things "full" funding for LWCF of \$3.2 billion. The program is currently authorized for \$900 million per year, but the commission report says inflation should increase the payout to \$3.2 billion.

The ORRG also calls for the study of a broader, \$5 billion per year fund to replace LWCF beginning in 2015, presumably by Congress, the White House and any new commission/conference.

Sens. Bingaman and Lamar Alexander

(R-Tenn.) were honorary cochairs of the ORRG.

REC PLANNERS ON LWCF: On October 1 the third study group, NARRP, submitted recommendations for a broad new, inter-governmental approach to recreation.

The NARRP would shake up the federal oversight of recreation by moving LWCF out of the Park Service and into a new national recreation agency. The new national coordinating agency would, as its title implies, work with the 20 or so federal agencies that have outdoor recreation responsibilities.

As for LWCF NARRP said that moving the fund into a national coordinating council would cut down on the federal-state competition for LWCF money that often leaves state and local governments with little or no money.

Said the NARRP report, *Support for the Great Outdoors America*, "The LWCF program has evolved into a competition between federal-side and state-side budgets and programs. There appears to be little connection, communication and collaboration among the programs. Furthermore, there has been an increase in 'new' programs funded out of LWCF, further diluting the LWCF monies. As it currently stands, the LWCF program is too fractured. The LWCF program would be more effective and efficient with increased interagency planning, coordination, collaboration, and programmatic integration."

The three cochairs of the NARRP committee preparing the report were Jeff Frey, senior planner for the Wisconsin Department of Natural Resources and NARRP board member; Rick Just, chief of planning for the Idaho Department of Parks and Recreation and president of NARRP; and Glenn Haas, professor emeritus at Colorado State University and vice president for development of NARRP.

THE NATIONAL PARKS REPORT: The national parks commission didn't focus simply on money. It also called for a greater emphasis on education in the parks, guarantees that park policy would be based on independent science, and a

greater emphasis on cultural resources.

But without money all those improvements would be difficult to achieve. So, said former Sen. Johnston, "The parks are tremendously popular. They need to be expanded particularly with heritage areas and that is going to take funding."

He added, "One of the things that we recommended was that we have a Presidentially-appointed commission to raise funds for the national parks. We think they are hugely popular with the American public and the public is willing to support the parks, not only by contributions but also by working in the national parks providing free manpower as it were."

Congress established LWCF in the Land and Water Conservation Fund Act of 1964. The law authorized up to \$900 million per year for the program, but subject to annual appropriations. Up to half the money is to go to federal land acquisition and half to state grants. Usually Congress provides around \$200 million per year, although the Obama administration is asking for double that in fiscal 2010. Meanwhile, the unspent reserve in the fund has grown to \$17 billion.

Both President Bush in 2001 and President Obama in 2009 came to office promising full funding for LWCF and to clean up a multi-billion national parks maintenance backlog. Bush provided significantly more money for park maintenance but the backlog continued to grow. In his second term Bush asked that LWCF be stripped to the bone.

WHAT IS NEXT? Salazar was cautious about what the Interior Department would do with the NPS report. On receiving the NPS report he said the department would look at the recommendations and implement those that it could.

The national parks commission report is available at <http://www/visionfortheparks.org>. For more information on the ORRG report go to <http://www.rff.org/orrg>. The NARRP report is posted at www.narrp.org.

Yosemite gives in to enviro lawsuit on Mojave OHV plan

The National Park Service cried uncle last week and agreed to scrap much of its planning for Yosemite National Park. The park will write a new land use plan for Yosemite Valley over the next three years.

Tossed out were an old Yosemite Valley Plan and more than \$100 million in initiatives to restore the park after a 1997 Merced River flood. The agreement does allow some projects to proceed.

At the heart of a decade of litigation is a dispute between environmentalists and the Park Service over how many visitors should be allowed into Yosemite Valley.

The dispute was settled - for the time being - on September 22 with the filing of a settlement agreement in the litigation in which the park appeared to give in to most of the environmentalists' demands. However, the agreement does allow Yosemite to proceed with specific river restoration projects.

In the agreement NPS said it would prepare over the next three years a new Merced River Plan and would rescind a Yosemite Valley Plan. The agreement contains detailed instructions for the planners including how many employee residences should be allowed in the park and where.

The lawsuit was brought by the Friends of Yosemite Valley and Mariposans for the Environment and Responsible Government. "We are optimistic," said Julia Olson, attorney for the plaintiffs. "We agreed to this settlement to establish a new process and focus, ideally leading to a positive and protective management plan for Yosemite's Merced River. We are hopeful that the new Merced plan will be focused on protection, putting the river and its values first."

The park also sounded optimistic. "With this Settlement complete, the

National Park Service is looking to the future and will move forward with preparing a new (comprehensive management plan) that will continue to protect and enhance the Merced River for the enjoyment of future generations," said Acting Superintendent Dave Uberuaga in a statement.

Not consulted in the deal was the lead park concessioner, Delaware North Companies Parks and Resorts. "No, we were not a party to the lawsuit," said a spokesman. "That is a decision by the National Park Service based on what they feel is best for the park."

Delaware North operates 1,667 guest rooms, 25 food and beverage units, 19 retail locations, guest activities and support for those businesses in the park.

The dispute between the park and the environmentalists began after the devastating Merced River flood of 1997. The park developed a Merced River Plan as part of the Yosemite Valley Plan to restore the river and valley facilities. Environmentalists filed suit, objecting to the number of overnight rooms in the valley, to the number of parking spaces and to the construction of facilities.

On March 27, 2008, the Ninth U.S. Circuit Court of Appeals said the Merced River plan failed because it did not determine how many people the river valley could carry without harming the environment. The court then remanded the case to a U.S. District Court judge who then oversaw the negotiations that led to the agreement.

The September 29 decision throws out the following plans and back-up documentation: a Yosemite Valley Plan and record of decision; a Yosemite Lodge Area Redevelopment Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and the Curry Village/East Valley Campgrounds EA and FONSI, with exceptions; a Yosemite Lodge Area Redevelopment EA/FONSI; and a Curry Village/East Valley Campgrounds EA/FONSI.

Here is an example of the details

in the 43-page agreement: "The Curry Village/East Valley Campgrounds EA/FONSI will be rescinded except for the planned removal of 108 tents used for visitor accommodations and 40 tents used for employee housing, as shown in Appendix B." And Appendix B lists 10 specific projects that the Park Service may not carry out.

The agreement sets this schedule: NPS is to immediately solicit scoping comments on its upcoming Merced River Comprehensive Management Plan and EIS; NPS is to publish a draft plan and EIS in December 2011; NPS is to complete the plan and EIS in November 2012; and, finally, NPS is to publish a final record of decision in December 2012.

Schwarzenegger backs off California parks closure

California Gov. Arnold Schwarzenegger (R) late last month came up with a strategy to keep all California state parks open through next summer, more or less.

Schwarzenegger and California State Parks devised a plan to offset a \$14.2 million appropriations reduction for the fiscal year. The plan calls for reduced hours in some parks and no acquisition of maintenance vehicles, but no parks will close.

"Working closely with my Departments of Finance and Parks and Recreation, we have successfully found a way to avoid closing parks this year," said Schwarzenegger. "This is fantastic news for all Californians."

The California State Parks Foundation was not as enthusiastic. "While the governor has found a clever way to get political cover on this issue, it's not clear that this plan won't actually leave Californians with just as limited access to their state parks as if they had been fully closed," said the foundation in a statement.

"The 'found money' here is from having less lifeguards on state beaches, not maintaining restrooms, not staffing

parks for health and safety standards, etc.," said the foundation.

The foundation noted that the Schwarzenegger administration, in announcing that it would keep parks open, was still threatening a \$22 million reduction in spending for parks in the next fiscal year.

But the Schwarzenegger administration did offer some hope in the announcement: "To achieve the \$22.2 million of ongoing future General Fund savings that was included in the 2009 Budget Act, the Administration can explore various solutions for inclusion in the January 10 budget to generate ongoing budget savings while minimizing full and complete park closures."

In the face of a mammoth budget deficit Schwarzenegger July 18 signed legislation that cut the state parks budget for this fiscal year by \$14.2 million. California State Parks immediately began trying to determine which parks to close. The parks department said it believed it must close 100 or more units to comply with the budget.

But the parks department, working with the state finance department, came up with the solution - partial closures and no acquisition of maintenance vehicles.

If the state had allowed the parks to close, it could have been in a worse financial fix than if it spent the \$14.2 million budget cuts. An internal California State Parks memo suggested that the proposed closure could have cost the state more than a \$14 million reduction in state spending.

The 11-page memo, prepared by the legal counsel for state parks, said that by closing the parks the state may:

- * be liable for any injury in a closed park,
- * be sued by concessioners for breach of contract,
- * be sued by the National Park Service for repayment of Land and Water Conservation Fund grants,
- * be forced to prepare costly

environmental analyses prior to closing parks, and

* be required to obtain a California Coastal Commission permit to ban citizens from the coast.

The California memo was prepared by the state parks department legal staff for state parks director Ruth Coleman. It was leaked to the environmental group Public Employees for Environmental Responsibility (PEER.) The state parks legal department reportedly asked PEER to remove the report from its website, but PEER refused. The PEER website is at <http://www.peer.org>

Energy and water bill leads the appropriations parade

Congress is on the verge of completing two fiscal year 2010 appropriations bills that affect the outdoors - an energy and water bill and an agriculture bill.

A third measure, a transportation appropriations bill, is awaiting a House-Senate conference committee.

Thus, all major outdoors appropriations bills - including an Interior bill - are well on the way to conclusion. Congress made time for itself to complete the bills by extending all fiscal 2009 spending through the end of October (PL 111-68 of October 1.)

Here's what happened to the three bills, other than Interior:

* ENERGY AND WATER: HR 3183. A House-Senate conference committee completed its bill September 30. The House approved the conference bill October 1 and the Senate was expected to vote on it at press time.

There was a hitch. Florida House members complained that the conferees removed from the measure money for one of the first two major Everglades restoration projects - an Indian River Lagoon initiative.

Said Rep. Tom Rooney (R-Fla.), "I must express my great disappointment

with the Senate for stripping out most of the vital construction funding for the Indian River Lagoon. This project was originally authorized in the 2007 Water Resources Development Act as a component of the Comprehensive Everglades Restoration Plan."

Rep. Debbie Wasserman Schultz (D-Fla.) was more accommodating. "This bill commits \$180 million in Federal funding for critical Everglades restoration projects," she said. "While it is less than the administration request and the House-funded level, it represents a firm commitment from this Congress."

"However," added Wasserman Schultz, "to date, the State has outspent the federal government by more than 2 to 1 (on Everglades restoration projects.)"

Rep. Ed Pastor (D-Ariz.) tried to reassure the Floridians that the Indian River Lagoon was now considered a "new start" under Congress's funding rules and is thus eligible for economic stimulus money. "By designating the new start for the Everglades, that means that recovery money can be used now for the purpose that you spoke about," he said.

Wasserman-Schultz said the bill contains \$180 million for Everglades restoration, compared to an Obama administration request for \$214.4 million, an original House recommendation of \$210.2 million and an original Senate recommendation of \$163.4 million.

All told for the Corps of Engineers HR 3183 includes \$5.4 billion, or \$100 million more than as an original House number and the same as a an original Senate number.

* AGRICULTURE: HR 2997. A House-Senate conference committee completed its bill September 30. The House approved the conference bill October 7 and the Senate is expected to vote soon.

The conferees rejected some - but not all - spending reductions proposed by the Obama administration for conservation programs. The bill restored \$267

million of \$600 million the Obama administration asked to be reduced from spending levels in a new farm law for these conservation programs: Agricultural Management Assistance Program, Environmental Quality Incentives Program, Farmland Protection Program, Healthy Forest Reserve Program, Wetlands Reserve Program and Wildlife Habitat Incentives Program.

* TRANSPORTATION: HR 3288. The House approved its bill July 23 with a survival appropriation of \$41.1 million for highway programs. The Senate approved its version of HR 3288 September 17 with \$42.5 billion for highway programs.

Guaranteed outdoor money put in first Senate climate bill

The mammoth climate change bill introduced by leading Senate Democrats last week includes a Climate Change Adaptation Fund that could allocate billions of dollars to conservation programs.

A House-passed climate change bill (HR 2454) also includes a climate change fund. The big unknowns now are how much money the funds would provide and under what conditions.

The Senate bill varies in one important respect from HR 2454. The House would subject all adaptation funds to annual appropriations. The Senate would guarantee the money by depositing it into a secure fund where the money would be available "without further appropriation."

But that's getting ahead of the game. Sens. Barbara Boxer (D-Calif.) and John Kerry (D-Mass.) formally introduced their bill (no number yet - CHECK) September 30. The Senate Environment and Public Works (EPW) Committee under chairman Boxer is expected to begin marking up a bill the week of October 12-17.

However, virtually no one expects Congress to complete a climate change bill this year because the issue is so

complex and the bill has so far to go.

Still, the House and Senate are edging toward development of legislation that would provide billions of dollars each to conservation programs, including the Land and Water Conservation Fund (LWCF.) By one estimate from conservationists the House fund would provide an average of \$2.6 billion per year to a natural resource fund.

Now comes the hard political slog. Ranking EPW Republican James Inhofe (R-Okla.) indicated that his party will not support the legislation. "While I've noted that the Democrats have the votes to pass this bill through the EPW Committee, that does not mean Republicans will stand down," he said. "We will expose this bill and its contents throughout every step of this process."

Inhofe said the Republicans will oppose legislation that imposes new fees (known as allowances) on carbon producers, i.e. much of American industry. He said Republicans will instead work for "a better approach, one that promotes domestic energy supplies, new clean energy technologies, and greater energy security."

But Boxer and Kerry have their supporters, including the National Parks Conservation Association (NPCA.) Said Mark Wenzler, director of clean air and climate programs for NPCA: "Senators Boxer and Kerry have put forth a bold plan that will begin to address the issue of climate change and the impacts it will continue to have on our national parks and wildlife."

Wenzler endorsed the Climate Change Adaptation Fund: "This bill takes an important step of lowering greenhouse gas levels as well as setting aside dedicated funding to protect wildlife and their habitats to both ensure the health of our citizens and continued economic growth. We commend Senators Boxer and Kerry for recognizing that major investments are needed to safeguard our air, water, wildlife, and national parks."

The House approved HR 2454 June 26

by a close 219-to-212 vote. However, the Senate requires a proportionately larger percentage of votes, at least 60, to move a bill. So Boxer and Kerry have been negotiating ever since with their colleagues on both the left and right.

In a related development the House Natural Resources Committee is rushing to approve a public lands energy bill (HR 3534) that may, in a long shot, be added to the climate bill down the road. The energy bill contains a provision that would guarantee \$900 million to the Land and Water Conservation Fund each year without further appropriation.

The Senate situation is reportedly complicated by competition between Boxer and Senate Finance Chairman Max Baucus (D-Mont.) for control over the legislation. Because any climate control program would be powered by taxes on carbon producers Baucus and his committee at some point must be consulted.

HR 2454 would produce an estimated \$845 billion in revenues for the government over the next decade. Some of that money would establish the Natural Resources Climate Change Adaptation Fund.

The National Wildlife Federation estimates the House fund would receive an average of \$2.6 billion per year from fees paid by companies that produce carbon pollution. However, the House would subject to annual appropriations all allocations to federal programs from the fund.

The Senate would not subject allocations to appropriations, making them automatic. No estimates have been published yet of how much money the Senate bill would take in and how much of that would be allocated to a fund.

The Senate would allocate 38.5 percent of the money from the fund to the states, with 32.5 percent going to state wildlife agencies and six percent to state coastal agencies.

Of the federal money the Senate would allocate 9.5 percent to the Land and Water Conservation Fund (LWCF), broken down as follows: one-sixth for

DoI competitive grants, one-third to traditional LWCF land acquisition, one-sixth to the Forest Service for the Forestry Assistance Act, and one-third to the Forest Service for land acquisition.

By comparison the House would provide LWCF with 19.5 percent of the adaptation fund. The House-passed bill would use the same percentage breakdown as the Boxer-Kerry bill: i.e. one-sixth DoI etc.

The Senate bill is available at the majority page at epw.senate.gov. Subtitle C, Section 370 on page 341 of the bill describes how money from the fund will be allocated. Title II Section 212 on page 818 describes where the money for the fund will come from.

Court throws out California Desert OHV route plan

A federal court held last week that the Bureau of Land Management (BLM) violated the law in designating off-highway vehicle (OHV) routes through three million acres of California Desert.

The court said that BLM erred in designating new routes as open to OHVs in a 2003 West Mojave (WEMO) plan because the mileage exceeds a cap in a 1980 California Desert Conservation Area (CDCA) plan.

BLM argued that the West Mojave plan effectively amended the CDCA plan and legally replaced the cap with a new total of 5,098 miles. Judge Susan Illston in the U.S. District Court for Northern California disagreed. "However," she said, "the WEMO Plan amendment did not amend or remove the language imposing a cap on OHV routes to those existing in 1980, nor is there any effort in the WEMO Plan to explain why the limitation should not apply to the post-1980 designated OHV routes."

She added, "Instead, the WEMO Plan simply ignores the language capping OHV routes to those existing in 1980, and designates thousands of OHV routes, a

significant portion of which did not exist in 1980."

In her 93-page decision Illston did not say what BLM must do next. She scheduled a conference with BLM and the environmentalist litigants for October 30 to determine punishment.

In her decision Illston held that BLM violated the Federal Land Policy and Management Act (FLPMA) by exceeding the OHV cap in the 1980 CDCA plan. And she said BLM violated the National Environmental Policy Act (NEPA) by failing to analyze the impacts of route designation on soils, cultural resources and riparian resources. Because of the failure to analyze specific impacts she said BLM also violated a NEPA mandate to analyze cumulative impacts. Illston did reject the litigants charge that BLM also violated the Endangered Species Act.

The environmental litigants included the Center for Biological Diversity, Sierra Club, Public Employees for Environmental Responsibility, and Desert Survivors.

The environmentalists blasted BLM after the decision. "The BLM planning was backwards," said Elden Hughes, honorary vice president of the Sierra Club. "They should first analyze the resources, natural, cultural, wildlife, etc., and then plan the route network. They put the route approvals first."

Motorized recreation interests weren't overly disappointed. "The court decision wasn't as bad as we feared coming out of a federal court in San Francisco," said Paul Turcke, an attorney who represents the BlueRibbon Coalition. Turcke said his side anticipated some tough Endangered Species Act holdings from the court, but Illston said BLM and the Fish and Wildlife Service adequately considered the impact of new routes on endangered species.

Turcke was resigned to some reductions in routes for OHVs. "It's my impression that travel planning has entered a new age where agencies approve about half as many miles as were already out there, and that's what this one

did," he said. "There's no question that products like this provide more protection of the environment." Turcke is an attorney with the firm Moore Smith Buxton & Turcke, Chartered in Boise, Idaho.

Congress designated the 25 million-acre CDCA in FLPMA in 1976. BLM completed a plan for managing the desert in 1980. In 1994, Congress approved another law - the California Desert Protection Act - that designated 3.5 million acres of the CDCA as wilderness, turned Death Valley and Joshua Tree national monuments into national parks, and established the 1.6-million-acre Mojave National Preserve. Death Valley, Joshua Tree and the Mojave Preserve are managed by the Park Service and are not involved in the litigation.

In 2003 BLM completed a Western Mojave Desert Off Road Vehicle Designation Project Environmental Assessment and CDCA Plan Amendment that revised OHV route designations in the 1980 plan on 3 million acres of the CDCA.

The three environmental groups immediately filed suit against what they called a "one-sided off-road plan." Their main objection is that "the overwhelming majority" of 1,000 miles of new routes (out of the total of 5,098 miles) would run through desert tortoise habitat.

DoI IG faults BLM NLCS boss; BLM publishes new guidance

The Interior Department Inspector General (IG) last week said that Bureau of Land Management (BLM) staff members who oversaw the National Landscape Conservation System (NLCS) on three occasions may have been too friendly with environmental groups.

In one count IG charged that NLCS officials discussed the agency budget with The Wilderness Society before the budget was published, which could be against Congressional rules.

In a second count the IG charged that NLCS officials discussed with a

National Wildlife Federation lobbyist the possible addition of new areas to legislation that formally designated NLCS areas in March, stretching Congressional rules about lobbying. Finally, the IG said NLCS officials helped NWF (NWF) officials prepare a brochure on hunting and fishing in the NLCS, without consulting BLM public affairs officials.

Said the report from Acting Inspector General Mary L. Kendall, "Our investigative efforts revealed that communication between NLCS and a few specific NGOs (nongovernmental organizations) these circumstances gave the appearance of federal employees being less than objective and created the potential for conflicts of interest or violations of law. We also uncovered a general disregard for establishing and maintaining boundaries among the various entities."

The IG said that the U.S. Attorney's Office concluded that the BLM officials had done nothing illegal, but the IG did refer the report to BLM Director Robert Abbey for possible administrative action.

NEW GUIDANCE: Meanwhile, BLM published a new instructional memorandum (IM) last month that makes clear that NLCS managers are to tilt toward conservation. The IM says Congressional language designating a national monument or a conservation area governs land uses in the areas.

The IM effectively says the designation language will overrule BLM's multiple use mandate contained in the Federal Land Policy and Management Act (FLPMA) in national monuments and national conservation areas.

"Therefore, as a general rule, if the management direction of the proclamation or act of Congress conflicts with FLPMA's multiple use mandate, the designating language supersedes that section of the FLPMA," said the BLM IM No. 2009-215 from the assistant director for renewable resources and planning.

The IM will govern much of the 25 million-acre NLCS that BLM oversees.

Congress officially designated the NLCS in an omnibus lands bill earlier this year (PL 111-11 of March 30.)

Said The Wilderness Society's Senior Counsel Nada Culver, "The BLM has now made it clear that conservation trumps other uses, and that's good news for everyone who wants to see these special places appropriately protected for future generations, which we know includes many BLM managers."

The guidance is on the web at: http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2009/IM_2009-215.html.

THE IG REPORT: The Interior Department IG began its investigation at the behest of former BLM Deputy Director Henri Bisson who came across evidence that Jeff Jarvis, NLCS division chief, had sent two suspicious E-mails to interest groups. BLM had earlier been asked by Rep. Rob Bishop (R-Utah) and former Rep. Bill Sali (R-Idaho) to look into the operation of the NLCS. The IG investigated three incidents:

* **BUDGET DISCUSSION:** Jarvis allegedly discussed budget information at a June 6, 2006, meeting of an NLCS Coalition. Jarvis acknowledged he made a presentation to The Wilderness Society. But the IG report said Jarvis did not recall details of the meeting but "said he was aware that there were very specific rules governing what could and could not be discussed concerning the President's budget." Federal employees are forbidden from discussing upcoming budgets with the public.

* **ADDITIONAL AREAS DISCUSSION:** Jarvis sent an E-mail to a National Wildlife Federation lobbyist recommending that NLCS supporters seek the addition of areas in the Galisteo Basin in New Mexico to the NLCS legislation. That request was put in an E-mail; however, the areas were not added to the bill. Line employees of agencies are not supposed to lobby Congress for legislation.

* **BROCHURE ASSISTANCE:** Jarvis helped the National Wildlife Federation

prepare a brochure on areas in the NLCS that are open to hunting and fishing, the IG suggested. BLM and the federation then shared printing costs for the brochure. BLM's public affairs office criticized the issuance of the brochure because all such BLM promotional efforts are to go through that office.

The IG investigation, *Report of Investigation - National Landscape Conservation System*, is available at the website: <http://www.doi.ig.gov/>.

Notes

FS roadless bill introduced. Sen. Maria Cantwell (D-Wash.) and Rep. Jay Inslee (D-Wash.) introduced legislation (HR 3692, S 1738) October 1 that would bar almost all road construction on 58 million acres of roadless national forests. The bill would institute a 2001 Clinton era rule that has been caught up in conflicting court rulings and injunctions over the last eight years. Cantwell painted her bill, cosponsored by 25 senators, as wise economic policy. "This act is not just good environmental policy, but it is also smart fiscal policy - it prevents the government from wasting millions of taxpayer dollars and allows the Forest Service to shift focus to its maintenance backlog," she said. The House bill has 152 cosponsors. The Ninth U.S. Circuit Court of Appeals August 5 upheld the Clinton rule but a U.S. District Court Judge in Wyoming June 16 held the Clinton rule was illegal. Secretary of Agriculture Tom Vilsack May 28 issued a directive that gives him authority to review all proposed projects in 49 million acres of roadless areas for the next year. And Vilsack has said that if federal courts don't resolve their disagreements about national forest roadless areas, the Forest Service will write a new rule. The Cantwell/Inslee bill is a simple two-paragraph affair that simply says roadless national forests will be managed in accordance with the Clinton rule.

Sherman opines on roadless policy. The Obama administration's nominee to set policy for the Forest Service, Harris Sherman, September 30 sailed through

an initial confirmation hearing by the Senate Agriculture Committee. The only bump on the road emerged when committee chairman Blanche Lincoln (D-Ark.) asked Sherman for his position on national forest roadless areas, in light of a Colorado petition for a state-specific regulation. Sherman said he would (1) recuse himself from the Department of Agriculture's review of the Colorado petition and (2) follow the Obama administration's lead on general roadless policy. As for his position on a national rule Sherman said, "But the President has stated very clearly his desire to protect roadless areas in this country and Secretary (of Agriculture Tom) Vilsack as well and I am anxious to sit down with the Secretary and his staff to review what strategies, what approaches that he will be using going forward." Sherman, former executive director of the Colorado Department of Natural Resources, got the nod September 10 from the Obama administration to serve as the next under secretary of Agriculture for Natural Resources. The Colorado roadless rule was initially proposed by Republican Gov. Bill Owens but Harris's boss Gov. Bill Ritter (D) has picked up on it. As Ritter's point man Harris's Department of Natural Resources August 3 proposed a new set of roadless rules that environmentalists and sportsmen both panned. Recreationists and environmentalists have said the proposed Colorado rule contains too many exceptions to a general ban on road construction that would allow coal production, timber harvests, power lines and water rights-of-way. The Colorado roadless petition was submitted under a 2005 Bush administration roadless rule that replaced the Clinton rule (above.)

Yellowstone posts more records.

Yellowstone National Park reported this week that visitation for the year through September set an all-time mark, and that's before the full impact of Ken Burns's film on the park system had had time to work. The park said its visitation for the year was up 8.7 percent, from 2,892,069 in 2008 to 3,143,816 this year. This is the first time Yellowstone received more than 3 million visitors through September. In September itself Yellowstone saw a jump of

11.9 percent, from 437,552 to 489,438. While the National Park System as a whole has seen a modest increase in visitation this year, the Yellowstone record is well ahead of the pack. The increase in Yellowstone and throughout the system has been attributed to the national recession, with people choosing visits to parks over expensive resorts. State and local park systems have also posted across-the-board visitation increases. The increase in national park visitation is a double-edged sword because the large numbers of visitors put extra pressure on the natural resources of the parks. Still, Secretary of Interior Ken Salazar has consistently said he would make visitation to the parks a top priority. Salazar reportedly connects park visitation to increased economic activity, locally and nationally. The Burns film was broadcast across the country in late September. That's too late in the year to catch the summer peak visitation months, but it is expected to provide at least a little boost. NPS visitation statistics are at <http://www.nature.nps.gov/stats/>.

Will FLREA repeal bill move? It's probably the last thing on Sen. Max Baucus's (D-Mont.) mind right now as the Senate Finance Committee he chairs wrestles with health care legislation and climate change legislation. But eventually this Congress Baucus is expected to train his committee's big guns on a federal entrance fee law called FLREA, as in Federal Lands Recreation Enhancement Act (PL 108-447 of Dec. 8, 2004.) Baucus introduced legislation (S 868) April 22 that would eliminate that law. "Once Baucus gets through with health care we expect him to take action on fees," said a lobbyist who supports the FLREA law. Baucus doesn't like the law because he says it taxes Americans a second time for using federal lands for recreation, in addition to income taxes. Critics of FLREA maintain that federal land management agencies - the Forest Service in particular - have gone overboard in collecting entrance fees to areas that include developed sites. The bill would leave in place only Park Service entrance fees (as established in a previous law before FLREA), with 80 percent of revenues still retained by collecting NPS units.

Senate also approves FLAME bill.

The Senate September 24 approved a one-year version of an emergency fund for fighting forest fires in a fiscal year 2010 appropriations bill. The House has approved separate legislation (HR 1404) to authorize the fund in perpetuity in a stand-alone bill, but not in an appropriations bill. If the fund, called the Federal Land Assistance Management and Enhancement Act (FLAME), is to be enacted this year, most likely it will be included in the appropriations bill (HR 2996.) The House and Senate are expected to go to conference on HR 2996 shortly. Western senators and House members, backed by a broad base of interest groups, drafted the FLAME bill to prevent federal land management agencies from borrowing from line operations to fight emergency fires. Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), supported by western Republican and Democratic senators, was the lead sponsor. In approving the one-year version of HR 2996 the Senate effectively transferred \$834 million from regular fire fighting accounts in HR 2996 to the contingency fund. The bill also spells out in detail conditions for using the money, i.e. "to pay the costs of emergency wildfire suppression activities that are separate from amounts annually appropriated to the Secretary concerned for routine wildfire suppression activities." The calendar 2009 fire season has thus far run slightly below the 10-year average of acres burned. As of late September 5.6 million acres have burned, or 600,000 acres less than the average of 6.2 million acres. In calendar 2006 9 million acres had burned over a comparable period. There is one big difference between the Senate-approved FLAME bill and the House bill. The Senate set aside a specific amount of money, the \$834 million, for fiscal 2010. The House-approved bill would have Congress appropriate the average emergency wildfire expenditures of the last five years. The House would require Congress to appropriate the money each year, a risky business.

RS 2477 decision appeal likely.

The plaintiff in a landmark RS 2477 lawsuit in Utah - Kane County - will appeal a decision in the case by a three-judge panel of the Tenth U.S.

Circuit Court of Appeals to the full appeals court, an attorney for the county told *FPR*. However, even if Kane County is able to persuade the full panel to hear the case, it may be severely handicapped in the subsequent debate. That's because a dissenting judge in the three-man court, Judge Michael M. McConnell, has retired. "That judge McConnell has retired is not such a good thing for us," said Shawn T. Welch, the attorney for San Juan County. "That was also a big loss for the court. He had a sharp mind and was able to dig into these kinds of decisions." Welch is with the Holme Roberts & Owen law firm in Salt Lake City. In the landmark decision the court held that a county may not manage a road on federal land if that management violates federal policy. Specifically, the court said that Kane County had no authority to open BLM lands to off-highway vehicle use when BLM policy prohibited it. A two-judge-to-one majority in the decision held that when federal policy disagrees with local policy the Supremacy Clause of the U.S. Constitution gives the feds priority. In a dissent judge McConnell said the courts have no right to say that Kane County did not enjoy valid existing rights (VER) to RS 2477 rights-of-way (ROWs.) And that VER could be interpreted to give the county authority over the ROW.

Continental Divide plan amended.

The Forest Service announced October 5 that it has completed amendments to the Continental Divide National Scenic Trail (CDNST) plan that reaffirm the main uses of the trail. That is, the plan limits uses to those that don't damage the purposes of the trail that extends from Canada to Mexico. Congress designated the trail in 1978 and a comprehensive plan was completed in 1985. Now the Forest Service, in consultation with other federal land management agencies and states, has completed amendments to the plan. A *Federal Register* notice emphasizes that nonconsumptive uses will rule. It says that "the nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor." The notice says the plan and

amendments "provide that backpacking, nature walking, day hiking, horseback riding, nature photography, mountain climbing, cross-country skiing, and snowshoeing are compatible with the nature and purposes of the (trail.)" The Forest Service said it received 8,000 public comments, 7,200 of which came from mountain bikers.

TRCP honors Dingell, Morris, Range. The Theodore Roosevelt Conservation Partnership (TRCP) September 30 honored three leaders of the conservation community at its annual honors dinner. TRCP presented Rep. John D. Dingell (D-Mich.) with its Sportsman's Champion Award for his work in the House on legislation to protect waters and wetlands and in providing money for outdoor programs. TRCP presented Johnny Morris, founder of Bass Pro Shops and a lifelong conservationist, with the partnership's Lifetime Conservation Achievement Award. And TRCP began a fundraising effort to honor former TRCP chairman and co-founder Jim Range. The two-year campaign for the TRCP Jim Range Conservation Fund begins with \$150,000 in contributions and with a fundraising goal of \$2 million. Range died earlier this year of kidney cancer. Range was a leading force in uniting a broad range of conservation groups within the TRCP umbrella to work together to protect fish and wildlife habitat.

Beach access before top court. The Supreme Court has before it this session a case that could decide private access rights to a beach after a State of Florida completed a beach renourishment project. The Florida Supreme Court held that renourishment projects convey no particular rights to a private property owner. But the private property owner counters that to allow public use of a renourished beach would create a taking of his private property that is unconstitutional. The State of Florida dredged sand from the ocean and deposited it on the beach, creating new state land and taking away private property, argues the private landowner. The Surfrider Foundation has filed an *amicus curiae* in support of the Florida Supreme Court decision and against the private property owner.

"While our organization does not endorse the practice of dredge and fill projects, the outcome of this case to the beach management program in Florida could cause further complication and/or loss of lateral beach access for the public," said Ericka D'Avanzo, Surfrider Foundation's Florida regional manager. The case before the Supreme Court is cited as *Florida Department of Environmental Protection v. Stop the Beach Renourishment*

Conference Calendar

OCTOBER

11-14. **Land Trust Alliance** rally in Portland, Ore. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725. <http://www.lta.org>.

13-16. **National Recreation and Park Association** congress and exposition in Salt Lake City. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2158. <http://www.nrpa.org>.

13-17. **The National Trust for Historic Preservation** annual conference in San Diego. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

27-29. **Sportfishing Summit** in Galveston, Texas. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

NOVEMBER

3-6. **National League of Cities** annual Congress of Cities in San Francisco. Contact: National League of Cities, Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004. (202) 626-3105. <http://www.nlc.org>.

12-15. **Council of State Governments** state trends forum in Palm Springs, Calif. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. www.csg.org.