

# Federal Parks & Recreation

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## President to designate major monument near Los Angeles

President Obama is schedule to designate today (October 10) a 346,000-acre San Gabriel Mountains National Monument just outside Los Angeles in the Angeles National Forest, the White House said October 8.

That is just over half the size that California Democrats have recommended, but it is more than some local officials and private property rights advocates have recommended. They would be happy with no monument.

Rep. Judy Chu (D-Calif.), the lead Congressional advocate for a monument in the area, said, "I am overjoyed and thrilled. This is an historic moment for the Los Angeles area, and it has been a long time coming. The San Gabriel Mountains are a treasure, providing 70 percent of the open space for Angelenos and attracting more than 3 million visitors a year."

Chu said that the designation of a national monument would help restore a tattered recreation facility. "With this designation, the San Gabriels will become a priority, opening up new streams of funding that can be used to ensure that the mountains achieve their full potential for all the people who have gone there to hike, fish, or just enjoy fresh air," she said.

But Rep. Paul Cook (R-Calif.), who represents a portion of the forest in San Bernardino County, asked that most of his county be excluded from a monument. Cook wrote Secretary of Agriculture Tom Vilsack September 12 to complain, "While lack of public input is our primary objection, insufficient information regarding potential impacts to public recreation, off-highway vehicle use, mining rights, renewable

energy transmission, special-use permitting, and governing structure are also serious causes for concern."

He concluded, "Because of the aforementioned factors and the expeditious fashion by which this proposal is moving forward, we respectfully request that San Bernardino County be withdrawn from inclusion in the San Gabriel National Monument proposal, . . ." However, Cook did not object to the inclusion of Cucamonga Canyon.

Private property rights advocates last week raised the alarm and tried to head off the designation. Said the American Land Rights Association in a bulletin to its members this week, "Congresswoman Judy Chu seems to want to bypass the democratic process and get President Obama to declare the San Gabriel Mountains a National Monument with little or no public involvement. So far the process has been top down, command and control with little opportunity for local people or public officials."

Chu is the lead sponsor of legislation (HR 4858), introduced June 12. that would designate a 615,245-acre San Gabriel Valley National Recreation Area. That bill formed the basis for the monument.

Chu said the monument idea was fully vetted. She said the Park Service (note, not the Forest Service) wrote a feasibility study and held 66 public meetings and solicited 16,800 public comments. And Chu said she herself held more than 40 stakeholder meetings.

The Forest Service hosted a major public hearing of its own August 26 that produced an overflow crowd of more than 700 people.

In announcing the August 26 hearing the Forest Service said, "The managers of the most urban forest in the country must reassess how to remain committed to forest and watershed conservation while meeting the challenge of increasing recreational demands. The Forest Service will engage the public to explore opportunities to achieve our

shared goals to enhance protection of wildland and watershed values."

But American Land Rights Association said the designation of a national monument would actually lead to fewer recreation opportunities. "Recreation is hard to come by in L.A.," the association said. "Taking an area already protected by the U. S. Forest Service and locking it up as a National Monument imposes new restrictions and regulations. When advocacy groups gain control, roads and access used to get to and from recreation are often closed. Handicapped, elderly and children will lose access when the lobbyists for the Monument get large areas of the San Gabriels set aside as official Legal Wilderness meaning no cars, motorized or mechanical vehicles."

Conservationists disagree. "Los Angeles has too few parks, and its residents have high rates of obesity and diabetes, so a San Gabriel Mountains National Monument will offer a fun and healthy escape from the pavement and congestion," said Daniel Rossman, San Gabriel Mountains Forever chair and senior regional representative for The Wilderness Society. "In less than an hour, you will be in one of the monument's beautiful areas to swim in a rushing stream, hike to a dramatic peak, or simply relax under towering pines."

For private property rights advocates a San Gabriel National Monument represents the beginning of a larger Obama administration campaign to make its mark environmentally by designating millions of acres of national monuments from federal lands.

Indeed conservation groups such as The Wilderness Society have put increasing pressure on the Obama administration to use the Antiquities Act to protect large tracts of public lands. The Wilderness Society said it has identified 25 wilderness and conservation bills that are hung up in Congress and said Obama should step up and designate those areas as national monuments.

The list of bills pending on The Wilderness Society list is at: <http://>

[wilderness.org/article/wilderness-bills-await-congressional-action](http://wilderness.org/article/wilderness-bills-await-congressional-action).

On April 10, 2013, the Park Service (and not the Forest Service) completed a San Gabriel Mountains Special Resources Study that endorsed the designation of a national recreation area, as Chu has proposed. The study says the Forest Service would retain national forest land but the two agencies would collaborate in protecting area resources.

The San Gabriel National Monument will be based largely on land in the Angeles National Forest that frames the eastern side of Los Angeles County.

Chu's national recreation area legislation is complex. Among other things it would transfer 2,987 acres of Bureau of Land Management land to NPS for use as an administrative site, would forbid eminent domain but allow voluntary land acquisitions, and would establish a 17-member partnership to oversee the recreation area. The partnership would be composed of federal, state, local, water management agency officials and others.

The Forest Service and Park Service are now expected to put together a management plan for the monument over the next three years. Presumably that plan will clarify responsibilities of the Forest Service and Park Service in managing the monument.

## **Legal settlement may be end for Point Reyes oyster farm**

Although the company operating an oyster farm in Point Reyes National Seashore long ago lost its legal battle to continue to operate, the Park Service October 6 said it agreed to a settlement with the company.

The settlement, which still must be approved by a federal judge, would allow Drakes Bay Oyster Company to continue to farm in the seashore through the end of the year. In addition the agreement would have NPS pay federal relocation benefits to the company's 30 employees and have NPS pay to remove the

farm's structures in the seashore.

Once all that was done the estero, or estuary, would be managed as wilderness as envisioned by the Point Reyes National Seashore Wilderness Act of 1976. Although Congress set aside the area as potential wilderness, the oyster company held a contract with NPS to farm oysters in the estuary. The contract expired in November 2012.

Despite the costs of the agreement to the Park Service, Christine Lehnertz, Pacific West Regional Director of the National Park Service, was enthused. "We are pleased to have reached this settlement agreement with Drakes Bay Oyster Company," she said. "More than two and half million visitors enjoy this extraordinary place every year and we will continue to take our stewardship responsibilities seriously on behalf of the American people."

The Park Service says those 2.5 million visitors generate more than \$109 million in local economic benefits and support 1,200 jobs.

Despite losing its contract and its lawsuit, the Lunny family that operates the oyster farm was optimistic because they say they will pursue old and new enterprises. Old, they will continue to distribute oysters to hundreds of businesses in the San Francisco area. New, they plan to open a restaurant, the Drakes Oyster House, at the Tomales Bay Resort in Inverness, Calif.

Still, they lost the lawsuit and the oyster farm. "At the end of the day, although we lost this battle, it was important for us to be a voice for justice for family farms," the Lunnys said in a joint statement. "Even though we believe we were right, as good and law-abiding Americans, we accept this decision and will now move on to other things."

The handwriting was on the wall for the Lunnys when a three-judge panel of the Ninth U.S. Circuit Court of Appeals Sept. 3, 2013, upheld a Department of Interior decision to remove the Drakes Bay Oyster Company

from Point Reyes. The Lunnys appealed the decision to the U.S. Supreme Court but in June the panel said it would not take up the case.

The two-to-one decision of the Ninth Circuit was as contentious as the national debate about the oyster farm in the seashore. In the end the majority held that former Secretary of Interior Ken Salazar in denying an extension of the contract in November 2012 followed the dictates of Congress in (1) a fiscal year 2009 appropriations law requiring a review of the permit and (2) the 1976 law designating the portion of the park that includes the oyster farm as "potential wilderness."

But dissenting Judge Paul J. Watford held the opposite. "Continued operation of the oyster farm is fully consistent with the Wilderness Act, and the farm's existence is therefore not an 'obstacle' to converting Drakes Estero to wilderness status as directed by the Point Reyes Wilderness Act," he said. And that encouraged the Lunnys to continue their appeals.

The battle over the oyster permit became politicized with the conservative group Cause of Action and House Natural Resources Committee Chairman Doc Hastings (R-Wash.) working on behalf of the appellant Lunny family.

On the left numerous national and local environmental groups opposed the permit but their opposition was compromised somewhat when famed chef Alice Waters, usually an ally of environmentalists, sided with the Lunnys. She buys oysters harvested by the Lunnys. In addition Sen. Dianne Feinstein (D-Calif.) backed the Lunnys.

Environmentalists praised the settlement. Said Neal Desai, Pacific Region field director for the National Parks Conservation Association, "Americans have waited decades for the west coast's first marine wilderness to be protected, and we are excited that nature will soon thrive in the ecological heart of the national park. Though the oyster company's pollution and damage to the environment will unfortunately continue until the end

of the year, Americans will soon have a newly restored marine wilderness to explore and be inspired by."

The proposed settlement was submitted to U.S. District Court Judge Yvonne Gonzalez Rogers in the Northern District of California for final approval.

In a sidelight the agreement also lets Feinstein off the hook. She has championed legislation in the past to keep the oyster farm at Point Reyes, even though she angered her environmentalist allies in the process.

### **Grand Canyon concessions prospectus taken to court**

The holder of a huge concessions contract at Grand Canyon National Park, Xanterra Parks & Resorts, sued the Park Service October 8 over a greatly revised contract proposal.

Xanterra says that the prospectus, for which bids were due October 8, was not economically realistic. The company said the franchise fee was too steep.

In an announcement of the lawsuit Xanterra's attorney said the proposed franchise fee would jump from 3.8 percent of gross receipts now to 14 percent. "Xanterra believes this will result in a cumulative negative cash flow for any concessioner over the entire term of the larger contract and represents a wholly unfeasible economic proposition," said Xanterra's attorneys, Hogan Lovells.

In soliciting bids NPS increased the franchise fees to compensate in part for facility improvements made by concessioners over the years, so-called leasehold surrender interest. When NPS first put the contract out for bid last year it asked bidders to pay more than \$150 million for leasehold surrender interest.

When it received no bids NPS decided to reduce the leasehold surrender interest payment to \$57 million, and to make up the difference out of Park Service money.

In addition Xanterra objects to a second Park Service strategy of breaking out a portion of its old contract, and awarding it to competitor Delaware North.

The park posted a prospectus August 11 for a 15-year contract encompassing six lodging facilities, including El Tovar, as well as food services and transportation.

The park first proposed the contract a year ago but received no bids, ostensibly because it asked bidders to pay the more than \$150 million for facility improvements made by concessioners over the years.

The contract is to begin Feb. 1, 2015. Xanterra obtained the existing contract in 2002 and it has been renewed three times on a yearly basis since then. It is now due to expire on December 31.

Xanterra says NPS's strategy of paying down the leasehold surrender interest with its own money will backfire. "It appears the reason for such a drastic hike in the contract's franchise fee is the NPS decision to use \$25 million in Park funds and another \$75 million borrowed from other national parks to 'buy down' Xanterra's LSI," said Xanterra's attorneys Hogan Lovells. "This decision will in turn, by NPS' own admission, result in cutting budgets of its staff, implementing hiring freezes and furloughing of NPS employees at a number of national parks."

Meanwhile, as we reported in late August two proposed developments may pose the most serious threats to the park in its 95-year history, park officials say.

The more serious of the threats is a proposed Tusayan development in the gateway community of Tusayan. The Stilo Development Group, backed by Italian investors, has already gained approval of the city.

Separately, the Navajo Indian tribe has proposed a development east of the South Rim consisting of restaurants, hotels and shops on tribal land. But,

to the dismay of park supporters, the tribe has also proposed the construction of a Grand Canyon Escalade gondola down to the canyon floor.

The park is also in the midst of a couple of major battles over uranium mining and a power plant on its borders. (See following article.)

## **Court backs DOI on major withdrawal near Grand Canyon**

A federal judge September 30 said the Interior Department has the authority to withdraw one million acres of public land from uranium mining to protect Grand Canyon National Park.

Plaintiff uranium miners contended that a 2012 withdrawal failed in large part because the department didn't establish conclusively that the mining would damage water resources that feed into the park.

But U.S. District Court Judge David G. Campbell for the District of Arizona upheld the withdrawal decision on the water resources count, and on all other counts.

Campbell concluded, "Ultimately, the question in this case is whether DOI, when faced with uncertainty due to a lack of definitive information, and a low risk of significant environmental harm, can proceed cautiously by withdrawing land for a period of time under the FLPMA. The Court can find no legal principle that prevents DOI from acting in the face of uncertainty. Nor can the Court conclude that the Secretary abused his discretion or acted arbitrarily, capriciously, or in violation of law when he chose to err on the side of caution in protecting a national treasure - Grand Canyon National Park."

FLPMA is the Federal Land Policy and Management Act of 1976. It serves as the organic act for the Bureau of Land Management (BLM).

The judge acknowledged the paucity of conclusive scientific information behind the department's assertion

that water resources might be damaged. "Moreover, although it is true as Plaintiffs contend that the data was sparse and the uncertainties substantial in this investigation, BLM (the Bureau of Land Management) openly acknowledged uncertainty on how water resources might be impacted. It candidly recognized a low probability of groundwater contamination from uranium mining," Campbell said.

But, he added, "It nevertheless examined the available science, solicited and considered comments both internally and from the public, and ultimately concluded that the uncertainties, coupled with even a low potential for major adverse effects, warranted a level of precaution that justified the Withdrawal. The Court does not find this arbitrary or capricious."

Environmentalists who intervened in the lawsuit declared victory. "The court's ruling affirms conclusions by five federal agencies, including scientists from the U.S. Geological Survey," said Grand Canyon Trust's Roger Clark. "Uranium mining poses unacceptable risks to Grand Canyon's water, wildlife, and people. It should be permanently banned from our region."

A spokesman for one of the plaintiffs, the National Mining Association (NMA), noted the judge's acknowledgement that the danger from uranium mining to water resources was low.

Said Luke Popovich, vice president for external communications for NMA, "The decision underscores the need for congressional action to place limits on DOI's ability to undertake large scale withdrawals of public lands." The plaintiffs have 60 days to appeal the decision.

The Interior Department January 18, 2012, formally withdrew from uranium mining for 20 years one million acres of public land near Grand Canyon. BLM prepared an EIS to back up the withdrawal decision.

The withdrawal barred the filing of new mining claims on the lands managed

by the Forest Service and BLM, but it did not necessarily prevent the mining of existing claims.

Then Secretary of Interior Ken Salazar said the long-term withdrawal - which replaced a short-term withdrawal - was necessary to protect Grand Canyon.

The million acres in question were first closed to new mining claims by a July 21, 2009, segregation notice. The notice had been scheduled to expire on July 20, 2011, but Salazar imposed an interim, six-month withdrawal. The interim withdrawal provided the Interior Department with time to complete an EIS to back the 20-year withdrawal.

Salazar authorized the withdrawal in the form of a record of decision. He used withdrawal authority granted the secretary of Interior by FLPMA.

Campbell's decision is available at: <http://earthjustice.org/sites/default/files/files/FINAL%20ORDER%20-%20Grand%20Canyon%20withdrawal.pdf>.

**CLEAN AIR LAWSUIT:** In another mining issue affecting Grand Canyon, environmentalists October 7 filed a lawsuit against EPA for allowing a major coal power plant to continue operations. The appellants said the Navajo Generating Station was damaging air quality over Grand Canyon.

The environmentalists, including the Grand Canyon Trust and the National Parks Conservation Association among others, asked the Ninth U.S. Circuit Court of Appeals to review a July EPA decision. The plant has been in operation for 40 years and EPA in July approved a plan to reduce pollutants over the next three decades while the coal-fired plant continues to operate.

"EPA's decision is unconscionable," said Kevin Dahl of the National Parks Conservation Association. "The Grand Canyon's spectacular vistas are too often shrouded by pollution from one of America's dirtiest power plants. The pollution that has plagued the region for generations should have ended with this EPA rule. Now we are left with more dirty air that mars this

beautiful region and harms the millions of visitors and residents who breathe it."

## **Eisenhower Memorial is back on track, for the moment**

Two weeks ago it was dead in the water, but since then a proposed design for a Dwight D. Eisenhower Memorial in Washington, D.C., has received two important approvals.

Most recently on October 2 the National Capital Parks Commission (NCPC) signed off on the latest design by a strong 10-to-1 vote, despite opposition from Eisenhower family members. However, that vote was preliminary.

On September 24 a Dwight D. Eisenhower Memorial Commission itself voted 8-to-2 to submit two competing designs to the NCPC for approval.

Still to come is a scheduled October 16 vote on the design by the Commission of Fine Arts. And the NCPC will at some point take a final vote on the project.

If all those bodies line up, and they well may, the controversial and long-delayed monument could begin to move forward.

But there are crucial obstacles ahead, including objections from the Eisenhower family and the House Natural Resources Committee. The former still objects to the most recent design from architect Frank Gehry.

To quiet complaints from the family last month Gehry modified his design by removing two large tapestries and some columns. But Gehry would retain a large tapestry as a backdrop for the memorial portraying Eisenhower as a boy. And to that the family objects.

The remaining tapestry is no small thing. It would be 80 feet high and 447 feet long, a sizeable dimension given the memorial site is only four acres.

In the resolution the NCPC approved October 2 the staff recommended "that as a result of the modifications made to the project following the Commission's April 2014 review, the revised preliminary memorial design satisfies NCPC's adopted site selection design principles."

Meanwhile, Congress continues to attack the commission itself and the design from architect Frank Gehry. In a temporary spending resolution that it approved September 18 Congress shut off federal money for the commission through December 11.

More explicitly on July 30 the House Natural Resources Committee approved legislation (HR 5203) that would terminate the existing 12-member commission and staff and replace them all. The committee approved HR 5203 by unanimous consent, so committee Democrats did not enter the fray.

According to the Obama administration's fiscal year 2015 budget request, the Eisenhower Commission currently estimates the total construction cost of the memorial at about \$100 million. Congress has already appropriated about \$44 million for design and construction of the memorial and about \$65 million total. Other estimates put the total cost at \$142 million.

The commission itself receives a federal stipend; in fiscal 2014 it was \$1 million. However, Congress on September 18 approved a continuing resolution (PL 113-164) for early fiscal 2015 that would discontinue that stipend, at least through December 11.

On July 15 the House Appropriations Committee approved a full-year fiscal 2015 appropriations bill (HR 5171) that would put up no money for the commission. However, the leaders of the Senate subcommittee on Interior appropriations August 1 published a draft bill that would appropriate \$1 million for the commission.

The House Natural Resources Committee July 25 published a report that sharply criticized the Gehry

design. The report faulted the design of the tapestries, saying it violates standards set by the NCPC.

The report says, "The NCPC found the tapestry proposal most problematic in that it adhered to only two of the design principles. NCPC staff commented that the tapestries 'read more like an extension of the street wall similar to what would occur if a building was constructed' and that the design 'turns its back on the surrounding precinct . . . rather than creating a common space which the surrounding buildings help define.'"

The design was approved a first time on July 18, 2013, by the U.S. Commission of Fine Arts. However, on April 3 the NCPC disapproved the design, objecting in particular to the tapestries.

To move forward the proposed \$142 million memorial must gain approval from all the commissioners and obtain money from Congress.

The Eisenhower Memorial Commission was established by Congress in 1999. It consists of 12 members including four member of the U.S. Senate and four members of the House. Commission Chairman Rocco Siciliano, a World War II combat veteran, is also chairman of the Eisenhower World Affairs Institute.

### **Lame duck may address a few items, no matter who wins**

When Congress returns to work after the November 4 elections it will have its hands full whether Republicans or Democrats prevail in the voting. The House and Senate are tentatively scheduled to meet again next on November 12.

If the Republican Party wins control of the Senate, it will likely want a clean slate when it takes over both the House and Senate in 2015. In that case a lame-duck session may just address the bare necessities, i.e. a full year appropriations bill.

If by chance the Democratic Party

retains control of the Senate for next year, the parties may be more interested in addressing pressing legislation now.

No matter who wins, there are a few important issues besides appropriations that the solons may take up this fall, such as writing a new law to extend the Land and Water Conservation Fund and an omnibus lands bill.

But first and foremost Congress must write a full-year fiscal 2015 appropriations bill. On September 19 it approved a temporary spending bill (PL 113-164) that provides all government agencies with money through December 11.

On passage of the continuing resolution (CR) Senate Appropriations Committee Chair Barbara Mikulski (D-Md.) said that during the lame-duck session Congress would wrap all 12 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.

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

The different approaches mean the Senate would set aside more than \$900 million for other programs than the House.

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

The Senate drafters - Senate subcommittee on Interior Chairman Jack Reed (D-R.I.) and ranking subcommittee Republican Lisa Murkowski (R-Alaska) - did not include in their proposal

\$470 million to pay back fiscal 2014 fire fighting costs. The House subcommittee did include the \$470 million.

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

(Speaking of Murkowski, if Republicans take over the Senate she may become the proverbial 500-pound gorilla on park and recreation matters. Murkowski would be in line to chair both the Senate Energy Committee and the Senate subcommittee on Interior appropriations.)

**LWCF extension:** Senate Finance Committee Chairman Ron Wyden (D-Ore.) said September 17 he will introduce two bills "shortly" 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.

## Drums already beating for new highway law; GOP offers hints

The new fiscal year had barely begun October 1 before influential highway construction interests began campaigning for a fresh infusion of money into surface transportation programs.

That, even though Congress in August put up money for - and extended - the old highway law through May of 2015. However, the Transportation Construction Coalition said the Highway Trust Fund that pays for roads and mass transit is waning rapidly

The coalition said October 1 that federal data indicate that Congress will have to come up with \$7 billion more for highway and transit in the last four months of fiscal 2015. And they said that beyond fiscal 2015 Congress will have to come up with an additional \$16 billion above and beyond the gasoline tax revenues annually poured into the Highway Trust Fund.

The coalition, with 31 member groups ranging from the American Road & Transportation Builders Association to the United Brotherhood of Carpenters and Joiners of America, said Congress should find the money before it writes a new six-year bill, if it writes a six-year bill.

"Congress needs to 'keep the horse before the cart' and address the trust fund's long-term revenue problem as was done in the 1997 and 2004 tax bills. Then it can develop and properly fund a six-year program bill early in 2015," said Pete Ruane, president the American Road & Transportation Builders Association.

Recreation has a major stake in the game because an umbrella Transportation Alternatives Program receives \$720 million per year from the existing highway law, Moving Ahead for Progress in the 21st Century Act (MAP-21). That money is then relayed to such programs as Recreational Trails, Transportation Enhancements, Scenic Byways, and Safe Routes to School.

Crucially, when Congress writes, or attempts to write, a new six-year surface transportation law next year to replace MAP-21 that runs through May, Republicans may be in charge of the Senate and the House.

House leaders said last month that writing a new bill is near the top of their agenda for next year. Speaker of the House John Boehner (R-Ohio) told ABC News last weekend it was a "priority" for him.

Both Boehner and House Ways and Means Committee Chairman Paul Ryan (R-Wis.) said they intend to undertake tax reform in 2015 with some of the proceeds used to beef up surface transportation programs.

However, a number of Republicans on both sides of the Hill have traditionally had it in for the Transportation Alternatives Program (TAP) and the trails, etc. it finances.

For instance, when the short-term fix bill was on the Senate floor July 29 Sen. Mike Lee (R-Utah) introduced an amendment that would have repealed TAP. The greater goal of the Lee amendment, voted down 28-to-69, was to turn most responsibility for surface transportation over to the states. It would have reduced the federal gasoline tax from 18.4 cents per gallon to 3.7 cents.

Lee described his amendment as a positive for trail advocates because it would allow communities to put their highway money into whatever projects they wished. "Under the Transportation Empowerment Act (the name of his amendment), Americans could finally enjoy the local infrastructure they want. More environmentally conscious States and towns could finally have the flexibility to invest in more green transit projects and bike lanes," he said.

Transportation spending for recreation and trails is also under attack in the House. On June 10 the House approved a fiscal year 2015 appropriations bill (HR 4745) that would bar the use of regional grant money

called TIGER for recreation and trails projects. Although rec and trails money was dropped from TIGER by the House, several members pointed out that such projects serve as economic engines for local communities.

The short-term fix law, PL 113-159, gives the Highway Trust Fund an \$11 billion boost, primarily by jiggering employee pension programs.

There is also some optimism that Senate Republicans will agree next year to some user fees - not taxes, but user fees - to supplement the gasoline tax as an instrument to pay for the Highway Trust Fund. That fund pays the bulk of surface transportation costs. Democrats are usually more willing than Republicans to increase the gasoline tax above its current 18.4 cents per gallon.

### **Federal agencies schedule different 2015 fee free days**

Once again in 2015 federal land management agencies will hold admission free days on special occasions.

The Park Service will hold nine admission fee free days, the Bureau of Land Management (BLM) six and the U.S. Forest Service four.

The agencies hold the fee free days to drum up business. "Every day is a great day in a national park, and these entrance fee free days offer an extra incentive to visit one of these amazing places," said National Park Service Director Jonathan B. Jarvis. "As we prepare to celebrate the National Park Service's centennial in 2016, we are inviting all Americans to discover the beauty and history that lives in our national parks."

NPS announced October 2 this fee-free schedule for 2015:

January 19: Martin Luther King Jr. Day  
 February 14-16: Presidents Day weekend  
 April 18 & 19: National Park Week's opening weekend  
 August 25: National Park Service's 99<sup>th</sup> birthday  
 September 26: National Public Lands Day

November 11: Veterans Day.

NPS acknowledges the agency will lose some revenues, but hopes to make it up with increased interest in the parks. Said Kathy Kupper of the NPS Office of Communications, "We estimate the nine entrance fee free days in 2015 would normally bring in an average of \$250,000 for a total of \$2.25 million. It seems like parks near population centers see increases on entrance fee free days while destination parks don't see much of an impact."

Kupper gave this estimate of lost revenues:

January 19: \$165,000  
 February 14-16: \$500,000 total for weekend  
 April 18-19: \$500,000 total for weekend  
 August 25: \$500,000  
 September 26: \$400,000  
 November 11: \$185,000.

Like NPS, BLM has scheduled fee-free days for the Martin Luther King holiday, Presidents Day weekend and Veterans Day. It also will allow free passage on National Public Lands Day, September 26.

Like NPS, the Forest Service has scheduled fee-free days for the Martin Luther King holiday and Presidents Day weekend (but just February 16). Unlike NPS it will also allow free passage on National Get Outdoors Day, June 13, and National Public Lands Day, September 26.

If the Park Service would be out just over \$2 million and the Forest Service usually takes in about one-third as much in fees each year as NPS, that suggests the Forest Service would be out less than \$1 million.

BLM takes in about ten percent as much as NPS over a year, so it might be out a couple of hundred thousand dollars.

### **OOPS, FLREA only extended through December 11, 2015**

In the last issue of *FPR* we misconstrued the confusing language of a

temporary spending law that extended the federal recreation fee law called the Federal Lands Recreation Enhancements Act of 2004 (FLREA).

We said the continuing resolution (CR), PL 113-164 of September 19, extended the law into December 2016. It only extended FLREA through December 11 of 2015.

According to a budget specialist with the National Parks Conservation Association, Emily Douce, the extension to 2015 authorizes agencies to charge for annual visitation passes.

Presumably, when the House and Senate write a full fiscal year 2015 appropriations bill after the November 4 elections they will again extend FLREA through December of 2016 to allow agencies to sell or grant annual passes next year.

There is always a chance, however small, that the House and Senate will reach agreement this fall on a multi-year revision to FLREA, like a bill (HR 5204) approved by the House Natural Resources Committee July 30. Some bill critics such as the Western Slope No-Fee Coalition fear the House will insert HR 5204 as a rider in a full fiscal 2015 money bill.

But before then the House Natural Resources Committee has several loose ends to tie up. First and foremost the Obama administration is expected to criticize, if not oppose, HR 5204 because the measure would allegedly usurp agency authority to assess fees. The bill would require Congressional approval of any individual area fee increases.

Also unresolved are discounts for senior citizens age 62 or older. For \$10 now seniors can buy a lifetime America The Beautiful Pass into all national parks and other land management agency sites. The standard America the Beautiful fee is \$80 per year.

Some outdoor policy players have suggested a \$40 lifetime pass for seniors, others have suggested an increase in the age to begin the pass,

and others have suggested just giving seniors a simple percentage discount each year.

HR 5204 punts on the issue, calling instead for a study by the Departments of Interior and Agriculture. We understand that both Republican and Democratic members of the committee are reluctant to give agencies carte blanche to increase fees, for fear they - the Congressmen - will be charged with increasing taxes.

Third, there is some unease about a provision that would return 90 percent of collected fees to a collecting site, instead of the 80 percent now. The fear there is that the big parks that collect the lion's share of fees will contribute less to sites that collect little if any fee revenues.

Finally, the committee bill does not include the Corps of Engineers despite general agreement among interest groups and politicians that the Corps should be part of the program.

The committee did clear up a concern of outfitters in an early committee draft bill that could have been interpreted as requiring holders of special recreation permits to absorb broad federal maintenance costs. The debated provision would do that by levying a cost recovery charge against each permit. However, HR 5204 deleted most of the controversial cost recovery provisions.

HR 5204 has another, unresolved problem - opposition from backcountry users. Kitty Bazar, president of the Western Slope No-Fee Coalition, said requirements in the bill for the two standard fees (day use and amenity) would be less rigorous than under existing law.

(Bazar says she has no quarrel with entrance fees to major federal sites, such as national parks.)

FLREA, as enacted on Dec. 8, 2004, as PL 108-447, Section 804, was only good for 10 years. An interim appropriations law (PL 113-46 of Oct. 16, 2013) extended it through Dec. 8,

2015. PL 113-164 extends FLREA through December 11, 2015.

FLREA produces about \$270 million per year in fee revenues and most of the money is used to improve recreation facilities.

The FLREA provision in the fiscal 2015 CR refers to the base law of 2004 (extending it one year beyond the 10 years in FLREA) and it refers to an earlier provision in the CR (extending FLREA one year beyond the expiration date of the CR in December).

The provision says in total: "*SEC. 130. Section 810 of the Federal Lands Recreation Enhancement Act (16 U.S.C. 6809) shall be applied by substituting 'on the date that is 1 year after the date specified in section 106(3) of the Continuing Appropriations Resolution, 2015' for '10 years after the date of the enactment of this Act.'*" Section 106(3) says the CR is effective through Dec. 11, 2014, so the additional year takes us through Dec. 11, 2015.)

## **Obama designates big Pacific monument in fishing ground**

President Obama's designation last month of an expanded national monument in the Pacific Ocean - 490,000 acres down from a proposal of 782,000 acres - is drawing the usual mixed reaction.

Conservationists are praising Obama for expanding the Pacific Remote Islands Marine National Monument by a factor of six. President George W. Bush designated an 87,000 square mile Papahānaumokuākea Marine National Monument in 2006.

Dan Chu, senior director of the Sierra Club's Our Wild America campaign, said, "The Sierra Club applauds President Obama for protecting the largest nearly intact and near-pristine ocean ecosystem in the world. The Pacific Remote Islands are home to an abundance of life, from deep ancient corals to endangered sea turtles, marine mammals, seabirds and fish."

But House Natural Resources

Committee Chairman Doc Hastings (R-Wash.) said, "President Obama has repeatedly taken unilateral action to lock-up federal lands, and now he's doing the same thing to our oceans. There has been significant public opposition to the expansion of this marine monument along with questions about the scientific validity. But instead of going through an open, public review process, the Administration chose to forge ahead and take secret, unilateral action."

Hastings took note of a bill (HR 4988) introduced by Rep. Steve Southerland (R-Fla.) that would require Congressional and state approval of any marine monument designated under the Antiquities Act of 1906.

And Obama did use the Antiquities Act to expand the monument. The act authorizes a President to designate unilaterally national monuments from federal lands.

A key interest group, the Western Pacific Regional Fishery Management Council (WPRFMC), consulted with the White House before the designation and opposed a larger 782,000-acre monument, as the President had proposed in June. The council had a mixed reaction to the final designation.

The WPRFMC said that the monument designation would forbid fishing in 65 percent of traditional grounds. The council did praise Obama for not expanding the monument to bar fishing around Howland and Baker Islands and Palmyra Atoll and Kingman Reef.

A White House Fact Sheet said recreational fishing may continue. "In recognition of the importance of encouraging and supporting access to federally managed areas, recreational and traditional fishing that is consistent with the conservation goals of the Monument will continue to be allowed in the expanded Monument," said the White House.

The monument is jointly managed by the National Oceanographic and Atmospheric Administration, the U.S. Fish and Wildlife Service, and the

State of Hawaii. The Obama expansion complements that designation of lands bordered by the Hawaiian Islands on the east, Australia on the southwest, and the Marianas Islands on the west.

## Notes

**Would New Jersey rob Peter?** New Jersey voters are being asked in the November 4 election to vote on a ballot measure that would transfer more than \$30 million per year out of conservation agency operations and maintenance and into land acquisition. The acquired land would be used for open space, farmland and historic preservation. 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. "This measure subsidizes a galling amount of self-dealing real estate deals," said Bill Wolfe, New Jersey PEER director, noting that supporters label themselves the 'Keep It Green Coalition.' "Some Keep It Green members are also focused on the green in their wallets." The resolution would move a portion of revenues from corporate business taxes that are now used for operations and maintenance to land acquisition. Says a State Senate explanation of the Corporation Business Tax (CBT), "Assuming annual CBT revenue of \$2.5 billion, annual funding for open space, farmland and historic preservation will increase in FY 2016-2019 from \$32 million to \$71 million, and thereafter to \$117 million." The state summary also says, "Annual funding will decline for the other four authorized uses, by an aggregate annual amount of \$39 million for FY 2016-2019, and by an aggregate annual amount of \$35 million in FY 2020 and each year thereafter." The losers would include state parks and historic sites capital projects and water resource programs. Of course in federal Congressional battles over park and rec spending the environmentalist roles are reversed with green groups asking for more money for the Land and Water Conservation Fund and Republicans giving maintenance and operations first priority.

**FS chief addresses film storm.**

Forest Service Chief Tom Tidwell himself September 25 entered the controversy over a proposed agency directive that would limit commercial filming and still photography in wilderness areas. Tidwell said the directive would not apply to newsgathering. "The fact is, the directive pertains to commercial photography and filming only - if you're there to gather news or take recreational photographs, no permit would be required. We take your First Amendment rights very seriously," said Tidwell. The September 4 proposal would establish permanent, strict requirements for commercial filmers to obtain special use permits. For instance, it would mandate that the filming have a "primary objective of dissemination of information about the use and enjoyment of wilderness" or related attributes. It would also forbid the use of any motorized vehicle, bicycle or hang glider, unless specifically authorized. Ranking Senate Energy Committee Republican Lisa Murkowski (R-Alaska) took the Forest Service to task for the proposed directive September 26. "No one should have to fear that the federal government is going to use such a (wilderness) designation to restrict or prohibit you from news gathering or taking photos. If the Forest Service is intent on moving forward with its proposed regulation it must make clear that these kinds of activities are exempt," she said. Comment by November 3 to reply\_lands@fs.fed.us or to <http://www.regulation.gov> or by mail to: *Commercial Filming in Wilderness, USDA, Forest Service, Attn: Wilderness & Wild and Scenic Rivers (WWSR), 201 14th Street S.W., Mailstop Code: 1124, Washington, D.C. 20250-1124.*

**Former FS chiefs fight fire.** Three former Forest Service chiefs last week urged Congress to take up legislation (HR 3992, S 1875) to shift payment for fighting major emergency fires to a disaster account, and out of annual appropriations bills. In a *Los Angeles Times* opinion piece the three wrote, "The Wildfire Disaster Funding Act would allow hundreds of millions of dollars now diverted to fight fires to be restored to programs Congress intended to fund, including ones designed for wildfire prevention and forest health. That

would in all likelihood result in fewer wildfires, healthier forests and better wildlife habitat. And, in the long term, it could save billions of federal dollars that are now, quite literally, going up in smoke." Former chiefs Dale N. Bosworth, Jack Ward Thomas and Michael Dombeck chose the *Times* in part because California has been devastated by fire and in part because California Rep. Kevin McCarthy (R) is now House Majority Leader. The chiefs urged McCarthy to put HR 3992, sponsored by Rep. Mike Simpson (R-Idaho), on the House floor agenda. Fighting fires, particularly huge ones, each year eats up an increasingly large percentage of Forest Service and Interior Department budgets. In some cases the Forest Service has been forced to back off fire prevention work to allocate money to emergency fires. However, the House Appropriations Committee approved its version of a fiscal year 2015 Forest Service spending bill (HR 5171) July 15 that does not include the language. Further, the House bill would take \$470 million from fiscal 2015 spending to pay for fiscal 2014 emergency fire spending. House Democrats have initiated a discharge petition that would force the House to consider the bill, which would then force the House to vote up-or-down on the legislation. Rep. Scott Peters (D-Calif.) said last month 196 House members have signed up, but 218 signatures are needed.

**Golf course is historic.** Among the nine national historic landmarks the Interior Department announced September 30 is the famed Baltusrol Golf Club in Springfield, N.J., site of numerous major national championships. The course makes the national list of more than 2,500 sites because of the integration of a golf course into nature, said NPS. The golf course pales in importance to such other new sites as the General Motors Technical Center in Warren, Mich.; the St Charles (streetcar) Line, New Orleans, La.; and the (Maitland) Research Studio in Maitland, Fla. All nine sites lie east of the Mississippi. The other new national historic landmarks are Brown Bridge, Rutland County, Vt.; Duck Creek Aqueduct, Franklin County, Ind.; Eagle Island, Harpswell, Me.; Frances Perkins

Homestead, Newcastle, Me.; and Lydia Pinkham House, Lynn, Mass.

**FS helps 11,000 youths.** The Forest Service and its partners supported work and training for 11,000 youths and veterans in fiscal year 2014, the Department of Agriculture announced September 26. The service spent \$20 million on the 21<sup>st</sup> Century Conservation Service Corps. The Forest Service money was matched on a nearly one-to-one basis by partners.

**Sagebrush habitat entices rec.** An independent economics firm said September 30 that visitors to sagebrush habitat managed by the Bureau of Land Management (BLM) generated more than \$1 billion in economic benefits in 2013. The report, prepared by ECONorthwest, was commissioned by the Western Values Project and the Pew Charitable Trusts. Environmentalists are pressing the Fish and Wildlife Service (FWS) to bar development (oil and gas leasing, livestock grazing) on sagebrush habitat to protect the greater sage-grouse. The birds live in 165 million acres of sagebrush habitat across the West. If the sage-grouse were listed as threatened or endangered, it could result in the closure of portions of the 165 million acres to all sorts of uses. BLM, the Forest Service and western states have undertaken crash planning to protect the habitat and ward off listing of the bird under the Endangered Species Act. But the new report asserts the sagebrush habitat has economic value of its own beyond energy development and ranching. "We live, work and play in the outdoors," said Ron Hunter, Patagonia Inc.'s environmental programs manager in Reno, Nev. "Conserving lands in sagebrush country is critical to wildlife such as the sage-grouse and Americans' ability to explore the West and enjoy our great outdoors." ECONorthwest looked at recreation visits to California, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. The report said direct spending in sagebrush habitat totaled about \$623 million and added economic benefits totaled \$562 million. The report, *Recreational Spending & BLM Sagebrush Lands*, is available at: <http://www.>

[pewtrusts.org/~media/Assets/2014/09/RecSpendingBLMLandsReport.pdf?la=en](http://pewtrusts.org/~media/Assets/2014/09/RecSpendingBLMLandsReport.pdf?la=en).

## 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.

### Appropriations fiscal 2014 (All agencies)

HR 3547 (Lamar Smith). President Obama signed into law January 17 as PL 113-76. Law appropriates modest across-the-board increases for park and rec programs.

### 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.

### WRDA (Everglades)

S 601 (Boxer), HR 3080 (Shuster). President Obama signed into law June 10 as PL 113-121. Authorizes new projects, including several in the Everglades.