

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 31 Number 18, September 20, 2013

In this issue. . .

FS, DoI may get fire money back.

House working on approps bill with \$636M for line programs that put up fire suppression aid. Rec fees paid a big price. Advocates ask permanent fire fund..... Page 1

Approps CR in trouble in House.

Interim appropriations bill would allocate money through Dec. 15. But conservative Republicans ask tougher spending curbs.. Page 3

PEER files NPS Centennial suit.

Demands documents on cost of new office, advisory commission and Grey Group advertising firm.. Page 5

Deal struck on three RS 2477 ROWs.

In Utah. Would grant county the ROWs, but with curbs. Is it a precedent for 14,000 more?.. Page 7

House WRDA bill beginning to move.

House Transportation Committee approves water bill with four major Everglades projects... Page 8

NPCA wants action on park haze.

Asks administration to set new state deadlines. Says old plans would delay cleanup..... Page 9

El Dorado trails deal worked out.

Enviros and OHVers compromise on number of forest trails..... Page 10

Feinstein Point Reyes move waited.

Senator has not indicated if she will protect oyster farm.... Page 11

Notes..... Page 12

Conference calendar..... Page 15

House would return FS money borrowed to fight bad fires

The House has almost become serious about repaying the Forest Service the \$600 million it has had to borrow from line programs during the current fiscal year (2013) to pay for fire suppression.

Last week House Appropriations Committee Chairman Hal Rogers (R-Ky.) introduced an interim-spending bill (HJ Res 59) that would appropriate \$636 million for wildfire suppression - \$600 million for the Forest Service and \$36 million for the Interior Department.

But we say the House "almost" became serious because Republican leaders were forced to delay consideration of HJ Res 59 until today. Democrats say there is not enough money in the bill and conservative Republicans say the bill must terminate President Obama's health care program.

The Senate is waiting for the House to act before preparing its own legislation to keep the government in money through December 15.

While HJ Res 59 would allocate the fire money to fiscal 2014 wildfire suppression, it says "such funds are also available for transfer to other appropriations accounts to repay amounts previously transferred for wildfire suppression." Meaning, the Forest Service can pay back other programs, in part.

HJ Res 39 would provide money for the early days of fiscal 2014 - from October 1 through December 15. During that time Congress supposedly would prepare individual appropriations bills. But because the House and Senate disagree so greatly about spending bills, they probably will not pass

individual measures, meaning another extension is possible.

However, the extra \$636 million in fire suppression money would be available to the agencies as soon as HJ Res 59 is enacted. In addition Rogers said his bill will keep all other programs at fiscal 2013 levels, meaning the \$636 million will supplement more than \$3 billion in regular fire-fighting money.

A broad coalition of interest groups this week endorsed the fire reimbursement plan, although the groups worried about using up fiscal 2014 appropriations to pay for fiscal 2013 fire programs.

"We commend the House Appropriation Committee for recognizing the impacts of these unanticipated emergency expenditures, but we worry that transferring funds from the FY 2014 budget to repay FY 2013 expenses will only further erode the ability of the USFS and DOI to deliver needed forest restoration work and ultimately continue the cycle of budget deficits due to costly wildfire seasons," said the groups that included commercial users of the national forests as well as conservationists.

The groups also recommended a permanent set-aside in the future for suppression to avoid borrowing money from line programs. "As you continue to work with your fellow members in Congress on a CR and FY 2014 budget, please consider changing the current emergency wildfire funding structure," they said. "The USFS and DOI need a new structure that utilizes emergency funds for large fires and that does not come at the expense of other agency programs."

Submitting the recommendations to appropriators were such groups as American Forests, the National Association of State Foresters, the National Association of Forest Service Retirees, the National Ski Areas Association and the Nature Conservancy.

For a whole host of reasons the Forest Service has run out of fire suppression money this year, even though

the number of fires and acres burned are down.

Perhaps most important many fires this summer have blown up in the urban wildland interface and are thus much more expensive to fight than backcountry conflagrations.

As has been widely reported, including by us, the Forest Service has begun transferring \$600 million from line programs to pay for emergency fire-fighting programs.

Chief Tom Tidwell told agency leaders in a memo last month that this fire season has been so severe the agency has used up most of its fiscal 2013 fire suppression money. Congress appropriated approximately \$1 billion for Forest Service suppression; that counts a \$55 million reduction from a sequestration law.

Recreation has sacrificed as much money as any Forest Service programs to help the fire-fighting effort - more than \$100 million. Although recreation activities supposedly would be repaid under the interim appropriations bill, much damage has been done. The service has been forced to delay projects, cancel projects and even cancel contracts.

The recreation program, which recycles fee money to improve the resource, has given up \$30 million alone, the Forest Service said.

The 2013 fire season has been capped by an enormous conflagration that spread into northern Yosemite National Park from the Stanislaus National Forest has capped the fire season.

The administration has come under attack for requesting a significant decrease in fire suppression money in fiscal 2014, money that theoretically would be used to prevent extreme wildfires.

The House subcommittee on Interior appropriations July 23 approved a fiscal 2014 appropriations bill that would appropriate a substantial amount of money for fire fighting in the coming

year, a total of \$4.08 billion. How much of the \$636 million payback to fiscal 2013 would be deductions from the \$4 billion, if any, remains to be seen.

Among the subcommittee breakouts are, for the Forest Service, \$1.613 billion for fire suppression and prevention and \$315 million for an emergency account called FLAME. For the Interior Department the subcommittee would provide \$493 million for suppression and prevention and \$92 million for the emergency FLAME account.

The National Interagency Fire Center said late this week that 2013 has not been a statistically severe fire season in terms of numbers of fires and acres burned. The center said just over 38,000 fires have been identified this year compared to more than 59,000 in the ten-year average from 2004-2013. And the number of acres burned is down to four million from a ten-year average of 6.5 million. However, ongoing wildfires in California and throughout the West are increasing those numbers.

And many of the 2013 fires have been particularly expensive to fight because they are in the wildland/urban interface.

The Yosemite fire: As of midweek the Rim Fire had burned more than 260,000 acres of backcountry, including areas of Yosemite National Park. One of the largest fires in California history it has slowed in recent days, according to fire fighters, and was 85 percent contained at press time.

Yosemite park officials said the main tourist areas of the 750,000-acre site have remained open, including Yosemite Valley, home to many of the park's principal tourist sites. The park had closed two of the four main access roads - Tioga Road and Big Oak Flat Road.

Most of the Rim Fire has burned in the Stanislaus National Forest, which closed the entire Groveland Ranger District and much of the Miwok Ranger District. The forest says the cost of fighting the fire has passed the \$100 million mark.

House trying to write bill with money into December

After a lot of political maneuvering the House this week was unable to pass an interim fiscal year 2014 spending bill (HJ Res 59) that is designed to keep the government in money through December 15 at fiscal 2013 levels. That includes deductions for a budget sequestration.

With the fiscal year due to begin in another week on October 1, the federal government once again faces a shutdown.

Republican Speaker of the House John Boehner (R-Ohio) has been unable to move HJ Res 59 across the finish line because his conservative members rebelled when it was introduced by House Appropriations Committee Chairman Hal Rogers (R-Ky.) The conservatives want the measure to block President Obama's health care law.

At the same time House Democrats objected to the low funding levels in HRJ Res 59, leaving the leaders without enough support to move the measure.

The House had scheduled a vote on the bill for today (September 20).

In addition to keeping the government in money HJ Res 59 would immediately appropriate \$636 million for wildfire suppression - \$600 million for the Forest Service and \$36 million for the Interior Department. (See *previous article*.)

Said Rogers, "This bill is free of controversial riders, maintains current funding levels, and does not seek to change existing federal policies." Rogers said the measure would provide money for fiscal 2014 at the rate of \$986.3 billion for the entire federal government. That squares with Republican recommendations, as laid out in a House-passed budget. However, the Senate budget assumes a total spending cap of \$1.058 trillion, or \$91 billion more than the House cap of \$967 billion.

If by some miracle House and

Senate appropriators do sit down to try to work out a compromise Interior Department spending bill, they will have their hands full.

That's because the leaders of the Senate Interior and Related Agencies Appropriations subcommittee in early August published a draft fiscal 2014 spending bill that would appropriate \$5.9 billion more than the \$24.3 billion the House subcommittee on Interior appropriations approved July 23. The Senate subcommittee would spend \$30.2 billion.

Meanwhile, it is understood that the House appropriations subcommittee chairmen are fed up with the existing system of financing the government through CRs that simply extend prior year funding. The chairs, known as the cardinals, object to working all year to write 100-page appropriations bills only to have them junked in favor of a CR.

Word has it that the cardinals are pressuring Speaker of the House John Boehner (R-Ohio) and House Minority Leader Nancy Pelosi (D-Calif.) to strike a deal on overall spending ceilings for the next several years and let the cardinals write appropriations bills within that cap. This spending agreement would not include the details of a grand budget resolution; it would simply provide overall caps.

However, the cardinals may be disappointed because the real power in the House is now wielded not by old-line chairmen but by conservative Republicans, and they by definition would not accept any deal that was agreeable to Pelosi.

Asked about the possibility that the cardinals were rebelling against the CR system, Alan Rowsome, a budget specialist with The Wilderness Society, said, "Behind the scenes there may be more reasonable people talking about a spending deal." But he said he was not aware of such discussions.

The numbers: Here are some of the proposals in the two bills compared to fiscal 2013, but not counting 5.5 percent sequestrations in fiscal 2013.

LWCF FEDERAL: Senate draft, \$225 million; House subcommittee, zero; fiscal 2013, \$186 million.

LWCF STATE: Senate draft, \$45 million; House subcommittee, zero; fiscal 2013, \$45 million.

STATE WILDLIFE GRANTS: Senate draft, \$61.2 million; House subcommittee, zero; fiscal 2013, \$61.2 million.

URBAN PARKS AND RECREATION RECOVERY: Senate draft, \$10 million; House subcommittee, zero; fiscal 2013, zero.

FOREST LEGACY: Senate draft, \$60 million; House subcommittee, zero; fiscal 2013, \$53 million.

NPS OPERATIONS: Senate draft, \$2.279 billion; House subcommittee, \$2.121 billion; fiscal 2013, \$2.214 billion.

HISTORIC PRESERVATION: Senate draft, \$65.9 million; House subcommittee, \$45.3 million; fiscal 2013, \$56 million.

NPS CONSTRUCTION: Senate draft, \$145 million; House subcommittee, \$106 million; fiscal 2013, \$131 million.

NPS REC AND PRES: Senate draft, \$64.3 million; House subcommittee, \$48.5 million; fiscal 2013, \$60 million.

NPS HERITAGE AREAS: Senate draft, \$21.2 million; House subcommittee, \$8 million; fiscal 2013, \$9 million. In addition the Senate draft would extend for one year the authorization for 12 national heritage areas. The House subcommittee would not.

FOREST SERVICE RECREATION: Senate draft, \$261 million; House subcommittee, \$262 million; fiscal 2013, \$276 million.

FOREST TRAILS: Senate draft, \$81.4 million; House subcommittee, \$82.5 million; fiscal 2013, \$78.1 million.

BLM RECREATION: Senate draft, \$51.8 million. Fiscal 2013, \$48.6 million. House not broken out.

WILDLIFE REFUGE SYSTEM: Senate draft, \$484 million; fiscal 2013 \$478 million. House not broken out.

The riders: While the House subcommittee was more active in the way of riders, it may not matter much because the Interior spending bill will likely be wrapped into a bare-boned continuing resolution, sans most riders. But here is a list of the provisions of the House subcommittee and Senate draft bills that dip into policy arenas.

* *STATUE OF LIBERTY ACCESS*: House and Senate. Both the House subcommittee and the Senate draft bill would authorize NPS to acquire lands in New York and New Jersey to use for providing transportation to the Ellis, Governors and Liberty Islands in New York Harbor.

* *FEDERAL LANDS RECREATION ENHANCEMENTS ACT (FLREA)*: House only. The subcommittee would extend the existing recreation fee law one year through Dec. 8, 2015. That presumably would give authorizing committees time to replace or extend FLREA for years.

* *NPS HERITAGE AREAS*: The Senate draft would extend for one year the authorization for 12 national heritage areas. The House subcommittee would not. A draft House committee report said the subcommittee "has not included requested language to extend the 12 expiring areas' authority by one more year." On the money side the Senate draft would appropriate \$21.2 million for national heritage areas and the House subcommittee \$8 million.

* *TRAVEL MANAGEMENT PLANS*: House only. The House subcommittee would have national forests rewrite travel management plans "where communities are dissatisfied" with existing plans. The Senate draft does not address the issue.

* *EISENHOWER COMMISSION*: House only. The House subcommittee bill would provide no money for the Dwight D. Eisenhower Memorial Commission. The Senate would appropriate \$2 million, compared to a fiscal 2013 appropriation of \$1 million.

* *OCEANS*: House only. The

subcommittee would block implementation of a National Oceans Policy proposed by the Obama administration. House Republicans argue the administration policy would lead to zoning of the ocean and a decrease in recreational fishing opportunities.

* *WETLANDS*: House only. The Interior bill is one of many pieces of legislation that House Republicans are trying to use to block implementation of a proposed administration wetlands policy. Republicans argue the policy would require a permit for nonnavigable waters, violating Supreme Court decisions.

* *HUNTING*: House only. The bill would declare public lands open to hunting unless specifically closed. This proposal enjoys some Democratic support and is being proposed by House and Senate Republicans and Democrats in several other authorization bills.

* *SNOWMOBILES*: House only. The bill would authorize the Forest Service to write new oversnow vehicle regulations.

PEER demands NPS documents on Centennial planning cost

The environmental group Public Employees for Environmental Responsibility (PEER) filed a lawsuit against the Park Service September 18 demanding documentation of agency spending on a 2016 Centennial.

PEER filed the Freedom of Information lawsuit because it believes NPS and the National Park Foundation are spending money on a Centennial celebration that could be better spent on agency maintenance.

"The Park Service seems to be staging the grandest self-celebration in the history of the Republic but says it has committed virtually nothing about it to writing," said PEER Executive Director Jeff Ruch.

PEER said in a release, "Although much of the Centennial funds will apparently be raised through the

National Park Foundation, the agency's official fundraising arm, those funds could have been used to address an expanding park maintenance backlog rather than PR consultants and pricey media ad buys."

The lawsuit itself lays out this *casus belli*: "Based on NPS' own public statements, NPS has already created a new office dedicated to the Centennial, formed a thirty-member advisory committee, negotiated with multiple advertising firms, and contracted with Grey Group for a multi-million dollar contract. Despite these significant steps, NPS has claimed that it has no responsive documents relating to these activities. Plaintiff believes that NPS possesses documents responsive to Plaintiff's request that it has not produced and that NPS is withholding documents in violation of FOIA."

The lawsuit surfaces just as NPS, its advisory committee, the Grey Group advertising firm and the Senate Energy Committee are focusing on strategies for raising money for the Park Service in anticipation of the Centennial.

In that regard Senate Energy Committee leaders and staff are at this point still at the research stage in putting together legislation that would provide significant federal and non-federal revenues to the Park Service.

But the half-dozen senators who are interested in an initiative are still in the game. "We'll try to get busy on that this fall," said a committee staff member. He noted the commitment of committee Chairman Ron Wyden (D-Ore.), ranking minority member Lisa Murkowski (R-Alaska), Sen. John Portman (R-Ohio) and Sen. Mark Udall (D-Colo.) to develop legislation.

Thus far the senators have publicly focused on a base provision consisting of an endowment to address non-operational needs of the service, such as an \$11 billion maintenance backlog. The senators have not indicated yet how much entitlement money they believe should come from nonfederal sources and how much from matching federal appropriations, if any.

Other recommendations that have been circulated, but not necessarily by the senators, include diversion of a portion of oil and gas royalties to a new NPS fund of about \$350 million per year and a penny per gallon gasoline tax of about \$1.5 billion per year.

"We have a lot of concept papers before us that are very broad," said the committee staff member who would help write any legislative proposal. "We have to get a sense of what would be productive and what policy calls are needed."

The legislation, if it comes to fruition, would provide a capstone for the ambitious campaign now under way by lead National Park System supporters to improve the system as its Centennial approaches in 2016.

The senators are following up in a way on both a private Second Century Commission report that advocates regeneration of the park system and a Centennial blueprint written by the Park Service itself, *A Call to Action*. Among other things *A Call to Action*, published on Aug. 25, 2011, recommended a \$1 billion endowment program.

As a follow-up to the Second Century Commission of 2008 sponsored by the National Parks Conservation Association and *A Call to Action*, major organizations backing NPS are attempting to identify possible new sources of unconventional revenues for the parks. The National Park Foundation, the National Parks Conservation Association and the National Park Hospitality Association have come up with some 16 recommendations.

The recommendations were presented March 19 to a stellar group of past and present Congressmen, cabinet members and other VIPs of the park and rec world at a meeting hosted by the Bipartisan Policy Center.

Meanwhile, the Park Service and its allies continue to gear up for the Centennial on their own. Spearheading the effort is a 30-member Centennial Advisory Committee, which has named a six-member executive group. The

committee and the advisory group are presently discussing an initiative to develop a signature brand for the Park Service and a campaign to spread the word about the brand. The Park Service hired the advertising firm, Grey Global Group, to prepare the campaign.

One member of both the 30-member committee and the six-member executive group, Derrick Crandall, said this week, "The campaign is not ready for unveiling but we expect it to be around November 1." Crandall is counselor to the National Park Hospitality Association.

Of particular interest in the Senate campaign is the possible role of spending scourge Sen. Tom Coburn (R-Okla.) At a July 23 hearing of the Senate panel Coburn as usual scolded the committee for thinking about adding new units to the National Park System as long as the system faces an \$11 billion maintenance backlog.

But he then intrigued the senators by suggesting a revision to the Land and Water Conservation Fund (LWCF) spending formula that authorizes up to \$900 million per year. He would allocate some of the LWCF money to maintenance. How much would remain for land acquisition is unclear but Coburn noted the offshore oil and gas revenues that power LWCF are increasing each year.

In a second surprise Coburn endorsed the idea of an endowment with an influential person championing a campaign. "If you think about an endowment, an endowment is doubly saving," he said. "It means you have income coming off the endowment that you can apply today and also you don't borrow money against the future."

Coburn called for a champion to campaign for the money, such as "a retired senator, retired Congressman or a retired vice president.")

(Our nominee for a figurehead to run such a campaign would be New York Mayor Mike Bloomberg (I), who leaves office at the end of the year. He has long promoted city parks and partnerships to finance city parks with both private interests and NPS. And

he is one of the richest people in the country.)

The PEER lawsuit is at: http://www.peer.org/assets/docs/nps/9_18_13_FOIA_complaint.pdf.

RS 2477 agreement set for three Utah ROWs, a precedent?

A federal court September 4 approved a lawsuit settlement that will allow locally-supervised access across three RS 2477 rights-of-way in Utah on federal lands.

The agreement was stuck by the Justice Department, the State Of Utah, Juab County and three environmental groups.

It remains to be seen if the complex negotiation will set a precedent for the 14,000 other RS 2477 roads the State of Utah has claimed in 29 other lawsuits. The Wilderness Society, an intervenor in the litigation, hopes so.

"This settlement shows that even the most divisive of issues surrounding our public lands can be resolved if reasonable minds are willing to come to the table," said Phil Hanceford, assistant director of agency policy and planning at The Wilderness Society. "It gives us hope that we can work together with diverse stakeholders elsewhere in Utah to provide more certainty and protection for our wildest public lands."

BLM Utah State Director Juan Palma was also optimistic. "This settlement serves as a tangible reminder that certain RS 2477 issues can be resolved through good-faith negotiations and cooperation," he said.

Under the agreement Juab County will be allowed to provide access across the three rights-of-way (ROWs) to an area known as Camp Ethel in the Deep Creek Mountains, a wilderness study area. But access will be limited by a bar on development and by seasonal restrictions.

Stephen Bloch, legal director for

the Southern Utah Wilderness Alliance, warned that the battle is far from decided. "This settlement is a positive development, but it shouldn't be lost on anyone that the State of Utah has 29 other active lawsuits claiming more than 14,000 other dirt roads and trails (totaling more than 36,000 miles) as RS 2477 'highways,'" he said. "These claims, many of which are nothing more than cowpaths or dry streambeds, crisscross National Parks, National Monuments, and Utah's remarkable red rock wilderness."

Although the agreement imposes important restrictions on the use of the ways, it does grant the state and county RS 2477 ROWs. The 1866 RS 2477 law says, "the right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted."

And as Bloch noted the State of Utah has applied to the U.S. District Court in Utah for more than 14,000 such ROWs. The Tenth U.S. Circuit Court has ruled that only federal courts may adjudicate the status of claimed RS 2477 ROWs.

In the instant case the west central Utah county of Juab and the State of Utah on Aug. 25, 2005, filed suit in District Court in Utah seeking control of three ROWs known as the Toms Creek Road, the Granite Canyon Road and the Trout Creek Road. All lie within the Deep Creek Mountains Wilderness Study Area.

Three environmental groups intervened - The Wilderness Society, the Southern Utah Wilderness Alliance and the Sierra Club.

The agreement first affirms that the three ROWs are RS 2477 ROWs. It then imposes seven conditions on the ROWs. The conditions include a mandate to keep the ROWs as primitive roads, a limit on the width of the ROWs of between seven and nine feet, and a waiver by the county to any other claims within the Deep Creek wilderness study area.

The agreement is available at: <http://earthjustice.org/sites/default/>

<files/files/DeepCreekSettlement.pdf>.

WRDA bill is moving in House; Everglades projects in

The House Transportation Committee September 19 approved a major water resources bill (HR 3080) that includes authorization for Everglades projects that would cost more than \$1.8 billion. Half of the \$1.8 billion would be federal money and half would be State of Florida money.

HR 3080, introduced by both committee Republican and Democratic leaders, reportedly has the support of the House Republican cadre. But that has proved meaningless lately because conservative Republicans have had enough votes to block costly new initiatives.

However, House Transportation Committee members contend that HR 3080 would actually save money because it would deauthorize \$12 billion in old projects, enough to offset the 23 projects it would authorize anew.

House Transportation Committee Chairman Bill Shuster (R-Pa.) and ranking Democrat Nick Joe Rahall (W.Va.) are lead sponsors. Shuster's Senate counterpart Barbara Boxer, chair of the Senate Environment and Public Works Committee, immediately applied pressure on the House to get moving.

"I am pleased that Republican and Democratic leaders on the House Transportation and Infrastructure Committee worked together to develop a bipartisan bill," she said, "and I urge the House to move quickly so that we can reconcile the House and Senate approaches and get a water resources development bill to the President's desk."

On May 15, the Senate passed a counterpart Water Resources Development Act (WRDA), S 601, by an 83-to-14 margin. Congress tries to pass a WRDA bill every two years but has not been able to enact one in the last six years.

Unlike the House bill, which identifies the 23 new water resources

projects, the Senate bill would let the Obama administration choose projects to fund. However, the Corps would be expected to follow its own priority recommendations.

Similarly, the House committee leaders' bill would limit its approval of approval to initiatives cleared by detailed Corps plans over the last few years.

Appropriations to pay for the projects - whether identified by the administration or by Congress - must still come from separate appropriations bills.

Since 2000 when Congress approved an overarching multi-billion-dollar Comprehensive Everglades Restoration Project (CERP) in a previous WRDA, only two of the dozen or so projects anticipated by the law have been authorized.

Under CERP the Corps of Engineers, the State of Florida and Interior Department agencies are charged with carrying out major projects to restore the Everglades by in general replumbing south Florida.

HR 3080 would authorize these four Everglades projects:

* Caloosahatchee River West Basin Storage Reservoir, \$594 million (\$297 million federal, \$297 million state),

* Biscayne Bay coastal wetland, \$192 million (\$96 million each),

* Broward County water preserve area, \$866 million (\$433 million each), and

* C-111 Spreader Canal, \$180 million (\$90 million each).

Sen. Bill Nelson (D-Fla.) and Reps. Alcee Hastings (D-Fla.) and Mario Diaz-Balart (R-Fla.) put the four Everglades projects into stand-alone bills (S 414, HR 913) in February with slightly less authorization amounts.

More information is available on the projects at:

http://www.evergladesplan.org/pm/projects/landing_projects.aspx.

NPCA says state Class I haze plans could take centuries

The National Parks Conservation Association (NPCA) September 10 pressured the Obama administration to set tougher deadlines for cleaning up haze over Class I national parks and wilderness areas.

However, key Republican senators, such as those in Wyoming that represent the pivotal Yellowstone National Park, are pushing back. They say the administration is already going too far in regulating haze.

On its behalf, NPCA argues that under EPA's Regional Haze Rule of 1999 the air over ten national parks won't be clear from a range of 83 years (Sequoia National Park) to 263 years (Cascade National Park). NPCA says those goals even violate the generous, present EPA deadline for cleaning up the air over all parks by 2064.

"At the current rate of clean up it will be ten generations before our national parks are returned to natural air quality," said NPCA clean air program director and counsel Stephanie Kodish. "With pollution control technology and Congressional approval already in place to meet the 2064 deadline, which is half a century away, it should not take longer than this nation has existed to clean the air at these national treasures."

Under the Regional Haze Program states submit to EPA State Implementation Plans (SIPs) to eliminate haze that drifts over Class I parks by 2064. EPA has approved many of those SIPs, but NPCA says the state plans don't do the job.

Said NPCA in a Question and Answer paper: "In their haze cleanup plans, some states were unable to show that their protected parks and wilderness areas would be on track to meet the 2064 deadline. Those states predicted that clean air would not be reached in some

cases for hundreds or even thousands of years. These delays are especially discouraging because by law, the easiest pollution reductions to achieve – from modernizing bigger, older industrial sources – are required to happen now. In many cases, the Environmental Protection Agency has approved these unacceptably extended timeframes.”

But Wyoming Gov. Matt Mead (R) and Wyoming Republican Sens. Mike Enzi and John Barrasso counter that EPA’s haze demands are economically and financially debilitating.

On August 26 Mead repeated his charges to EPA that a proposed Wyoming-peculiar visibility rule would cost utilities in the state hundreds of millions of dollars, if not billions of dollars.

In a letter to EPA Administrator Gina McCarthy, Mead said the EPA proposal to clean up air over Class I areas would come close to putting utilities in the state out of business.

Separately, Wyoming Sens. Enzi and Barrasso introduced an amendment (SA 1863) last week to an energy efficiency bill (S 1863) that would bar any federal plan to replace a state plan if it would cost more than \$100 million per year or \$300 million over several years to implement. The Senate leadership has cleared the Enzi amendment for floor consideration.

EPA proposed the Wyoming rule June 10 because it said a Jan. 12, 2011, state plan for reducing haze over Class I public lands within the state failed because it did not establish rigorous controls over coal-fired power plants. EPA did approve the rest of the state plan.

But NPCA says those state concerns must be balanced by the possibility or probability that visibility over the national parks could be marred for centuries. NPCA, using data from SIPs submitted to EPA, said these parks won’t have clean air until the following dates:

* North Cascades National Park

(Washington) – 2276

* Badlands National Park (South Dakota) – 2265

* Voyagers National Park (Minnesota) – 2177

* Yellowstone National Park (Wyoming/Montana/Idaho) – 2163

* Theodore Roosevelt National Park (North Dakota) – 2158

* Big Bend National Park (Texas) – 2155

* Grand Canyon National Park (Arizona) – 2127

* Black Canyon of the Gunnison National Park (Colorado) – 2119

* Joshua Tree National Park (California) – 2106

* Sequoia National Park (California) – 2096.

Background on the NPCA studies is at <http://www.npca.org/news/media-center/press-releases/2013/national-parks-group-1.html>.

El Dorado Forest deal finally identifies open OHV ways

A decade-long dispute about off-road vehicle (OHV) routes in the El Dorado National Forest in California may have ended this week with a broad agreement among interest groups and local governments.

The agreement represents the last step in deciding what ways should be open to motorized travel and what ways should be closed, a policy that was supposed to be implemented by a 2008 travel management plan.

The agreement, announced September 16, focuses on 42 OHV routes through meadows identified in the 2008 plan that conservationists said should be off limits to vehicles. The deal opens 24 of the routes immediately, closes 18 and directs the Forest Service to review the closed 18 over the next three years for possible opening. OHVs could use many of the opened routes.

Technically, the agreement simply allows the Forest Service to implement a court-ordered June 2013 supplement to the 2008 plan that covers the 42 routes through meadows. But 11 appeals to that supplement had threatened further

litigation before U.S. District Court Judge Lawrence K. Karlton.

Said Forest Supervisor Laurence Crabtree, "I am implementing the decision that was made in June following the completion of a Supplemental Environmental Impact Statement and a record of decision. Eleven appeals were filed on that decision and I am happy to say all 11 were withdrawn, which paved the way for me to open the 24 routes now and to get on with repairing the other 18."

One of the environmental group appellants, Public Employees for Environmental Responsibility (PEER), endorsed the compromise. Said California PEER Director Karen Schambach, "The nineteen parties, who represent the diversity of a public that is passionate about our public lands, have chosen collaboration over litigation. Nobody got all they wanted, but we have agreed to work together on this going forward, to protect our public lands and provide high quality recreation opportunities."

The Forest Service on Nov. 9, 2005, published a regulation directing its field offices to write travel management plans to identify routes that should continue to be open to OHVs and which should be closed. Forests around the county immediately began writing the plans.

The implementation of those plans has been particularly controversial in California where Congressional Republicans have repeatedly inserted amendments to House versions of appropriations bill curbing the plans. For instance, in a fiscal year 2014 Interior and Related Agencies spending bill the House subcommittee on Interior July 23 would have the service redo all controversial plans.

Says a committee report accompanying the bill, "The Committee has been informed by several communities that travel management plans did not properly include public and community input and needs. Where communities are dissatisfied with travel management plans, the Committee directs the

Forest Service to revise these plans in consultation with, and to include more input from, the communities." The report doesn't tell the Forest Service how to determine which forests should revise their plans.

The El Dorado National Forest published its travel management plan on April 2, 2008. It kept open 210 miles of roads for OHVs and added six miles. Conservationists took the decision to court and on July 31, 2012, Judge Karlton upheld the plan, except for 135 miles of meadow routes.

For those 135 miles Karlton directed the Forest Service to open 46 miles but conduct further study on 89 miles. On June 13 the service completed a supplement to the plan that addresses the 42 meadow trails. The supplement was immediately hit by 11 appeals from nine environmental groups, eight OHV groups and the counties of Alpine, Amador and El Dorado.

Feinstein not showing cards on Point Reyes oyster farm

Sen. Dianne Feinstein (D-Calif.) is not saying yet if she will attempt some sort of legislative strategy to keep open an oyster farm in Point Reyes National Seashore.

Feinstein, long a champion of the oyster farm, would have to persuade Congress to overturn a September 3 decision of the Ninth U.S. Circuit Court of Appeals upholding a decision to remove the business from the park.

Feinstein at this point is not tipping her hand. A spokesman for the senators would only say that Sen. Feinstein "did not comment on the decision."

Complicating Feinstein's chore, her Senate partner from California, Barbara Boxer (D), has taken an opposite position in favor of an Interior Department decision to shutter the oyster farm.

The two-to-one decision of the court 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 followed the dictates of Congress in (1) a fiscal year 2009 appropriations law requiring a review of the permit and (2) a 1976 law designating the portion of the park that includes the oyster farm as "potential wilderness."

"The Secretary elected to let the permit expire not to avoid 'violating' any law, as Drakes Bay posits, but because the Secretary weighed and balanced competing concerns about the environment and the value of aquaculture," said the majority opinion written by Judge Margaret McKeown. "He chose to give weight to the policies underlying wilderness legislation, taking into account consideration of environmental impacts."

But because of the strong dissent of Judge Paul J. Watford, the owner of the Drakes Bay Oyster Company said he would appeal the decision to the full Ninth Circuit and continue oystering. "After reading the Court's decision – and especially the dissent from Judge Watford – we are more convinced than ever that we will prevail based on the merits of our case," said Kevin Lunny, owner of Drakes Bay.

Environmentalists lauded the decision. "The court ruling affirms that our national parks will be preserved and is another step closer to being protected as wilderness for the American people," said Neal Desai, associate director of the Pacific Region for the National Parks Conservation Association. "Incredibly beautiful places like Drakes Estero need to be returned to their full splendor as Congress determined decades ago when the land was purchased by and for the American public."

The battle over the oyster permit has become 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 oppose

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. Feinstein has also backed the Lunnys.

The Ninth U.S. Circuit Court of Appeals entered the conversation February 25 when it ordered the Park Service to allow the oyster farm to continue to operate until the court considered the lawsuit objecting to a planned closure. Now the court has rendered its decision.

At bottom the Drakes Bay Oyster Company contends that the Congressional direction in a fiscal year 2009 appropriations law (PL 111-88 of Oct. 30, 2009) made clear the permit was to be extended.

The debate among the three Ninth Circuit judges – all appointed by Democratic Presidents – focused on the language of the 1976 Point Reyes Wilderness Act. It directed NPS to manage the Drakes Bay area "as wilderness, to the extent possible, with efforts to steadily continue to remove all obstacles to the eventual conversion of these lands and waters to wilderness status."

The majority held that meant remove the oyster farm.

But in his dissent Judge 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.

The Ninth Circuit decision is available at: http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000654.

Notes

Feds act on wetlands permits. EPA took two significant steps September 17 toward an expansive new policy that defines water bodies that are subject to Section 404 permitting under the Clean

Water Act. The actions are designed to clarify what non-navigable water bodies must be covered by the permits. The U.S. Supreme Court posted two decisions that the Bush administration used to limit permitting to navigable bodies. One EPA action consists of a draft report that uses scientific literature to identify connectivity of water bodies. The other action is to submit to the Office of Management and Budget (OMB) a proposed rule based on the report. The draft report digs into the details. It makes three conclusions. First, "Streams, regardless of their size or how frequently they flow, are connected to and have important effects on downstream waters." Second, "Wetlands and open-waters in floodplains of streams and rivers and in riparian areas (transition areas between terrestrial and aquatic ecosystems) are integrated with streams and rivers." And third, "there is insufficient information to generalize about wetlands and open-waters located outside of riparian areas and floodplains and their connectivity to downstream waters." Again, EPA will now use those conclusions to prepare a regulation to expand somewhat the definition of a navigable water. "This draft rule takes into consideration the current state-of-the-art peer reviewed science reflected in the draft science report," says EPA. In announcing the draft report and draft regulation EPA did not mention a more substantive policy change it submitted to OMB in February 2011 that would have significantly expanded the definition of a navigable water. EPA did, however, say that current agricultural exemptions set by the Bush administration would not be changed by the proposed rule. Conservationists commended the administration, including the Izaak Walton League of America, the National Wildlife Federation, the Theodore Roosevelt Conservation Partnership and Trout Unlimited. The EPA materials are available at: <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=238345>.

Flight 93 victims remembered.

Secretary of Interior Sally Jewell was among the dignitaries September 11 at the Flight 93 Memorial in Shanksville, Pa., that remembered the 40 passengers and crew of United Flight 93 who died

in the September 11, 2001, terror attacks. The dignitaries came to a groundbreaking for a 6,800-square-foot visitor center. Completion of the center is scheduled for September 2015, well behind the schedules for the 911 memorials in New York City and at the Pentagon in Arlington, Va., which have already been completed. The National Park Foundation has raised more than \$40 million for the Flight 93 Memorial. The delay was caused in part by difficult negotiations between the Park Service and some of the eight owners of the 1,400 acres on the site. The initial portion of the Flight 93 Memorial was completed in September 2011, including a memorial plaza and 40 trees to honor the 40 passengers and crewmembers who died in the crash. Said Jewell, "It is a testament to the 40 that 300,000 people a year visit this place of honor and more than 100,000 people have donated to build the Memorial. Thank you to the Families of Flight 93, the Flight 93 Advisory Commission, the Flight 93 Memorial Task Force, Friends of Flight 93 and the National Park Foundation for your tireless work to create a memorial to honor these heroes." President Bush signed legislation on Sept. 24, 2002, that authorized the site as a unit of the National Park System. The website for the memorial is at www.nps.gov/flni/.

New delay in Eisenhower Memorial.

The organizations charged with final approval of the design of a memorial to former President Dwight D. Eisenhower are unable to agree on the design. The Eisenhower Memorial Commission last week canceled a scheduled September 12 appearance before the National Capital Planning Commission, perhaps delaying approval by several months. The planning body must approve the design. Reportedly, the National Capital Planning Commission staff objected to a number of facets of the design proposed by the famed architect Frank Gehry, such as the scale of memorial elements. The existing proposal had moved forward July 18 when the U.S. Commission of Fine Arts approved the general concept of a memorial designed by Gehry. The vote was 3-to-1. However, members of the Eisenhower family have objected to the proposal. To move forward the

proposed \$143 million memorial must gain approval from all the commissions and obtain money from Congress. The money side took a hit July 23 when the House subcommittee on Interior Appropriations approved no money for the commission in a fiscal year 2014 spending bill. In addition, the House Natural Resources Committee approved a bill (HR 1126) June 12 that would scrap the existing Eisenhower Commission and establish a new commission, with new staff. However, the Congressional Budget Office estimated the bill would increase the cost of the memorial by \$17 million.

LWCF state grants announced.

Despite continued House Republican opposition to the Land and Water Conservation Fund (LWCF), the Park Service September 12 was able to make available \$40 million in fiscal year 2013 state grants. That's because Congress simply continued fiscal 2013 spending for LWCF at the fiscal 2012 level because it was unable to complete a new appropriations bill. The \$40 million comes after a 5.1 percent deduction because of a budget sequestration. That left the state grant program with the \$40 million to allocate. For fiscal 2014 the Obama administration has asked Congress to move legislation that would guarantee \$900 million per year for LWCF without the need for annual appropriations. However, the House subcommittee on Interior Appropriations would take the opposite approach. It approved a fiscal 2014 money bill July 23 that would put up no money for LWCF in fiscal 2014.

Panel considers Connor post.

The Senate Energy Committee was generally receptive September 17 to the nomination of Bureau of Reclamation Commissioner Michael L. Connor to the number two post at the Interior Department - deputy secretary. One key senator, ranking committee Republican Lisa Murkowski (R-Alaska), endorsed the nomination. "You clearly know the significance that the Department of the Interior has to western states, in particular - you know firsthand the impact it can have on our lives and our lands," she said. "I am pleased to say that, on the basis of your prior service and the opportunity I have had to observe your work for some

time, I (will) be able to support your nomination today." Connor has headed the Bureau of Reclamation since 2009. Before that he served as counsel to the Senate Energy Committee. As deputy secretary of Interior Connor would function as the chief operating officer.

TV network to help Great

Waters. The World Fishing Network said September 12 that it will partner with conservation groups to highlight America's largest water bodies. The network will develop programs that tell the stories behind the waters. In 2009 leading conservation groups teamed up to form the America's Great Waters program to protect 21 significant water bodies, including the Chesapeake Bay, the Everglades, the Great Lakes, the Colorado River, and more. Said Keri Mahe, vice president of sales for the network, "World Fishing Network, as the only television network devoted exclusively to fishing and the outdoor lifestyle, recognizes its responsibility to assist America's Great Waters' year-round efforts to raise awareness for the protection, conservation and enjoyment of America's watersheds."

California: Get the lead out.

The California Senate cleared for Gov. Jerry Brown's (D) signature last week legislation (Assembly Bill 711) that would ban the use of all lead ammunition in sport hunting. If enacted, AB 711 would make California the first state to require nontoxic bullets in hunting. Environmentalists are ecstatic at the prospect but the sport hunting industry is, well, up in arms. "California is on the verge of a historic step toward protecting people and wildlife from needless lead poisoning," said Jeff Miller, conservation advocate at the Center for Biological Diversity. But Larry Keane, senior vice president of the National Shooting Sports Foundation, said the bill would cost the state money, would make ammunition scarce and expensive, and would not target a specific problem, as the Fish and Wildlife Service did in banning the use of lead shot for waterfowl hunting. "AB 711 proponents point approvingly to the U.S. Fish and Wildlife regulation restricting the use of lead shot for waterfowl hunting,"

he said. "But the USFWS regulation is based on scientific concerns of a specific wildlife population impact." The foundation has put together an alliance of the hunting industry, unions and taxpayer advocates against the bill. Environmentalists have not enjoyed as much success nationally in attempting to ban lead ammunition. EPA says it does not have authority under the Toxic Substances Control Act to regulate lead gear. In addition House and Senate members from both political parties have introduced legislation in the last two years that would bar EPA from issuing such regulations.

Alaska mine in monument saved.

The Forest Service decided September 6 to give the Green Creek Mine in the Tongass National Forest in Alaska a temporary reprieve. The service posted a record of decision (ROD) that allows the Hecla Greens Creek Mining Company to deposit tailings in 18 acres of the Admiralty Island National Monument within the forest. The company said that without the additional waste disposal acreage it would have been forced to close. At the same time the company, one of the largest employers in Southeast Alaska, and its political supporters said the ROD falls far short of the 116 acres the company requested and will provide for waste storage only for an additional ten years. Said Sen. Mark Begich (D-Alaska), "Today's decision provides some mid-term relief, but falls short of satisfying me or the mine operators or its 400 employees."

Conference calendar

SEPTEMBER

30-Oct. 2. **Outdoor Industry Association Rendezvous** in San Diego. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

OCTOBER

3-5. **National Association of State Outdoor Recreation Liaison Officers annual meeting** in Austin, TX. Contact: <http://www.nasorlo.org/>.

Postponed until 2014. **Watchable Wildlife**

Annual Conference Contact: Watchable Wildlife, Inc., PO Box 319, Marine on St. Croix, MN 55047. 651-433-4100. <http://www.watchablewildlife.org>.

5-9 **The Wildlife Society** annual meeting in Portland, Ore. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

8-10. **National Recreation and Park Association** Congress and Exposition in Houston, Texas. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2158. <http://www.nrpa.org>.

16-18. **Sportfishing Summit** in Fort Myers, Fla.. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

30-Nov. 2. The **National Trust for Historic Preservation** annual conference in Indianapolis, Ind. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

NOVEMBER

2-7. **National Scenic & Historic Trails Conference in Tucson, Ariz.** Contact: Partnership for the National Trails System at www.pnts.org.

4-6. **National Forest Recreation Association 65th** annual conference and trade show in Reno, Nevada. Contact the website nfra.org or the NFRA Office at: 559-564-2365.

12-16. **National League of Cities Annual Congress of Cities** in Seattle. Contact: National League of Cities, Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004. (202) 626-3105. <http://www.nlc.org>.

DECEMBER

10-12. **America Outdoors Marketing and Management Conference** in Albuquerque, N.M. Contact: <http://www.americaoutdoors.org/>.