

# Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 32 Number 17, September 12, 2014

In this issue. . .

**Temporary money bill introduced.**

*Appropriators insist it will be noncontroversial. Would keep all agencies in money until after the November 4 elections.... Page 1*

**NPS readies entrance fee hikes.**

*Would require public consultation first. Fees haven't increased in eight years. With election near the timing may be risky..... Page 4*

**DoI defends conservation agenda.**

*Says it can promote LWCF and NPS Centennial at the same time. Critic sees LWCF bias..... Page 5*

**House votes to block water rule.**

*Would bar expansion of definition of wetlands requiring permit. One of many GOP attempts.... Page 7*

**Sportsmen and Jewell back LWCF.**

*Hunters, fishermen detail some LWCF successes. Jewell marks 50<sup>th</sup> anniversary of law ..... Page 8*

**FS groundwater rule in trouble.**

*Once again GOP complains of overreach in a proposal to establish new water policy.. Page 10*

**EPA's Wyoming haze rule blocked.**

*Circuit court stays reg to protect Class 1 fed areas. Indicates state would win... Page 11*

**FS roadless court fight goes on.**

*Full appeals court will consider exemption of Tongass NF..... Page 12*

**Notes..... Page 14**

**Boxscore of Legislation..... Page 16**

## Congress begins work on relatively riderless CR

The House at press time was preparing to consider a temporary spending resolution that would keep the government in money through the November 4 elections and into a lame duck session. That session is expected to begin in mid-November.

The temporary continuing resolution (HJ Res 124) is needed because the House and Senate will be unable to agree on the 11 annual appropriations bills before fiscal year 2015 begins October 1.

The continuing resolution (CR) is relatively noncontroversial so the House and the Senate may be able to pass it with only a few political complications going into the elections.

The continuing resolution contains money for all 11 spending bills including the four leading outdoor measures - Interior and Related Agencies, Energy and Water, Transportation, and Agriculture. The CR would put up money for all agencies through December 11.

Said House Appropriations Committee Chairman Hal Rogers (R-Ky.), "It is a critical piece of legislation, and my Committee has crafted the bill in a responsible, restrained way that should draw wide support in the House and Senate. This bill is free of controversial riders, maintains current levels, and does not seek to change existing federal policies."

Conservatives disagree that HJ Res 124 is free of riders. Heritage Action, an arm of the Heritage Foundation, urged a no vote on the CR because a rider would extend the Export-Import Bank for nine months.

Rogers's counterpart at the Senate Appropriations Committee, chair Barbara Mikulski (D-Md.), has yet to begin moving a Senate bill. She has told the press she will attempt to keep it as noncontroversial as possible.

Given the tempestuous political times, it is almost guaranteed that some issue will surface to muck up HR Res 124 - immigration, Middle East war, health care, etc. And now the Export-Import Bank.

On a relatively minor note Rogers included a provision to shut off money for a Dwight D. Eisenhower Memorial Commission. While House Republicans want to do that because they object to the design of a proposed memorial, the Senate has generally resisted.

If and when House and Senate appropriators do sit down to negotiate 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 money and payments-in-lieu of taxes (PILT) money.

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. And the two differ substantially on conservation spending, particularly the Land and Water Conservation Fund (LWCF).

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

Not only did Reed and Murkowski recommend the fiscal 2014 emergency fire payback (now grown to \$615 million from

the original \$470 million), they also included a rider that in the future would transfer emergency fire-fighting expenses out of appropriations bills and into a disaster-funding account.

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.

By not including the fire payback and PILT payments the Senate subcommittee draft has more than \$900 million to spend on other programs than the House committee.

With more money available in the senators' draft in fiscal 2015 than the House subcommittee, Reed and Murkowski would increase allocations to conservation programs above levels approved by the House panel. For instance the Senate subcommittee proposed \$137 million more for federal land acquisition than did the House committee, \$186 million to \$49 million.

For the state side of LWCF Reed and Murkowski's draft recommends \$48 million, the same as for fiscal 2014 and \$2 million more than the \$46 million the House committee approved in HR 5171.

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

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

**TRANSPORTATION:** The House approved its bill (HR 4575) June 10 that would bar the use of regional grant money called TIGER for recreation and trails projects. The Senate Appropriations

Committee approved its version of a bill (S 2438) June 5 without the trails limitation.

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

**Centennial:** Like the Republican-dominated House Appropriations Committee the senators recommended extra money for the Park Service in anticipation of its Centennial in 2016, as requested by the Obama administration. However, the House committee approved \$5 million more - \$30 million for NPS operations and \$10 million for matching endowment grants compared to the senators' \$25 million for NPS operations and \$10 million for endowments

**FLREA:** Like the House bill Reed and Murkowski would extend a federal recreation area fee law for one year until Sept. 30, 2016. Theoretically, that would give Congress time to revise or extend the existing law, the Federal Lands Recreation Enhancements Act of 2004 (FLREA).

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

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

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

block implementation of a National Ocean Policy proposed by the Obama administration.

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

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

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

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

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

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

**NATIONAL HERITAGE AREAS:** The senators recommended \$20.3 million, compared to \$9.2 million by the House committee and \$18.4 million in the fiscal 2014 appropriation. Said explanatory notes accompanying the Senate draft, "The recommendation once again emphatically rejects the administration's proposal to reduce funding for national heritage areas. This proposed funding reduction would have a particularly acute impact since the Service is in the process of approving management plans for newer areas which allow them access to

additional funding to implement their restoration and recreation programs." The administration had recommended the \$9.2 million favored by the House committee.

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

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

**EISENHOWER COMMISSION:** The senators recommended \$1 million to keep the controversial commission in business, compared to no money in the House bill and \$1 million in fiscal 2014.

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

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

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

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

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

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

**BLM LANDSCAPE SYSTEM MANAGEMENT:**

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

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

## **NPS tells field to gear up for entrance fee increases**

For the first time in eight years the Park Service has begun to raise entrance fees across the board, but with no public announcement.

The proposed schedule submitted to the field in August would increase the annual pass to a park by as much as \$20, the per vehicle fee for as much as \$10 and the per person entrance fee by as much as \$7.

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

And there must be public comment, says an August 19 memorandum from NPS Director Jonathan B. Jarvis. "Parks must thoroughly engage their stakeholders and document the support and concerns expressed by the public," says the memo. "Before submitting a request to implement increased fees to the Regional Directors, Superintendents must carefully evaluate and approve all proposed fee changes. Regional Directors may exempt parks from proposing increased entrance rates if there are extenuating circumstances."

Park Service spokesman Jeffrey Olson summarized, "Beginning in January, parks are authorized to change their entry fee to align with the new schedule AFTER (his emphasis) they have actively engaged the public and stakeholders about proposed changes. The decision to adjust fees will be made at the park level with input from local communities to make sure any fee increase is implemented in a way that works best for parks and visitors."

The proposal comes at a politically difficult time, because Congress at the moment is rewriting the underlying entrance fee authority in the Federal Lands Recreation Enhancements Act of 2004 (FLREA).

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

Said one source close to the political situation, "There is some trepidation within NPS on raising entrance fees during this election period. It is possible that some Members of Congress could attack the increases during the fall campaign - and even threaten the one-year extension of FLREA now contained in the House and Senate FY15 appropriations measures."

(The one-year extensions are included in a fiscal year 2015 Interior and Related Agencies appropriations bill (HR 5171) approved by the House Appropriations Committee July 15 and in a counterpart draft bill posted by leaders of the Senate subcommittee on Interior Appropriations August 1.)

The source added, "On the other hand, enactment of the House Natural Resources Committee successor to FLREA would subject increased fees to specific Congressional action approving the higher rates - unlikely. And I am certain that NPS leaders also felt that the overall friendliness of Congress in the next Congress to NPS and fees might be lower."

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

years, or delay the new rates until 2016 or 2017."

The proposed fee schedule places park units in groups one through four with group four the most expensive parks, such as Grand Canyon, and group one the least expensive. For Grand Canyon the schedule proposes an annual pass increase from \$50 to \$60, a per vehicle fee increase from \$25 to \$30 and a per person increase from \$12 to \$15.

In a random sample for a group three park such as Acadia the annual pass would increase from \$40 to \$50, the per vehicle fee from \$20 to \$25 and the per person fee from \$5 to \$12.

In group two, using Muir Woods as an example, the annual pass would double from \$20 to \$40 and the per person fee would increase from \$7 to \$10.

In group one, using Lincoln Boyhood as an example, the annual pass would triple from \$10 to \$30 and the per person fee would increase from \$3 to \$7.

## **DoI says it can at once promote LWCF, NPS Centennial**

In the August 29 issue of *FPR* we reported on some discontent in the ranks about the emphasis the Interior Department was placing on renewal of the Land and Water Conservation Fund (LWCF), perhaps at the expense of the upcoming NPS Centennial.

At the time of publication, we had not heard back from the office of Secretary of Interior Sally Jewell. Now we have and the department is saying in effect it can walk and chew gum at the same time. That is, it can work for the renewal of LWCF while it promotes the NPS Centennial in 2016.

Said Jewell spokeswoman Jessica Kershaw, "(T)he Secretary of the Interior manages an agency of more than 72,000 employees, in 2,400 operating locations across the United States and its territories, with a budget of more than \$16 billion and a Department that raises more than \$18 billion in revenues collected from resources developed

on our public lands and waters - and therefore is quite capable of managing multiple priorities and missions, those of which at many times are at conflict with one another."

She added, "Both the 50th anniversary of the Land and Water Conservation Fund Act as well as the upcoming Centennial of the National Park Service are important milestones in our nation's conservation history to be celebrated, remembered and serve as a marker for Americans to recommit to our unique outdoor heritage and work to protect it for future generations. Secretary Jewell is squarely committed to both."

In the last issue of *FPR* we quoted the counsel to the National Park Hospitality Association, Derrick Crandall, as saying the department didn't appear to be giving the Centennial the same emphasis as LWCF, above the level of NPS Director Jon Jarvis.

For the record the Obama administration in March came out foursquare behind an ambitious Park Service Centennial initiative. It asked Congress in a fiscal year 2015 budget request for between \$647 million and \$847 million in new money for the Centennial, depending on who is estimating.

Craig Obey, senior vice president of government affairs for the National Parks Conservation Association, said that proposal demonstrates administration support for the Centennial. Of Crandall's concerns he told us, "I don't see that. I see an administration proposal to spend over a billion dollars over the next three years (in new money) for the National Park Service. That's a good place to start and I know Secretary Jewell went to bat for it in the Park Service budget."

Obey did say he shared Crandall's frustration that the administration did not propose a significant increase for federal land roads in its fiscal 2015 transportation budget request. National park roadwork constitutes a

large percentage of a \$12 billion agency maintenance backlog.

On the LWCF front, Jewell on September 3 marked the 50<sup>th</sup> anniversary of the law at an event with three House members and other officials in New Jersey. At the same time Jewell marked the 50<sup>th</sup> anniversary of a sister law, the Wilderness Act.

Jewell launched a mini-campaign in support of LWCF July 7, promising to visit red and blue states. She complained that Congress has failed to appropriate \$18 billion for LWCF over the last half-century. The \$18 billion has been posted into the account from offshore oil and gas royalties.

**Centennial:** In its March 4 fiscal 2015 budget request the Obama administration asked Congress for between \$647 million and \$847 million in new direct appropriations and the rest in new programmatic spending from authorizing committees.

Congressional appropriators are doing their part. The leaders of the Senate subcommittee on Interior Appropriations August 1 outlined a draft fiscal 2015 spending bill that supports the Centennial, much as the House Appropriations Committee approved in its counterpart bill (HR 5171) July 15. However, the House committee approved \$5 million more - \$30 million for NPS operations and \$10 million for matching endowment grants compared to the senators' \$25 million for NPS operations and \$10 million for endowments.

Although appropriators are on board, authorizing committees have done very little about the Centennial. When Sen. Ron Wyden (D-Ore.) chaired the Senate Energy Committee he expressed some enthusiasm for the Centennial but his replacement Sen. Mary Landrieu (D-La.) has not.

A summary of the administration's authorization request, prepared by the National Parks Conservation Association's John Garder, director for budget and appropriations, begins with a \$55 million appropriations hike and counts \$192 million in Land and Water

Conservation Fund appropriations.

It then enumerates the new authorizations requested by the administration, including a \$100 million Centennial Challenge, a \$200 million deferred maintenance fund, a second \$100 million deferred maintenance account for the Centennial, a portion of \$100 million from a Centennial Land Management Investment Fund, and a portion of \$100 million Opportunity Growth & Security Initiative.

The concessioners' counsel Crandall worried that nothing is now happening on the Hill. "We're just not seeing the leadership emerge in Congress," he said.

**LWCF extension:** The renewal of LWCF presents a bit more immediate challenge for Congress than the Centennial because the fund is due to expire at the end of September 2015, and the Centennial is expected to be a long-term event beginning in 2016.

## **House once again approves measure to block wetland rule**

The House September 9 approved stand-alone legislation (HR 5078) that would stop a proposed Obama administration rule to expand the definition of a water body requiring a Section 404 Clean Water Act permit. The vote was 262-to-152.

The House had earlier approved similar legislation June 17 in a fiscal year 2015 Energy and Water appropriations bill (HR 4923). In addition, the House Appropriations Committee on July 15 included a like-provision to block the rule in a fiscal 2015 Interior and Related Agencies appropriations bill.

HR 5078 differs from those appropriations efforts in that it is a stand-alone bill.

All three bits of legislation target a proposed May 29 rule from EPA and the Corps of Engineers that would go beyond an existing regulation that only requires a Section 404 permit for

navigable waters. The new proposal would also require permits for seasonal streams, wetlands near navigable waters and other waters.

The Senate is in a more difficult political place on the issue than the House. A solid majority of Republicans and some Democrats in the House opposed the proposed rule.

But in the Senate, while Democratic leaders support the administration proposal, a number of Democratic senators who are up for reelection this year don't - and would like to avoid a vote on the issue at all cost. A Senate counterpart to the House bill (S 2496) has been introduced with the cosponsorship of 38 senators. Sen. John Barrasso (R-Wyo.) is the lead sponsor.

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

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

The lead sponsor of HR 5078, Rep. Steve Southerland II (R-Fla.), said on the House floor September 9, "The old rule (just covered wetlands adjacent to) navigable waters. Now it's all waters adjacent to wetlands, adjacent to navigable waters. This really facilitates a capture of private property using the Clean Water Act and this onerous authority as a tool for imminent domain."

But Rep. Tim Bishop (D-N.Y.), ranking Democrat on the House subcommittee on Water Resources, countered, "Opponents of this rulemaking

are trying to portray this as a Federal attempt to regulate birdbaths, puddles, and driveways, but both common sense and the testimony of representatives of the EPA and the Corps before our committee would confirm that these were never subject to Clean Water Act jurisdiction, nor would they be subject to the act under the administration's proposed rule."

In the Senate Appropriations Committee Republicans have paralyzed money bills by threatening to offer amendments to block the proposed wetlands rule and a proposed power plant rule. Sen. John Hoeven (R-N.D.) is taking the lead there.

Republican and Democratic legislators alike have criticized the June 2 administration proposal that would expand the definition of navigable water requiring a permit to seasonal streams, wetlands near navigable waters and other waters.

But sportsmen led by the Theodore Roosevelt Conservation Partnership support the proposal. The groups said in June, "Undermining the clean water rule, which currently is open to public comment, would negatively impact the nation's hunting and fishing economy, which generates \$200 billion in economic activity and 1.5 million jobs each year."

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

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

EPA and the Corps of Engineers in their proposal said that the rule should go beyond the existing regulation that only requires a Section 404 Clean Water

Act permit for navigable waters.

Disputes over the Obama administration's proposed wetland rule and a proposed power plant regulation may delay action on a fiscal year 2015 Interior and Related Agencies spending bill for the foreseeable future.

The wetlands rule would be even more germane to the Interior bill because that measure appropriates money for EPA, the author of both the wetland and power plant rules.

## **Sportsmen itemize LWCF's benefits; Jewell wants renewal**

Hunting and fishing conservation groups last week jumped onto the campaign to extend and strengthen the Land and Water Conservation Fund (LWCF), which is due to expire at the end of September 2015.

Groups ranging from backcountry hunters to archery enthusiasts combined to detail in a new report the successes of the 50-year old LWCF and the need to renew it.

The hunters and fishermen add a powerful additional voice to the renewal campaign already under way by the Obama administration, park and rec agencies at all levels, environmentalists and other citizens. Of note many hunters and fishermen, if not most, are Republicans and House Republicans are consistently the lead critics of LWCF.

"Yet despite the fund's many conservation success stories, it has gone underfunded for too long, and many opportunities to improve game and fish resources have been missed due to a perpetual lack of funding," said Whit Fosburgh, president and CEO of the Theodore Roosevelt Conservation Partnership. "Now is the time for Congress to live up to its commitment and fully fund the LWCF." President Roosevelt was of course a Republican.

In its report the hunters and fishermen describe 11 major land acquisitions using LWCF money that have benefitted outdoorsmen. For instance,



in the Midwest the report says LWCF has contributed \$600,000 to help expand the Ottawa National Wildlife Refuge from 5,470 acres to 10,000 acres.

The Ottawa refuge land that contains habitat for waterfowl is threatened with "urbanization, agriculture, invasive species and diking," says the report, adding that hunting and wildlife viewing in the Lake Erie area produces \$1.5 billion in sales and supports 50,000 jobs per year.

In the West the report describes a pending acquisition of Tenderfoot Creek within the Lewis and Clark National Forest in Montana. "This property has been a national priority for us to acquire and transfer to the Forest Service for several years now and we are very close to finishing it. It is a tremendous elk hunting area, and with the elimination of the checkerboard ownership, habitat management for many species should improve," said Blake Henning, vice president of lands and conservation with the Rocky Mountain Elk Foundation, which led the effort to purchase the land.

The report from the hunting and fishing groups - including The Rocky Mountain Elk Foundation, the Mule Deer Foundation, the National Wild Turkey Federation, Ducks Unlimited and Trout Unlimited - is available at: [http://www.trcp.org/images/uploads/wygam/LWCF\\_REPORT.pdf](http://www.trcp.org/images/uploads/wygam/LWCF_REPORT.pdf).

Meanwhile, the Obama administration continues to lead the campaign for renewal of LWCF. On September 3 Secretary of Interior Sally Jewell marked the 50<sup>th</sup> Anniversary of the program and the 50<sup>th</sup> anniversary of the sister Wilderness Act at a ceremony in New Jersey. Three New Jersey House members joined her - Reps. Rodney Frelinghuysen (R-N.J.), Rush Holt (D-N.J.) and Leonard Lance (R-N.J.)

Jewell said the LWCF law authorizes the expenditure of up to \$900 million per year from offshore oil and gas revenues, but Congress seldom appropriates a fraction of that much. She said at the event, "\$16 billion has been invested, \$19 billion has not

been invested because it hasn't been appropriated by Congress, but it's been authorized."

Although a significant number of senators from both sides of the aisle support LWCF and have endorsed its renewal, the political outlook for a new, stronger law is a bit cloudy.

By itself LWCF stands little chance in the House, where western Republican critics of the program hold sway in the House Natural Resources Committee.

Perhaps LWCF's best opportunity lies in a possible package of legislation, and then after the November 4 elections. Now Senate Finance Committee Chairman Wyden is reportedly considering such a package that would reauthorize LWCF in combination with reauthorizing county assistance programs such as Secure Rural Schools and payments-in-lieu of taxes.

Former Sen. Max Baucus (D-Mont.) introduced stand-alone legislation (S 338) last year that would also extend LWCF at \$900 million per year in guaranteed money. The money would continue to come from offshore oil and gas revenues.

Meanwhile, the House continues to hammer LWCF in annual appropriations bills, while the Senate is a little more generous. On July 15 the House Appropriations Committee approved a fiscal year 2015 Interior and Related Agencies appropriations bill (HR 5171) that would reduce federal land acquisition by \$138 million, from \$187 million in fiscal 2014 to \$49 million in fiscal 2015.

Leaders of the Senate subcommittee on Interior appropriations August 1 proposed a draft bill that would include \$137 million more for federal land acquisition than did the House committee, \$186 million to \$49 million.

The Senate subcommittee leaders recommended \$48 million for the state side of LWCF, or \$2 million more than the \$46 million the House committee approved in HR 5171.

And as we have reported, some supporters of the Park Service worry that Jewell and company are giving so much emphasis to renewal of LWCF that they are neglecting the Park Service's 2016 Centennial. (See separate article page 5.)

## **FS in trouble with GOP anew, this time for groundwater**

Faced with a broadside of criticism from mostly western Republicans, the Forest Service September 4 extended its comment period on proposed groundwater regulations with important recreation implications.

For one thing 12 senators and 30 House members complained in a letter to the Forest Service that the proposed rule is reminiscent of other administration water-related proposals the Republicans oppose, such as (1) a Forest Service ski area permit policy affecting water rights, (2) an administration Blueways policy and (3) an EPA wetlands rule.

Like those proposals, none of which have been implemented, "This Directive seeks to further federalize water resources at the expense of state authority," said the Republicans.

The critics, led by Sen. John Barrasso (R-Wyo.) and Rep. Stevan Pearce (R-N.M.), wrote the Forest Service, "This sweeping proposal additionally seeks to impose water use restrictions and deny agricultural, recreational, and other economic activity in 155 National Forests and their adjacent state, local and private neighbors in 40 states. The end result could be lost jobs and reduced recreational access to public lands, with little or no environmental benefit." The letter was generated by the Congressional Western Caucus and the Senate Western Caucus.

As with the proposed ski area permit proposal, the Forest Service said the draft groundwater directive of May 6 constituted a simple clarification of the agency's groundwater policy, given the importance of the resource in coping with climate change. The agency said

it does not now have "comprehensive direction" on groundwater.

So, the agency said, "The Forest Service recognizes a need to establish a consistent approach for addressing both surface and groundwater issues that appropriately protects water resources, recognizes existing water uses, and responds to the growing societal need for high-quality water supplies. Establishing comprehensive direction for groundwater resource management would round out existing policy (FSM 2500) to include all relevant components of watershed resources."

For one thing the proposal says, "Monitoring and mitigation would be required for major groundwater withdrawals and injections." And for existing users and permittees the proposal would require conservation measures.

But Republican westerners, such as Wyoming Gov. Matt Mead (R), said the proposal goes too far and interferes with the states' rights to manage water resources.

In a September 2 letter to the Forest Service Mead objected in particular to a provision in the guidance that would have the Forest Service review all applications for water rights on land adjacent to national forests. "Under no circumstances does the USFS have a role in groundwater permitting decisions on lands in Wyoming. This should be stricken from the Proposed Directive," he wrote.

Here are the other water-related administration proposals the westerners object to:

**Ski area water permits:** The Forest Service four years ago laid claim to water rights held by ski resorts operating on national forest land. That's most of the big ones. The Forest Service crafted the controversial policy known as X-99 in 2011 and 2012 ostensibly to protect the rights of the federal government vis-à-vis ski permit operators under the Ski Area Permit Act of 1986.

Subsequently, the service June 20 did pull its old policy and propose a new one to allow ski resorts to keep their water.

Meanwhile, on March 13 the House managed to turn a broadly-supported attempt to defeat the old policy into a partisan battle by extending the barring of Forest Service claims to private water rights on ALL public lands users.

Majority Republicans in the House did pass the legislation (HR 3189) but both original sponsor Rep. Jared Polis (D-Colo.) and principal bill beneficiary the National Ski Areas Association (NSAA) objected that the legislation was becoming too broad.

#### **National Blueways System:**

Secretary of Interior Sally Jewell January 3 discontinued a National Blueways System program after a year of assaults from Republicans on both sides of the Hill. Jewell indicated in a department statement she made the decision after an internal review. That review apparently found little interest in a program designed to designate broad watersheds.

Republican critics said under the program the Interior Department did not consult with the public before designating conservation areas. In its defense the Obama administration said the National System of Blueways would not affect land rights and would boost local economies.

Former Secretary of Interior Ken Salazar designated a Connecticut River National Blueway at the same time he established the system on May 24, 2012.

**Wetlands rule:** EPA and the Corps of Engineers announced March 25 a draft rule that would go well beyond the existing regulation that only requires a Section 404 Clean Water Act permit for navigable waters. The new proposal would also require permits for seasonal streams, wetlands near navigable waters and, maybe, other types of waters. (see *related article page 7.*)

Bird hunters and fishermen are

welcoming an Obama administration proposal to define waters that should be subject to Section 404 wetland permits. But western politicians are not nearly as welcoming.

### **Court backs Wyoming over parks/wilderness haze rule**

The Tenth U.S. Circuit Court of Appeals September 9 blocked an EPA demand that the state's large coal-powered generators reduce pollution over national parks and wilderness areas. The state said the EPA rule violated the Clean Air Act.

The Tenth Circuit not only stayed EPA's rule but also said the state was likely to win a lawsuit against it. The state argued in a 631-page filing with the court last month the EPA rule would break the bank and would not significantly improve visibility over so-called Class I areas.

The court didn't explain its reasoning for granting the stay other than the appellants "likelihood of success" and possible injury to the appellants.

Led by Gov. Matt Mead (R-Wyo.) the state has fought a long war with EPA over how stringently power plants should be regulated under the Clean Air Act. Specifically, the act and EPA require states to install best available retrofit technology in large, haze-causing industrial facilities.

On January 30 EPA partially disapproved a state haze plan for reducing nitrogen oxides from the five power plants. On March 28 Mead said the state would sue.

On September 2 it did in the mammoth 631-page filing with the Tenth Circuit. (Under the act suits go directly to appeals courts, skipping district courts.)

Said Mead, "The EPA approved Wyoming's plan related to the biggest sources of haze in the parks and wilderness areas but, without good cause, denied our work on the smaller

cause of visibility concerns. This is troubling because our plan requires power plants to install millions of dollars of new equipment and meets the goal laid out by Congress."

The heart of the state's case (and EPA's case) is highly technical, focusing on how much emissions the plants should be allowed to release and what technology the plants should use to control those emissions.

For instance, the lawsuit charges, "EPA proposed to require the installation of the most stringent control Technology – selective catalytic reduction with low NOx burners and overfire air – at the three Laramie River Station units and Dave Johnston Unit 3. Those controls would cost about eight times as much as Wyoming's BART controls (\$2.27 million versus approximately \$19 million in annualized costs at each of the three Laramie River Station units) (\$1.76 million versus \$16.35 million in annualized costs at Dave Johnston Unit 3). EPA found these costs to be 'reasonable' even though they would deliver an imperceptible visibility improvement over Wyoming's plan."

After EPA rejected portions of a Jan. 12, 2011, Wyoming plan, it proposed a federal plan for the state on June 10, 2013, that Mead said would cost utilities in the state hundreds of millions of dollars, if not billions of dollars. EPA did approve most of the state plan.

The EPA rule and the state rule are supposed to reduce haze over Class I public lands (wilderness areas and national parks).

## **Whole appeals court will hear Tongass FS roadless area suit**

Although the legal battle over the country-wide, 2001 national forest roadless rule was settled last year, one contest trundles on – an exemption of the Tongass National Forest from the rule.

In the latest twist the Ninth U.S. Circuit Court of Appeals said August 29 that it would en masse review

an earlier, three-judge decision that upheld the exclusion of the Tongass from the rule.

In a 2-1 split decision the panel March 26 ruled that a 2003 Bush administration rule to exclude the 17 million-acre Tongass from the 2001 Clinton administration regulation was legal. Now the entire 11-member Ninth Circuit will rehear the case the week of December 15.

Environmentalists, aware that the Ninth Circuit is among the most liberal of appeals courts, were ecstatic. Said Tom Waldo, an attorney with the environmental law firm Earthjustice, "Today's court order is great news for Southeast Alaska and for all those who visit this spectacular place. The remaining wild and undeveloped parts of the Tongass are important wildlife habitat and vital to local residents for hunting, fishing, recreation, and tourism, the driving forces of the local economy."

"The grant of rehearing ensures that those places will remain protected pending court review and provides a welcome opportunity for review of the prior decision," he said.

The Ninth Circuit's move to reconsider the case delivers a major blow to commercial interests in Alaska and their Republican supporters. When a district court upheld the inclusion of the Tongass in the Clinton rule Sen. Lisa Murkowski (R-Alaska) had cheered.

"Striking down the Tongass' exemption to the roadless rule was a terrible decision when it was made more than two years ago," she said in March when the Ninth Circuit first acted. "The people of Southeast Alaska knew it, and so did the state, which is why they acted so quickly to file an appeal to that decision. I applaud the Ninth Circuit for righting that wrong today."

Despite the upcoming rehearing though, the 2-1 March decision of the three-judge panel of the Circuit endorses the Bush administration record of decision (ROD) exempting the Tongass from the rule. The two-judge majority

on the appeals panel said the Forest Service was justified in saying inclusion of the Tongass in the rule would create legal uncertainty, interrupt timber demand, and create socioeconomic hardships.

"The panel concluded that these grounds and the Department of Agriculture's reasoning in reaching its decision were neither arbitrary nor capricious," said the majority decision written by Judge Carlos T. Bea.

In the dissent Judge Margaret McKeown disagreed with the legal uncertainty, timber demand disruption and socioeconomic hardship justifications.

To the ROD's contention that timber sale levels would be compromised she said, "The agency failed to give adequate reasons for adopting the temporary exemption, particularly given the USDA's acknowledgment that the intervening years had shown timber demand was even lower than had been expected. It simply stated that timber demand in recent years was below long-term historical averages and speculated that this level could have been due to a mere cyclical downturn."

The Tongass situation was one of the last remaining uncertainties surrounding the Clinton roadless rule after the U.S. Supreme Court on Oct. 1, 2012, let the *national* rule stand, ending a decade of litigation across the West.

The Supreme Court action consisted of a refusal to consider an appeal by the State of Wyoming of two federal circuit court decisions. The circuits upheld the rule that protects 49 million acres of national forest from most timber sales and road construction.

National forests in Idaho and Colorado are governed by separate state-specific rules.

The path chosen by Wyoming to get to the Supreme Court - a petition for a writ of certiorari - was a difficult one. Under the Supreme Court's rules a writ is granted review only in those cases

where an appeal is not available. Four court members must agree to hear a case. The court usually grants only about one percent of such writs.

Both the Tenth Circuit Court of Appeals on Oct. 22, 2011, and the Ninth Circuit on Aug. 5, 2009, had upheld the Clinton rule that limits road construction and timber sales on 49 million acres of national forest. The Obama administration is implementing the Clinton rule.

Wyoming had argued in its appeal to the Supreme Court that the Clinton administration infringed on Congress's authority to designate wilderness; that the Clinton administration violated the National Forest Management Act by not revising forest plans individually; and that the EIS prepared for the rule was illegal under the National Environmental Policy Act because the result was predetermined before the EIS process began.

The three-judge Ninth Circuit panel's decision on the Tongass is available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/03/26/11-35517.pdf>.

The full circuit was cryptic in a statement announcing that all 11 judges would take up the case. In a two-sentence statement it simply said "it is ordered that this case be reheard en banc. . ."

**\* THE IDAHO SITUATION:** The State of Idaho successfully petitioned the Forest Service for an Idaho-only rule. The Forest Service approved it Oct. 16, 2008. The Idaho rule governs management of 9.3 million acres of roadless national forest in the state, while allowing development on another 400,000 roadless acres. On January 29 Idaho District Court Chief Judge William Winmill rejected a lawsuit from environmentalists against the Idaho rule.

**\* THE COLORADO SITUATION:** The State of Colorado also successfully petitioned the Forest Service for a Colorado-only rule. The July 3, 2012, Forest Service regulation bars road

construction on 4.2 million acres of national forests in Colorado. The rule carves out exceptions to the 2001 Clinton administration roadless rule, including areas for energy development.

## Notes

### **USDA spending Farm Bill money.**

Secretary of Agriculture Tom Vilsack September 8 said the Department of Agriculture will allocate \$328 million from a new Farm Bill for conservation programs. Under a consolidated Agricultural Conservation Easement Program (ACEP), the department will distribute money to 380 projects nationally to protect 32,000 acres of farmland, 45,000 acres of grasslands and 52,000 acres of wetlands. ACEP consolidates a Farm and Ranch Lands Protection Program, a Grasslands Reserve Program and Wetlands Reserve Program into two initiatives - one to protect wetlands and one to protect farmland and grasslands. Separately, on August 7 Vilsack said that nine states and one Indian tribe will receive grants under an Open Fields program, also known as the Voluntary Public Access and Habitat Incentive Program (VPA-HIP). The \$20 million is to be used by states and tribe for projects that make private lands available to hunters and anglers. Congress put up the conservation money and the VPA-HIP money in a Farm Bill that President Obama signed into law (PL 113-79) February 7. It authorizes conservation programs tied to agriculture for the next five years. According to the Congressional Budget Office the Farm Bill will distribute \$28.2 billion to conservation programs over the five years, beginning with \$5.4 billion in this fiscal year 2014 and increasing to \$5.8 billion in fiscal 2018.

### **NRPA to address all rec benefits.**

The thousands of park and rec officials that gather at the annual National Recreation and Park Association (NRPA) conference in Charlotte, N.C., Oct. 14-16 will pay particular attention to all benefits the outdoors provides a community. The annual conference will feature more than 250 classes, 400 exhibitors, workshops, labs and, of course, networking for the park and

rec professional. Said NRPA President Barbara Tulipane, "This year, we're especially focused on how parks transform communities through economic revitalization, health and wellness and conservation, and how all members of the community benefit regardless of age, ability or background. Smart communities use their parks as a cost effective solution to the challenges facing all municipalities today. They are the ones that will thrive in the future." NRPA provides links to numerous facets of its conference at [www.NRPA.org](http://www.NRPA.org).

### **Y'stone preps for non-business snowmobiles.**

Yellowstone National Park September 3 began to accept applications for a limited number of non-commercially guided snowmobile trips in the park for this winter. The park will allow one guided group each day to enter each of the park's four winter entrances. Each group must consist of five or fewer snowmobiles. The trips can last up to three days. Applications will be accepted through October 3. The program was authorized in a 2013 Winter Rule that the park published Oct. 24, 2013. It authorizes up to 50 groups of guided snowmobiles daily to enter the park with up to seven vehicles in a group and up to 60 snowcoaches. That's a total of 110 "transportation events." In addition both snowmobiles and snowcoaches would have to pass tougher noise emission standards eventually. NPS published the snowmobile rule after a decade of controversial proposals that were met with lawsuits. Additional information is at: <http://www.nps.gov/yell/parkmgmt/ngsap.htm>.

### **FS tackles wilderness filming.**

The Forest Service proposed September 4 to make permanent an interim directive for commercial filming and still photography in wilderness areas. The existing interim directive expires next month. The 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. Comment by November 3 to [reply\\_lands@fs.fed.us](mailto: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.*

**NPS to charge for D.C. Mall parking.** The Park Service said September 4 it will install parking meters and charge for parking on the National Mall in Washington, D.C. At present parking on the mall, although limited, has usually been free. But beginning March 4 NPS will charge \$2 per hour seven days a week from 7 a.m. through 8 p.m. Buses will also have to pay, \$6 per hour.

**BlueRibbon looks for a boss.** The BlueRibbon Coalition, which represents powered recreation interests, said September 4 it is taking applications for an executive director to replace Greg Mumm. He served in the position from 2006 until he announced he would step down last November. The coalition is an aggressively conservative organization that participates both in policy debates and in litigation. The organization was founded by Clark Collins who served as the executive director from 1987 under 2005. Send resumes to: *Glen Zumwalt, Chair, Executive Director Search Committee c/o BlueRibbon Coalition 4555 Burley Drive, Suite A Pocatello, ID 83202.* More info at 208-237-1008 ext 105 or at [brc.exdir.apply@sharetrails.org](mailto:brc.exdir.apply@sharetrails.org)

**FS takes step on Calif. plan.** The Forest Service said August 29 that it has begun work on a new forest plan for three national forests in California and is seeking public comment on the recommended scope of the plan. The service said it anticipates publishing one draft EIS in the spring of 2015 to cover the Inyo, Sequoia and Sierra National Forests. When the revised plan is completed the agency said it will publish a separate record of decisions for each forest. The service has already broached the subject of revised plans for the three forests in two

separate Need to Change Analyses (NTCA). A coalition of local and national environmental groups in June in response to the NTCAs gave the service a taste of what they will demand from the revised plan. As for timber harvests in the Inyo, they said, "Friends of the Inyo would like to see this section include strong language to protect eastside forests from inappropriate forest management." Of energy development they said, "Mineral extraction often comes with a high pollution and natural resources price tag. Plan components should be developed regarding the protection of water quality, at-risk species, clean up and bonded site restoration. Fracking is one example of a new practice that has not been addressed on Forest Service lands in the Sierra Nevada to our knowledge." The revised plan and EIS are being developed under a national 2012 Forest Service Planning Rule. The three California forests are among the eight in the country that have been chosen as guinea pigs to test the 2012 plan. The other are the Nez Perce-Clearwater National Forest in Idaho, the Chugach National Forest in Alaska, the Cibola National Forest in New Mexico and the El Yunque National Forest in Puerto Rico. Comment on the California notice by September 29 to: <http://tinyurl.com/r5earlyadopters>, [R5planrevision@fs.fed.us](mailto:R5planrevision@fs.fed.us) or *Land Management Plan Revision, U.S. Forest Service, 1839 South Newcomb Street, Porterville, CA 93257.*

**FS okays Rim Fire timber cut.** The Forest Service last month approved a major salvage logging operation in the Stanislaus National Forest that would authorize a timber salvage operation on some 35,000 acres burned in the Rim Fire of August 2013. The fire burned 257,000 acres including 154,350 acres on the Stanislaus National Forest. The fire perhaps gained more renown for also burning 40,000 acres of Yosemite National Park. Yosemite officials kept the main tourist areas of the 750,000-acre site open, including Yosemite Valley, home to many of the park's principal tourist sites. None of the timber sales approved by the Forest Service are in Yosemite.

## Boxscore of Legislation

### Temporary appropriations fiscal 2015

HJ Res 124 (Rogers). House approved September 11. Would keep government in business through the elections and until December 12

### Appropriations fiscal 2015 (DoI)

HR 5171 (Calvert). House committee approved July 15. Senate subcommittee leaders posted draft bill July 31. 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 under the Antiquities Act.

### 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 ecosystem.