

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

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President asks Congress for millions for NPS Centennial

The Obama administration and senior House and Senate members are beginning to develop legislation to address the upcoming Park Service Centennial in 2016.

In that effort the House and Senate are expected to wrap other prominent outdoor policies into legislation, including an extension of the Land and Water Conservation Fund (LWCF) and renewal of the federal recreation fee law called FLREA (the Federal Land Recreation Enhancement Act).

President Obama opened the bidding September 1 in a widely-publicized tour of Alaska by laying out a detailed legislative recommendation in anticipation of the Centennial. It includes a matching grant program, an endowment program, and beefed-up maintenance for the parks. The proposal is called the National Park Service Centennial Act.

The proposal follows up on the administration's fiscal year 2016 appropriations request of February 2, that asks Congress to ante up an extra \$326.3 million over fiscal 2015 for the Centennial. That includes \$242.8 million for deferred maintenance and \$40 million for Centennial Challenge grants.

The follow-up legislative proposal, like the appropriations request, asks Congress for an additional \$500 million per year in new legislative authority, broken down into \$100 million for a new Centennial Challenge Fund, \$300 million for deferred maintenance in a new Second Century Infrastructure Investment and \$100 million for a new competitive Public Lands Centennial Fund. Money in the last category

would be available for other Interior Department land management agencies, as well as the Forest Service.

Separately, the proposed legislation recommends that Congress establish a Second Century Endowment for NPS composed of revenues from donations to the National Park Foundation. The draft bill is here: <http://www.nps.gov/subjects/centennial/nps-centennial-act.htm>.

In his three days of appearances in Alaska this week Obama, whose proposal would carry out fiscal 2016 budget recommendations of February 2, did not comment on his proposal.

Ranking House Natural Resources Committee Democrat Raul Grijalva (D-Ariz.) did, saying he will not only support the administration bill but also introduce it. "As the lead Democrat on the Committee, I am pleased to be among the first to declare my full endorsement," he said. "I intend to sponsor this bill in the House and work with my colleagues to see it move forward. I share the hopes of every American who believes in the mission of the NPS and doesn't wish to see it politicized or become a target for election-season grandstanding."

The office of committee chairman Rob Bishop (R-Utah) did not respond to our requests for comment on the legislation.

NPS Director Jonathan B. Jarvis said, "This legislation gives us an opportunity to modernize our tools and meet the century-old mandate to protect, preserve and share with the American people the diverse and special places in our care."

An alliance of Park Service concessioners praised the President for the Centennial Challenge and key provisions, but it took issue with others, such as a proposed five percent surcharge on lodging and camping.

"We also are disappointed by the proposal to add another tax on overnight park guests who already face a growing array of utility surcharges, local

lodging taxes and other fees," said National Park Hospitality Association Counselor Derrick Crandall.

He also faulted the bill for not emphasizing two base goals of the National Park System - inviting visitors into the parks and inviting visitors to enjoy themselves once in the parks. "We believe a bipartisan, valuable new law is achievable and will be sharing our suggestions - starting with a clear mission statement for Centennial legislation, which needs to go beyond protection and also embrace promotion and visitor enjoyment," Crandall said.

The National Parks Conservation Association environmental group endorsed the President's proposal. "After years of declining federal funding, our parks struggle with an \$11.5 billion maintenance backlog," said Theresa Pierno, the association's chief operating officer. "Ranger jobs have gone unfilled and roads and trails have gone unrepaired. We are encouraged by President Obama's commitment to help our parks get back on track."

The Association of Partners for Public Lands (APPL) was particularly enthusiastic about a Centennial Challenge Fund. Said APPL Executive Director Dan Puskar: "The expansion and continuation of the Centennial Challenge, a program first envisioned by the Bush Administration, demonstrates the power of public-private partnerships to improve the preservation of our parks and the experience of their visitors. This year, nonprofit park partners have matched \$10 million in federal funds with almost \$16 million in private funds to restore park habitat, build and maintain trails, engage youth and support educational programming."

APPL represents nonprofit public lands partnerships that contribute more than \$150 million to the nation's public lands. APPL is at www.appl.org.

An aide to Senate Energy Committee Chairman Lisa Murkowski (R-Alaska) said just before the administration released the Centennial proposal his boss was "aware of some concepts and details of what the administration is

pulling together and discussing for possible legislation, but it is getting late in the year and it is surprising that a legislative proposal from the administration has not been revealed given the discussion last February when the budget came out."

The aide, Robert Dillon, said the committee has its eye on long-term park problems. "We are interested in parks reform as we want to see a strong Park System that is relevant to all ages and user groups in the 21st century," he said. "We are interested in maintenance, the larger issue of financing parks going forward through greater donor recognition and private/public partnerships, and reviewing and improving concessions. This is not necessarily tied to the Centennial, though."

Indeed, a comprehensive energy bill that the committee approved July 30 would establish a \$150 million per year Park Service maintenance account, financed by offshore oil and gas royalties.

In the House key subcommittee chairmen are reportedly working on legislation that would address the Centennial, FLREA and Park Service concessions reform. Reps. Tom McClintock (R-Calif.), chairman of the House Federal Lands subcommittee, and Cynthia Lummis (R-Wyo.), chairman of the House subcommittee on Interior of the House Oversight Committee, held separate hearings on those issues July 23.

At the House subcommittee hearings park concessioners made a pitch for major changes in concessions law, such as an extension of contracts from an existing standard of 10 years to as long as 40 years. NPS is currently having difficulty finding a concessioner to bid on a lead Grand Canyon National Park contract because, concessioners say, franchise fees and leasehold surrender interests are excessive.

Separately, Sens. Maria Cantwell (D-Ore.) and Rob Portman (R-Ohio) had been writing legislation to authorize a multi-year Centennial Challenge program. To lay the groundwork they persuaded

the Senate this spring to recommend a matching grant program in an amendment to a fiscal year 2016 Congressional budget.

Murkowski's aide Dillon said he was aware of the Cantwell-Portman initiative but that "we are not directly involved."

Appropriations CR faces major time and policy hurdles

With as few as 10 working days this month, Congress is rapidly approaching another government shutdown.

The House and Senate must complete fiscal year 2016 appropriations bills - or more likely extend fiscal 2015 bills - to avoid a shutdown.

However, conservative House Republicans are demanding that any appropriations bill (or bills) include a ban on funding for Planned Parenthood. And such a ban would almost certainly be opposed by at least 40 senators, insuring a filibuster would succeed. And it would be opposed by President Obama, who would veto a bill.

However, some House leaders have said they intend to vote on Planned Parenthood outside the appropriations process, potentially freeing up an omnibus spending resolution.

But if it isn't Planned Parenthood, the sticking point is sure to be some other issue. Thus, the inevitable game of appropriations chicken will begin in earnest when Congress reconvenes September 8 after a month-long vacation.

As we reported in the last issue of *FPR* House Speaker John Boehner (R-Ohio) has already directed the House Appropriations Committee to prepare a short-term continuing resolution (CR) to keep the government in money. It would wrap all 12 appropriations bills into one extension.

That may be troublesome because a CR is due to surface at the same time Congress is trying to raise the debt

ceiling, move a transportation bill and approve an extension of tax breaks. In the middle of all that Senate Democrats are unified in demanding that Republican leadership redo spending ceilings.

As President Obama said July 30 in signing a temporary surface transportation bill, "On the domestic side, I've already said that we're not going to accept sequester-level budgets that result in effective cuts to critical programs like education that are imperative for our long-term growth. So my hope is, is that (Congress is) prepared to come up with a plan and approach whereby Democrats and Republicans sit down and negotiate a budget that works for everybody, . . ."

So the whole thing could come to a crashing halt. Or it could be rolled into a giant, successful package. Or the parts could be addressed piecemeal. At this point no one knows.

Individual spending bills have trouble of their own, particularly an Interior and Related Agencies bill. It has become so freighted with controversial amendments in the House that House leaders deferred action on its bill (HR 2822) July 9, perhaps until a grand budget agreement is struck. If such an agreement is politically feasible.

An Energy and Water Appropriations bill (HR 2208) was approved by the House May 1 and the Senate Appropriations Committee May 21, but has moved no further. A Transportation appropriations bill (HR 2577) also has been approved by the House and was approved by the Senate subcommittee on Transportation appropriations June 23, but moved no further.

The most prominent controversy facing the House bill is a proposed amendment that would authorize the flying of the Confederate flag over cemeteries that are part of the National Park System.

But the measure is ensnared in other, major policy disputes as well. Among them are amendments to block the designation of national monuments, to

bar national parks from banning bottled water and to encourage the sale of federal lands.

The Office of Management and Budget (OMB) said that the budget allocation to HR 2822 (and other domestic spending bills) is too low. "The President's senior advisors would recommend that he veto H.R. 2822 and any other legislation that implements the current Republican budget framework, which blocks the investments needed for our economy to compete in the future," said OMB.

As we have reported Speaker Boehner pulled HR 2822 from the House floor July 9 just before a final vote because of the Confederate flag amendment.

The amendment, introduced by Rep. Ken Calvert (R-Calif.), would reverse a provision in HR 2282 that would forbid the flying of the Confederate flag over cemeteries managed by NPS.

Boehner was unable to muster enough votes to pass the bill with the amendment authorizing display of Confederate flags in national parks because of moderate Republican and Democratic opposition. Nor could he muster sufficient votes to pass the bill without the flag amendment because of southern Republican opposition.

The spending cap: The House Appropriations Committee in May assigned a spending cap to the Interior and Related Agencies subcommittee bill that is \$246 million less than a fiscal 2015 ceiling of \$30.416 billion. The committee set a cap of \$30.170 billion for fiscal 2016. Still, that is marginally above the spending cap of \$30.010 billion set by the Senate Appropriations Committee May 21.

Congressional Democrats and the White House have made no secret of their plan to fight the spending caps for all domestic appropriations bills on any and all occasions. They will call on their Republican colleagues to replace or revoke a sequestration law that sets broad domestic and military spending ceilings. But Congressional Republicans intend to retain sequestration.

In the Senate Democratic opposition to a Senate Appropriations Committee-passed bill (S 1645) is so solid the measure may not make it to the floor. Thus, senators from both parties are already talking about the possibility of a significant delay in addressing the bill before the start of fiscal year 2016 on October 1.

Complicating the House bill is its approach to funding the payment-in-lieu of taxes (PILT) program and emergency fire fighting. HR 2822 would pay for both programs from appropriations in the bill.

Heretofore Congress has usually paid for PILT with money outside the appropriations bill, leaving room for assistance for other programs.

On the fire front both the House and Senate are moving to shift a portion of emergency fire fighting money out of appropriations bills and into disaster spending. In approving a counterpart Interior spending bill (S 1645) to the House measure the Senate Appropriations Committee June 18 approved such legislation.

Although HR 2822 doesn't contain similar legislative language, the House did approve stand-alone legislation (HR 2647) July 9 that would authorize the transfer of some emergency fire-fighting costs out of a regular appropriations bill and into disaster spending.

Confederate flag: The Calvert amendment would undo an amendment that Democrats had added to HR 2811 on the subject July 7. The amendment from Rep. Jared Huffman (D-Calif.) would forbid the display of Confederate flags at federal cemeteries. The Huffman amendment was approved without a formal vote.

The bill contains two other Confederate flag amendments that the Calvert amendment would not address. One from Huffman would bar a Park Service concessioner or a nonprofit within a park from selling the Confederate flag for non-educational purposes. That matches a Park Service policy.

A third amendment from Rep. Hakeem Jeffries (D-N.Y.) would forbid the purchase or display of the Confederate flag except to provide historic context.

Glass bottles: An amendment from Rep. Keith Rothfus (R-Pa.) would not let National Park System units ban water bottles within the parks.

The amendment addresses a 2010 controversy that erupted when Grand Canyon National Park attempted to ban water bottles.

On Dec. 14, 2011, the Park Service issued a new water bottle policy, not just for Grand Canyon but for all units. The policy allows superintendents to ban water bottles if they first obtain approval from the applicable regional director. The superintendents must first submit a request in writing. The Rothfus amendment, approved July 7 by voice vote, would not let the Park Service implement such bans.

National monuments: An amendment from Rep. Crescent Hardy (R-Nev.) would block the designation of national monuments in 17 counties in the West where such Presidential actions are considered probable.

Hardy is most concerned about the recent designation of a 700,000-acre national monument on Bureau of Land Management Land property in the Garden and Coal Valleys of southern Nevada.

But Hardy, who represents the area, opposes the designation and is attempting to block it on the House floor. He persuaded the House July 8 to approve an amendment to a fiscal year 2016 appropriations bill (HR 2822) that would forbid the designation. The vote was 222-to-206.

The Hardy amendment would also block anticipated national monument designations in 17 counties in Arizona, California, Colorado, New Mexico, Nevada, Oregon and Utah.

However, the Hardy amendment came too late in the game to block the Basin and Range designation because it is prospective - it would forbid spending

money to make a national monument proclamation in fiscal year 2016.

Old riders: Already in the House bill, coming out of the House Appropriations Committee, were policy amendments that would extend the Federal Lands Recreation Enhancements Act for one year; forbid EPA from completing a proposed rule that would reduce carbon emissions from existing power plants; forbid EPA from implementing a May 27 rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act; forbid any 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.

The money: On the money front HR 2822 would sharply reduce funding for the Land and Water Conservation Fund, allocate token money for the Park Service Centennial and, at best, maintain existing spending levels before inflation for most land management agencies.

For Park Service operations the House bill includes a \$52 million increase, primarily for the agency's Centennial in 2016. The House would appropriate \$2.328 billion for operations, compared to a fiscal 2015 appropriation of \$2.276 billion.

The Senate Appropriations Committee June 18 approved a counterpart bill (S 1645) with \$5 million more for NPS operations than the House, \$2.323 billion.

The Senate committee said it approved \$110 million in total for the Park Service Centennial; however, the two panels did not provide analogous breakdowns to allow direct comparisons.

In threatening a veto OMB first complained about a total funding level that is \$2.2 billion below the administration request.

"The bill drastically underfunds core Department of the Interior programs as well as the Environmental Protection

Agency's operating budget, which supports nationwide protection of human health and our vital air, water and land resources," said OMB.

As for policy amendments/slash riders OMB said, "Further, the bill includes numerous highly problematic ideological provisions that have no place in funding legislation."

FS running out of wildfire money; senators conferring

As he predicted, Forest Service Chief Tom Tidwell last week notified agency officials that they must transfer money out of line operations to fight wildfires.

In a memo to agency leaders August 25 he ordered an immediate transfer of \$250 million, including \$12 million from land acquisition. And he said that it was likely a second set of transfers of \$200 million would be required later in the year, including \$15 million from recreation fees.

"I recognize that this direction will have significant effects on the public whom we serve and on our many valuable partners, as well as agency operations, target accomplishments and performance," he said. "We will strive to reduce impacts, but cannot avoid them altogether."

The service must make the transfers because it has expended most of a fiscal year 2015 wildfire suppression appropriation of \$1.01 billion. As of August 25 Tidwell said only \$174 million remained in the account and it was being used up quickly.

This has been an even more ferocious fire season than the ferocious fire seasons of recent years. The National Interagency Fire Center reported this week that more than 8.2 million acres have burned from almost 44,000 fires. That compares to the average acreage burned over the last 10 years of 5.6 million acres burned from 46,000 fires.

As has often happened in the last

decade the Forest Service is being forced to borrow from line operations to pay for wildfires, which have become more and more expensive to fight.

And, as we have often documented, the Obama administration along with House and Senate leaders from both parties are advocating a new appropriations procedure that would transfer above average fire fighting costs to disaster funding, and out of line appropriations.

To that end just before Congress left on a month's vacation in early August Senate Budget Committee Chairman Mike Enzi (R-Wyo.) promised to consider a strategy for doing just that. He has been consulting with his colleagues in the West for the last month.

To authorize the transfers Congress would almost certainly have to make room in its budget through a budget cap adjustment, which is where Enzi comes in. He chairs the Senate Budget Committee.

As soon as Enzi announced his intention to begin discussions, some western Republican senators took issue with lead legislation that would transfer to disaster spending federal agency wildfire suppression costs above 70 percent of the 10-year average. That would remove those extra costs from appropriations bills and, theoretically, make more money available for conservation and land management.

The Republicans would prefer the Forest Service and Interior Department spend 100 percent, rather than 70 percent, of its recent average suppression costs before shifting money to a disaster-funding account.

Said Sen. John Barrasso (R-Wyo.), "If Congress is going to consider budgetary cap adjustments under the jurisdiction of the Budget Committee, the Forest Service should first budget for 100 percent of its wildfire suppression costs before cap adjustments are made."

He added that any such adjustment should also be tied to fire prevention

activities, such as hazardous fuels timber sales. "In order to bring down the long-term cost of wildfire suppression, Congress should also actively engage in supporting activities which reduce the cost and severity of wildfire such as hazardous fuels treatments, thinning, and other active forest management projects," Barrasso said.

The senator is a cosponsor of legislation (S 508) with Sens. John McCain (R-Ariz.) and Jeff Flake (R-Ariz.) to set the 100 percent revenue-transfer bar and to require millions of acres of hazardous fuels projects with reduced environmental reviews.

President Obama himself urged Congress to attack the fire-funding issue August 7 on signing into law an Idaho wilderness bill. "One of the things we're trying to work on with Congress is making sure that we are able to properly fund firefighting efforts, but also that we're engaged in the kind of conservation planning to ensure that we're preventing fires from happening in the first place," he said.

The full House approved legislation (HR 2647) July 9 that would shift some emergency wildfire money to the disaster account.

This flurry of political activity comes in response to an explosive increase in wildfires in the West over the last two decades that has not only taken a terrific toll on lives, property and the environment but also on Forest Service and Interior Department budgets.

When the agencies run out of fire-fighting money they borrow from other operations, such as recreation. That not only paralyzes other operations but the extra costs take a big bite out of annual Interior and Related Agencies Appropriations bills.

The Forest Service applied an exclamation point to the problem August 5 when it said that it now spends more than half of its budget on wildfire suppression. And the service said that within a decade it will be spending two-

thirds of its budget on wildfires.

To that end both the House and Senate are edging toward a legislative solution that would shift emergency fire-fighting costs out of annual appropriations bills and into a disaster account.

However, the future of the House-passed bill (HR 2647) and the McCain bill is cloudy because the measures include waivers of environmental laws for timber projects that the Obama administration opposes.

As noted, the House approved its bill July 9. Separately, the Senate Appropriations Committee June 18 took two steps toward the prevention of fire borrowing during the passage of a fiscal year 2016 Interior appropriations bill (S 1645).

The committee approved legislative language that would establish a wildfire adjustment cap that would allow for the transfer of emergency fire-fighting expenses above a ten-year average to disaster funding, effectively removing those expenses from a regular appropriations bill.

But that provision would not kick in until fiscal 2017, so the committee approved \$1.054 billion for a stand-by account that would kick in when the Forest Service and the Interior Department exceeded annual fire suppression appropriations for fiscal 2015 and 2016. The bill includes an additional \$3.61 billion to fight forest fires in fiscal year 2016.

The House Appropriations Committee approved its fiscal 2016 appropriations bill (HR 2822) June 18 with no emergency transfer position for wildfires. That measure is currently on the House floor.

The administration proposal to transfer emergency wildfire costs above 70 percent to disaster spending has been introduced in the House (HR 167) by Rep. Mike Simpson (R-Wyo.) and in the Senate (S 235) by Sens. Ron Wyden (R-Wyo.) and Mike Crapo (R-Idaho).

FIRE SPENDING: For the Forest

Service the House committee approved \$2.373 billion for regular fire fighting and fire prevention expenses and \$315 million for an emergency FLAME account. The Senate committee approved \$3.556 billion in total for both regular fire fighting and an emergency account. Of the \$3.556 billion, \$855 million would be allocated to the emergency account.

Judge echoes GOP objections to wetlands rule, blocks it

Repeating Republican complaints that an Obama administration wetlands rule would require a permit for almost any activity involving water, a federal judge August 27 blocked the rule.

More, Chief U.S. District Court Judge Ralph R. Erickson in North Dakota said repeatedly in his injunction that the plaintiffs were likely to prevail in their lawsuit. The plaintiffs include 13 states, most of them in the West.

Up front Erickson said, "The court finds that under either standard - 'substantial likelihood of success on the merits' or 'fair chance of success' - the States are likely to succeed on their claim because (1) it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule at issue, and (2) it appears likely the EPA failed to comply with APA requirements when promulgating the Rule." APA is the Administrative Procedures Act.

The Erickson injunction effectively blocks implementation of the rule published by EPA and the Corps of Engineers May 27 that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act.

The judge did offer the administration a glimmer of hope when he said he based his injunction on limited extracts from the administrative record.

"While the court would prefer an opportunity to review the entire administrative record, rather than rely on a handful of documents and deliberative memoranda," he said, "it is

impossible to obtain the record prior to the effective date of the Rule."

Because of that he said, "As noted in the internal memoranda and confirmed by a close review of the Economic Analysis document and Technical Support Document, the Agencies' internal documents reflect the absence of any information about how the EPA obtained its presented results. Consequently, the subsequent results are completely unverifiable."

On the substance Erickson said the rule violates the majority decision in the 2006 Supreme Court decision, *Rapanos v. United States*. In that decision Judge Anthony Kennedy said federal agencies must first determine if an activity affects the nexus of locations to navigable waters so as to affect the "chemical, physical, and biological integrity of those waters." The quote is from Kennedy's opinion.

But, said Erickson, "the definition of a tributary here includes vast numbers of waters that are unlikely to have a nexus to navigable waters within any reasonable understanding of the term."

Sportsmen who back the rule because of the protections it offers wetlands were disappointed. Said Whit Fosburgh, president of the Theodore Roosevelt Conservation Partnership, "The EPA's rule simply restores clean water protections to what they once were, a move that is essential for the future of outdoor recreation, public health, and the economy."

But agricultural interests such as the American Cattlemen's Association were pleased. Said association president Philip Ellis, "EPA's rule is nothing more than an attempt to put more land and water under federal jurisdiction, blatantly disregarding private property rights. Over the last year and a half, the agency continually ignored the concerns of the U.S. Army Corps of Engineers, farmers, ranchers and landowners across the country, to the point of calling the concerns of cattle producers ludicrous."

Judge Erickson joined the side of the farmers and the oil and gas industry. He said the rule would cause serious damage to the latter.

"For example, the Rule will make North Dakota subject to, among other things, undertaking jurisdictional studies for every proposed natural gas, oil, or water pipeline project," he said. "This will incur both direct losses, including vast expenditures to map and survey large portions of the state, and indirect losses such as lost tax revenue while projects are stalled pending mapping."

Congress has been active on the issue, with the House and Senate attempting to move riders to various pending bills to stop the rule. Those bills include fiscal year 2016 Interior and Related Agencies appropriations measures (HR 2822, S 1645) that the Senate and House Appropriations Committees approved in June.

Feinstein turns to Obama to protect Calif. Desert areas

Sen. Dianne Feinstein (D-La.) last month appeared to give up on Congress passing in the immediate future her legislation to designate more than 1.1 million acres of California Desert as national monument.

She asked President Obama to designate three distinct monuments within the desert that are included in her bill (S 414) that is stalled in Congress. Perhaps irretrievably.

In a letter to Obama first obtained by the *Los Angeles Times* Feinstein said she had been trying to move the legislation since 2009, without success. She continued, "While I intend to continue to work with my colleagues in the Senate and House to advance this important bill and the national park additions, recreation area designations and other conservation provisions that cannot be implemented through the Antiquities Act, I request that the administration begin conducting the necessary due diligence to designate the Mojave Trails, Sand to Snow and Castle

Mountains as national monuments.”

The Mojave Trails monument would link 921,000 acres of former railroad land between the Joshua Tree National Park and the Mojave National Preserve in California. All the monument land would come from territory now managed by the Bureau of Land Management (BLM).

The Sand to Snow National Monument would consist of 135,000 acres between Joshua Tree and the San Bernardino National Forest. Again, BLM now manages the land and would continue to do so if it were designated a national monument.

The Castle Mountains National Monument would consist of 8,000 acres near Mojave National Preserve that was formerly used for a gold mine that is no longer operating.

Feinstein said monument designation is needed because the areas are threatened by solar and wind energy development. That sounds inconsistent in a way because both the senator and the Obama administration have long championed solar and wind energy development in the area.

Feinstein told the President she has broad public support for her legislation, even though it is stalled in Congress.

“The legislation has received broad support from diverse stakeholders because it has always been premised on carefully balancing conservation, recreation, energy, military and other land use needs in the California desert,” she wrote. “Additionally, both state and federal agencies involved in developing the Desert Renewable Energy Conservation Plan have concurred with the conservation of proposed monument lands.”

Conservation groups that have been asking Feinstein to seek monument designations applauded. “California’s deserts include some of the most spectacular scenery in the nation and are a refuge for some of the most rare and endangered plants and animals,” said Ileene Anderson with the Center for Biological Diversity. “The Mojave

Trails, Sand to Snow and Castle Mountains national monuments offer enduring protections for these places and would allow future generations to enjoy them.”

President Obama has aggressively used his authority to designate national monuments on federal land under the Antiquities Act of 1906. Most recently on July 9 he designated three more – a 704,000-acre Basin and Range National Monument in southern Nevada, a 330,780-acre Berryessa Snow Mountain National Monument in northern California, and a five-acre Waco Mammoth National Monument in Waco, Texas.

Congressional Republicans are critical of most of Obama’s monument actions. They have introduced numerous bills to require Congressional and/or state approval of any monument.

And Rep. Crescent Hardy (R-Nev.) persuaded the House July 8 to approve an amendment to a fiscal year 2016 appropriations bill (HR 2822) that would forbid the designation of national monuments in 17 counties in Arizona, California, Colorado, New Mexico, Nevada, Oregon and Utah. The vote was 222-to-206.

Utah going to court over contested ROW managed by BLM

The State of Utah said last month that it intends to file a lawsuit to obtain title to a right-of-way (ROW) across Recapture Canyon. The canyon was the site of a controversial June 2014 all-terrain vehicle (ATV) protest ride on closed public lands.

The federal government subsequently filed misdemeanor charges against several of the riders for operating the ATVs on closed public lands. The Bureau of Land Management (BLM) manages Recapture Canyon near Blanding, Utah, in San Juan County.

If the federal government did transfer the 9.22-mile way to the state, the state could of course open it to ATVs.

The State of Utah has begun legal proceedings to obtain title to some 12,000 so-called RS 2477 routes across federal land that it says have long been maintained for use by the state and local governments. To obtain title courts have held the state must file lawsuits under the Quiet Title Act. That is what the state is doing and intends to do.

As for Recapture Canyon, the Utah Public Lands Policy Coordination Office notified Secretary of Interior Sally Jewell August 5 of its intent to file title to the Recapture Canyon right-of-way.

"The Recapture Canyon right-of-way is a small but important piece of the transportation system and economy of the State of Utah and San Juan County," said the letter from office director Kathleen Clarke. "Consequently, the United States' failure to recognize the State's and county's interest in the Recapture Canyon right-of-way creates a cloud on title that impairs the ability of the State to exercise its legal rights regarding the right-of-way."

Environmentalists, such as the Southern Utah Wilderness Alliance, view the state's RS 2477 claims as a threat to public lands. "We've been leading a legal team fighting the state's effort to seize tens of thousands of rights-of-way across public lands, which would open up national parks and wilderness to off-road vehicles," the alliance's associate director Deeda Seed wrote the association's members last month.

The Utah Association of Counties weighed in August 5 with a letter to Jewell that (1) says it does not prejudge the courts on the status of the ROW through Recapture Canyon but (2) faults the department for not moving more swiftly on the thousands of state RS 2477 assertions.

"We are writing now about this issue not to claim a final conclusion has been reached - and of course not to claim our legal reasoning is superior to the court's and the attorneys involved in this case," said the county association letter from Adam Trupp,

chief executive officer and Mark Ward, senior policy analyst.

"We put forth this opinion now simply to make the point that there are times when the facts we hear do not accurately reflect the truth."

Trupp and Ward added, "We also believe very strongly that prosecution in this case, and the facts that are developing, demonstrate the collateral damages and human costs that arise from the continuing inability to reach a settlement with the BLM on claims to roads that have been pending since 2012 and which, despite good and reliable evidence of long-term use - not to mention local needs - are not yet resolved."

As many as 50 ATV riders entered Recapture Canyon, which BLM had made off limits to them, on May 10, 2014. The riders traveled about a mile into the canyon as 30 sheriff's deputies and BLM law enforcement officials watched. BLM Utah State Director Juan Palma said the canyon is off limits to ATVs because it contains ancient artifacts.

The riders, led by San Juan County Commissioner Phil Lyman, said they were protesting federal overreach in managing public lands, according to press reports. The federal government eventually filed misdemeanor charges against Lyman and other leaders.

A 12-person jury found Lyman guilty May 1 of this year on charges of conspiracy and driving on public lands closed to motorized vehicles. One other defendant, Monte Wells, was also convicted. Lyman and Wells face as much as one year in jail. The jury acquitted two other defendants.

Another set of BP Gulf oil spill cleanup projects aired

Federal and state parks and refuges in the Gulf States are in line for a piece of \$139.6 million in proposed projects to restore the Gulf in the wake of the 2010 Deepwater Horizon oil spill.

The \$139.6 million comes from the settlement of litigation between Transocean Deepwater Inc. and the United States. It is separate from a much larger settlement with BP Oil Company that will allocate portions of \$18.7 billion to clean up the Gulf, including park and rec projects. Transoceanic provides drilling services to companies like BP.

For now a council made up of Gulf State governors and federal department heads is proposing to use the Transocean settlement money to begin clean up of 10 key watersheds. The Gulf Coast Ecosystem Restoration Council also proposed to hold back an additional \$43.6 million for future restoration projects.

One of the projects - the Deer Island beneficial use project - would benefit Gulf Islands National Seashore. Says a summary prepared by the Gulf Coast Ecosystem Restoration Council:

"This proposed work includes implementation of the Deer Island beneficial use project; strategic land conservation planning, education, and outreach; as well as acquisition in the areas of the upper reaches of the Tuxachanie/Tchoutacabouffa rivers in De Soto National Forest, Gulf Islands National Seashore, and Grand Bay. It would help restore and connect diverse habitats from east to west that are crucial for ecosystem and economic recovery in the northern Gulf coast."

BP grants: Even before the Transocean Deepwater settlement and the \$18.7 billion BP agreement, BP Exploration and Production Inc. had put up close to \$1 billion for emergency repairs to Gulf ecosystems.

A sizeable portion of that emergency money has gone directly to park and recreation projects in three phases. According to the National Oceanic and Atmospheric Administration those three phases have allocated to recreation \$237,628,642. In addition protection of barrier islands and dunes by definition boosts tourism.

For Phase IV of the BP-funded

emergency restoration program the Deepwater Horizon Natural Resource Damage Assessment Trustees took public comment through July 6 on ten proposed restoration projects. Those are separate from the 10 Transocean projects.

Almost all the BP projects affect parks and wildlife refuges, including such sites as the Gulf Islands National Seashore and the Bon Secour National Wildlife Refuge.

For instance, one of the ten smaller proposals would allocate about \$7 million for bike and pedestrian enhancements at Davis Bayou, Mississippi District and Gulf Islands. The Department of Interior would implement the project.

But those four Early Restoration emergency phases are just the BP appetizer. The main course now looms. It will be financed by a \$5.5 billion payment by BP to the Clean Water Act, with 80 percent of the money distributed to restoration projects, said Boxer.

Transocean grants: The Transocean Deepwater Inc. settlement was praised by Secretary of Interior Sally Jewell, the Gulf States and an alliance of conservation groups.

Said Jewell, "These important projects are focused on improving both water quality and wildlife habitat. Because of the direct connection between the environment and the economy in the Gulf region, these projects also help provide long-term economic benefits to local communities."

Said Mississippi Department of Environmental Quality Executive Director Gary Rikard, "This draft FPL builds a foundation for future success as additional funds become available. We believe all of these investments further our principle of making Mississippi whole, and represent priorities as established by the broader Mississippi Stakeholder community."

A coalition of seven conservation groups that includes the National Wildlife Federation said, "With a

final BP settlement on the horizon, the RESTORE Council and the Gulf states have a tremendous opportunity ahead to plan for and achieve meaningful restoration and lasting resilience for the essential ecosystems of the Gulf."

Most of the moneys ponied up under both the Transocean settlement and the BP settlement will be allocated under a system established by the RESTORE Act - the Resources and Ecosystems Sustainability Tourism Opportunities and Revived Economy of the Gulf Coast Act (PL 112-141).

Information on the latest proposed list of Transocean projects is available at: <http://www.restorethegulf.gov/>.

FWS adds hunting and fishing privileges to 21 refuges

The Fish and Wildlife Service (FWS) August 26 opened an additional national wildlife refuge to hunting (Tualatin River in Oregon) and four refuges to fishing (all in North Dakota).

That brings the number of the 560 refuges open to hunting to 336 and the number open to fishing to 275.

FWS Director Dan Ashe congratulated his agency. "By expanding those opportunities, we are enhancing the lives of millions of Americans, stimulating the national economy to which hunting and fishing contribute significantly, and generating much needed additional funding for wildlife conservation," he said.

Sportsmen also cheered. "I've hunted waterfowl my entire life on refuges that have been funded almost exclusively by sportsmen's dollars, and I, along with millions of other sportsmen, will continue to return to these places that provide the access and opportunity that are critical to our continued ability to go afield," said Backcountry Hunters & Anglers (BHA) President and CEO Land Tawney.

BHA was particularly pleased that the Tualatin Refuge is now open to hunting, albeit only to youths. "The

Tualatin River Refuge is located only a few miles from Portland, the largest city in Oregon, and provides a welcome and very necessary escape for urban residents of our state," said Ed Putnam, chairman of BHA's Oregon chapter.

National wildlife refuges are closed to hunting and fishing unless specifically opened by FWS. To be opened hunting and fishing must be compatible with the purposes of a refuge.

Tualatin: The 1,856-acre refuge is located within the floodplain of the Tualatin River within shouting distance of Portland, Ore. The FWS action opens the refuge to migratory bird hunting only and, at that, only to youths.

North Dakota fishing refuges: The four North Dakota refuges open to sport fishing are all part of the 48,066-acre Devils Lake Wetland Management District. They include the Ardoch National Wildlife Refuge, Lake Alice National Wildlife Refuge, Rose Lake National Wildlife Refuge and Silver Lake National Wildlife Refuge.

In addition to the Tualatin and North Dakota actions, FWS expanded hunting and fishing opportunities in 16 other national wildlife refuges in California, Delaware, Florida, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, New York, New Jersey and Vermont.

The FWS listings were posted in the *Federal Register* August 26 at this address: <http://www.gpo.gov/fdsys/pkg/FR-2015-08-25/pdf/2015-20371.pdf>.

Notes

White House mum on LWCF. The Obama administration was silent on a possible extension of the Land and Water Conservation Fund (LWCF) August 1 in the course of laying out recommendations for a Park Centennial bill. The introduction of the bill during a heavily-publicized trip to Alaska would have given the President a prime opportunity to repeat his recommendations that Congress should immediately reauthorize LWCF before it is due to expire September 30.

(See separate article page one on Centennial). The administration has previously recommended that Congress guarantee \$900 million per year for LWCF without further appropriations in perpetuity. The House and Senate by fits and starts are moving to extend LWCF, but Republican leaders would like to shake up the formula and distribute some LWCF source money to federal land management agency maintenance. The LWCF law says money for the program is to come from offshore oil and gas royalties. As an example of Congressional action the Senate Energy Committee approved legislation July 30 that would reauthorize LWCF permanently. The bill, from chairman Lisa Murkowski (R-Alaska) and ranking Democrat Maria Cantwell (D-Wash.), would also establish a \$150 million per year Park Service maintenance account. Although that account would draw on the same source of money as LWCF - offshore oil and gas royalties, it would constitute a separate fund and would not draw revenues from LWCF itself. In the legislation Murkowski and Cantwell would specify minimum annual allocations within LWCF, such as at least 40 percent per year for federal land acquisition and at least 1.5 percent per year (or more than \$10 million) for access to federal land for recreational purposes. Finally, the bill (unnumbered at press time) would require expenditure of at least 40 percent of annual LWCF appropriations for a combination of state LWCF grants, Forest Legacy grants, endangered species grants and an American Battlefield Protection Program.

Kids in Parks begins. The Obama administration September 1 kicked off its Every Kid in a Park program by offering free entrance to 2,000 federal park and recreation sites for fourth graders. The program makes the free entry available throughout the 2015-2016 school year and allows three adults to accompany each fourth grader. Although the program has "park" in its title it Every Kid in a Park is a multi-agency effort among the Department of the Interior, the Department of Agriculture, the Department of Education, U.S. Army Corps of Engineers, and the National Oceanic and Atmospheric Administration. The program is a follow-on to First

Lady Michelle Obama's Let's Move Outside Initiative to help improve the health of young Americans with more exercise. Coincident with the September 1 announcement the National Park Foundation said it would conduct a fund-raising effort to raise money to help transport children to all federal sites, including national parks, forests, wildlife refuges and public lands and waters. Passes and information are available at the website: <https://www.everykidinapark.gov/>.

Mount McKinley is no more. Mount McKinley in Alaska is no longer the name of the nation's tallest mountain. It is now Denali. Secretary of Interior Sally Jewell made the change August 28, using a 1947 law that gives the secretary the authority to change geographic names. Since 1987 Mount McKinley has been named just that after former President William McKinley, much to the delight of Ohioans. But Alaskans of all political parties have long sought to change the name to Denali, the native name for the 20,237-foot high mountain. House Speaker John Boehner (R-Ohio) said he was disappointed by the renaming. "There is a reason President McKinley's name has served atop the highest peak in North America for more than 100 years, and that is because it is a testament to his great legacy," he said. "McKinley served our country with distinction during the Civil War as a member of the Army. He made a difference for his constituents and his state as a member of the House of Representatives and as Governor of the great state of Ohio."

NPS visitation erratic. Through July the rate of visitation to the national parks was all over the lot. Some units, such as those clustered around the Washington, D.C., mall, received substantial increases. For instance the Vietnam Veterans Memorial was up some 20 percent for the year, from 2.6 million in 2014 to 3.1 million in 2016. Some golden jewel national parks such as Grand Canyon were also up commensurately, with Grand Canyon jumping from 2.7 million last year to 3.1 million this year over the same seven months. However, some other units - particularly recreation areas - showed substantial decreases. Gateway National

Recreation Area was down by more than 635,000, from 3.4 million in 2014 to 2.7 million this year. On the West Coast Golden Gate National Recreation Area visitation dipped by a significant 385,621, from 8.8 million last year to 8.4 million this year. The NPS statistics are available at <https://irma.nps.gov/Stats/Reports/Park>.

State LWCF money distributed.

States will receive \$42 million this fiscal year (2015) from the Land and Water Conservation Fund (LWCF), the Interior Department said last month. Secretary of Interior Sally Jewell took the occasion to urge Congress to extend the base LWCF program, which is scheduled to expire September 30 after a 50-year run. "A half century ago, Congress established a landmark law to use some revenues from offshore oil and gas development to help states and communities across America set aside green spaces, build boat docks and ball fields, and undertake other recreation projects," Jewell said. "Today, Congress has the opportunity to continue this great legacy by permanently reauthorizing and fully funding the Land and Water Conservation Fund." LWCF has distributed more than \$4 billion to more than 40,000 projects over the last 50 years. The state grants are distributed based on a formula in the law, based on population and acreage. More information is at: www.doi.gov/lwcf.

Obernesser gets top NPS position.

Rick Obernesser, superintendent of Wrangell-St. Elias National Park and Preserve in Alaska, has been named the associate director of the National Park Service for visitor and resource protection. Obernesser has served in eight parks during his more than 30 years with NPS. His portfolio as assistant director includes law enforcement, security, fire, regulations, special park uses and more.

NPS retirees getting serious. An association of Park Service retirees moved up in the advocacy world last month by hiring an executive director to head the Coalition to Protect America's National Parks. The association named Amy Gilbert, a park ranger for seven years and most recently a United Nations

Foundation official, to take the job. A succession of former national park superintendents have served as president of the association. Former Olympic and Everglades National Parks Superintendent Maureen Finnerty will continue to serve as the sitting president. The coalition was formerly known as the Coalition of National Park Service Retirees. It has more than 1,100 members.

Alaskan Marine Monuments sought.

The environmental group Public Employees for Environmental Responsibility (PEER) last week helped submit a petition signed by more than 100,000 people seeking designation of mammoth Marine National Monuments in Alaska waters. An early version of the PEER request would have covered 554,000 square miles. The National Oceanic and Atmospheric Administration (NOAA) on January 26 refused to act on that request on the grounds that it wouldn't recommend such a sanctuary with narrow public support. NOAA said the nomination should include support from native groups or local governments, along with industries dependent on the waters. The new PEER recommendation calls for three national monuments - Aleutian Islands, Bering Strait and Arctic Coastal. Rep Don Young (R-Alaska) has introduced legislation (HR 332) to prohibit the Secretary of Commerce from designating marine sanctuaries under the National Marine Sanctuary Act without Congressional approval.

Maine monuments, park in dispute.

Maine Gov. Paul LePage (R-Me.) August 28 attempted to head off initiatives to have President Obama designate a national monument in the Gulf of Maine and to have Congress designate portions of Baxter State Park a national park. LePage wrote the Maine Congressional delegation to enlist their assistance in blocking the designations. The Conservation Law Foundation, a New England group, is heading the campaign for a national monument in the Cashes Ledge region of the Gulf of Maine and the New England Canyons and Seamounds. The foundation says, "Bottom trawling and scallop dredging on Cashes Ledge has been banned for over a decade, but these protections are temporary. Cashes Ledge needs permanent protection."

To which LePage said in his letter, "A National Marine Monument putting Cashes Ledge and undersea canyons and seamounts in the Gulf of Maine off-limits to commercial fishing activity will affect Maine's offshore lobstermen, tuna fishermen, herring fishermen and groundfish fishermen." The Baxter National Park proposal has long been advocated by State of Maine conservationists. The state park is home of the fabled Mount Katahdin. But LePage said the Congressional delegation should listen to votes in the communities of East Millinocket and Medway against a national park. "I have been somewhat dismayed members of the Maine congressional delegation have yet to take a position on this matter, particularly in light of this summer's lopsided votes against this proposal in the towns of Medway and East Millinocket," he said.

Everglades python hunt riles PEER.

The environmental group Public Employees for Environmental Responsibility (PEER) is objecting to an Everglades National Park decision to authorize a hunt for pythons in the park. While hunting is technically illegal in the park, superintendent Pedro Ramos is allowing "authorized agents," i.e. those with a state hunting license, to capture and kill the pythons. It should be noted that pythons are a nonnative species that have been quite destructive in the Everglades. Still, PEER Executive Director Jeff Ruch said, "The Everglades python hunt of 2016 is a misguided publicity stunt that would not improve, let alone solve, the python problem."

Liberal duck season on tap.

The Fish and Wildlife Service (FWS) proposed August 25 liberal migratory bird hunting frameworks for states to adopt this fall. The proposal follows up on earlier FWS estimates that duck populations this year are similar to last year. That is, FWS estimates a breeding population of 49.5 million ducks, compared to 49.1 million last year. Each year FWS proposes migratory bird hunting bag limits and season limits in association with four Flyway Councils. The states then prepare regulations within those frameworks.

On the half-full glass side the duck population is 43 percent higher than the long-term average. That is expected to translate into hunting seasons and bag limits similar to last year. On the half-empty side, despite the large number of ducks FWS issued a note of caution, saying, "While this year's survey results were very favorable, when and where waterfowl will be encountered this fall depends on many factors. Food availability and the condition and distribution of water resources all influence local duck and goose abundance, distribution, behavior, and ultimately, hunter success."

Conference calendar

SEPTEMBER

8-11 **National Association of State Park Directors Annual Meeting** in Greenville, S.C. Contact: <http://www.naspd.org> or <http://www.southcarolinaparks.com/programs-events/naspd-2015.aspx>.

8-11. **National Association of State Outdoor Recreation Liaison Officers Annual Meeting** in Greenville, S.C. Contact: <http://www.nasorlo.org/>

15-17. **National Recreation and Park Association Congress and Exposition** in Las Vegas, Nev. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2158. <http://www.nrpa.org>.

OCTOBER

5-7. **Outdoor Industry Association Rendezvous** in Seattle, Wash. Contact: Outdoor Industry Association, 4909 Pearl East Circle, Suite 200, Boulder, CO 80301. (303) 444-3353. <http://www.outdoorindustry.org>.

7-10. **The National Land Conservation Conference** in Sacramento, Calif. Contact: Land Trust Alliance, 1331 H St., N.W., Suite 400, Washington, DC 20005-4711. (202) 638-4725. <http://www.lta.org>.

17-21. **The Wildlife Society Annual Conference** in Winnipeg, Manitoba. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.