

Federal Parks & Recreation

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Is Salazar order to designate BLM 'wild lands' legal?

Secretary of Interior Ken Salazar December 23 undertook a politically and legally risky strategy that would have the Bureau of Land Management (BLM) protect a new system of "wild lands."

Salazar ordered BLM to identify and manage as wilderness lands with wilderness characteristics. He acknowledged that only Congress has authority to designate wilderness. Even so, he said BLM has authority to protect lands as wilderness on its own authority, raising deep legal questions.

Salazar said BLM derives authority to designate and protect wild lands from the Federal Land Policy and Management Act of 1976 (FLPMA). In a press conference he said, "This approach takes into account authorities the BLM has under FLPMA and other sections of formal law that allows us to provide these protections."

A BLM spokesman elucidated, "We believe various statutes give us the authority to promulgate this policy, including FLPMA, The Wilderness Act, and NEPA."

Salazar said his order did not violate The Wilderness Act by actually designating wilderness because BLM could on its own reverse wild lands designations.

New House Natural Resources Committee Chairman Doc Hastings (R-Wash.) questioned the legality of the Salazar Secretarial Order. "The Administration clearly knows that the law only allows Congress to designate Wilderness areas, though somehow they hope giving it a different label of 'Wild Lands' will pass legal muster," he said.

He added, "This backdoor approach is intended to circumvent both the people who will be directly affected and Congress."

One recreation industry lobbyist also questioned the legality of the order. "You look at the background materials the Interior Department put out and it is clear they are worried about the legality of the proposal," he said. "But the fact is how they did it shows they were trying to make amends to the environmental community."

On the Hill sympathetic Democrats were circulating this week a "Dear Colleague" letter seeking support for Salazar's order. A letter prepared by Rep. Edward Markey (D-Mass.), ranking minority member on the House Natural Resources Committee, addresses head on the allegation that Salazar has exceeded Congressional authority by calling for the designation of *de facto* wilderness areas.

Counters the letter, "Such criticism is based on a misunderstanding of the Order and a misunderstanding of wilderness. No law requires the federal government to transform unsuitable land into wilderness and that is not what the Order contemplates. Rather, the Order acknowledges Congressional intent that the Department conduct periodic assessments to determine where wilderness already exists and work to protect wilderness characteristics where appropriate."

BLM Director Bob Abbey said BLM will designate the wild lands through a land use planning process. "The designation of wild lands will occur only through a public process," said Abbey. "We will routinely inventory public land as we are required to do under out planning process."

The BLM spokesman explained, "The field offices will review existing planning documents in the near future in order to identify areas that could qualify for protection under the new policy. The designation of wild lands would formally occur during the planning process."

Although Salazar and Abbey said wild lands will only be designated at

some point in the distant future, Salazar issued a Secretarial Order 3310 December 22 that may or may not require immediate protection of inventoried potential wild lands.

"All BLM offices shall protect these inventoried wilderness characteristics when undertaking land use planning and when making project-level decisions by avoiding impairment of such wilderness characteristics unless the BLM determines that impairment of wilderness characteristics is appropriate and consistent with applicable requirements of law and other resource management considerations," said the order. Our emphasis.

The order appears to reverse in part a 2003 agreement between then Secretary of Interior Gale Norton and former Utah Gov. Michael O. Leavitt (R) that told BLM not to inventory any more wilderness study areas. However, Salazar said his order does not directly revoke that agreement. He said the protections would be applied "without necessarily having to disavow the Norton-Leavitt settlement which never should have happened in the first place we need to move on."

The House Democrats' letter argues that Secretary Norton was the one who skirted the law. "The decision by former Secretary Norton to settle litigation in Utah by unilaterally declaring that the Department of the Interior would no longer seek protection for new areas of public land exhibiting wilderness characteristics exceeded the scope of the litigation and abdicated the Department's statutory responsibilities," says the letter.

But BlueRibbon Coalition Executive director Greg Mumm backed Hastings. "The Order is as complex and convoluted as any validly promulgated law or regulation," he said. "Its meaning is not readily apparent and will likely be determined by the courts."

At the press conference a representative of the outdoor recreation industry said it was about time the administration protected wild lands. Said Peter Metcalf, CEO of Black Diamond

Equipment, "For too long the availability of the American landscape for recreation has taken a back seat to oil, gas and mineral extraction. The economic value of outdoor recreation has not been considered in land management decision making." Metcalf said the outdoor recreation industry is a mammoth economic power in the West and deserves equal treatment with commodities.

Abbey laid out the current wilderness status of BLM land, without hinting at how much wild land acreage would be designated. "We have 8.7 million acres of BLM land that have been designated as wilderness by the U.S. Congress," he said. "We have an additional 15 million acres of land that have been designated as wilderness study areas and are awaiting Congressional action."

Environmentalists, although cheered by the Salazar order, were still apprehensive about the policy because it would allow BLM to reverse wild lands designations.

Said Heidi McIntosh, associate director of the Southern Utah Wilderness Alliance, "The new policy also has an escape hatch that allows the BLM to decide not to protect deserving lands if it decides that development is 'appropriate.' That's a loophole big enough to drive a drilling rig through, and the BLM will have to close that gap if this policy is to fix the wilderness mess that the BLM's historically unbalanced policies have left us."

She continued, "And the BLM would not designate new 'wilderness study areas' under the policy - another shortcoming."

Upcoming House Republican bosses working on agendas

The all-important chairman of the House subcommittee on Interior and Related Agencies, Rep. Mike Simpson (R-Idaho), last week set his sights on major budget reductions for EPA. But Simpson didn't, for now, target federal land management agencies.

In announcing his selection to chair the subcommittee, Simpson savaged

EPA. "The EPA is the scariest agency in the federal government, an agency run amok," he said. "Its bloated budget has allowed it to drastically expand its regulatory authority in a way that is hurting our economy and pushing an unwelcomed government further into the lives of Idahoans."

But Simpson did not attack federal land management agencies. "Land management agencies need to be good neighbors, and I will work to ensure that they are able to act effectively and efficiently on the public's behalf," he said.

Simpson's subcommittee has responsibility both for funding both land management agencies, such as the Park Service and the Forest Service, and EPA.

Park and recreation lobbyists are saying publicly what they say privately - they think they can work with Simpson, despite the fierce anti-spending rhetoric. "He's demonstrated an ability to listen to people in the community," said John Garder, budget and appropriations legislative representative for the National Parks Conservation Association (NPCA.) "He's clearly open-minded and practical. He's shown in the past a willingness to work with all constituents."

As Simpson's office indicated the new House Republican majority is rapidly setting general priorities that, above all, will emphasize spending reductions and oversight.

That is also true for the House Natural Resources Committee and its chairman Doc Hastings (R-Wash.) Said a spokesman for Hastings, "Certainly cutting spending and lowering the budget deficit is going to be a priority for not just our committee but the entire Republican controlled House of Representatives, which means being very mindful of any new spending."

Hastings has not developed an agenda for the committee yet. "The Chairman is still in the process of organizing an agenda for the coming months - we hope to get subcommittee assignments for our members this week or next week and the Democrats have not assigned

members to the full committee, so there is still some housekeeping to do before we get started with hearings and mark-ups," said the spokesman.

Hastings has indicated he will emphasize the panel's oversight responsibilities by dogging the Interior Department in hearings. He has already said he will hold early hearings on a new administration "wild lands" policy (*see related article page one.*) "Oversight is certainly going to be a major emphasis of the committee, especially early in the Congress, with possible legislation developing from the oversight hearings," the Hastings aide said.

Simpson and Hastings are unable to talk many specifics yet because (1) Congress hasn't finished fiscal year 2011 appropriations bills, (2) the Obama administration has delayed release of a fiscal 2012 budget request until mid-February and (3) committees haven't hired staff. Here are the key players:

HOUSE NATURAL RESOURCES COMMITTEE, MAJORITY: Hastings named Rep. Rob Bishop (R-Utah) as chairman of the House subcommittee on National Parks, Forests and Public Lands. Rep. John Fleming (R-La.) will chair the subcommittee on Fisheries, Wildlife and Oceans.

HOUSE NATURAL RESOURCES COMMITTEE, MINORITY: A major change here with former committee chairman Nick Joe Rahall (D-W.Va.) becoming ranking minority member of the House Transportation Committee. Taking his place as ranking Democrat on the natural resources panel is Rep. Ed Markey (R-Mass.) Markey is one of the more aggressive – and effective – liberals in Congress.

HOUSE APPROPRIATIONS COMMITTEE: Simpson will chair the subcommittee on Interior and Related Agencies. Rep. Rodney Frelinghuysen (R-N.J.), will chair the Energy and Water subcommittee. Democrats have not named ranking members yet.

HOUSE TRANSPORTATION COMMITTEE, MAJORITY: Rep. John Mica (R-Fla.), as expected, is the new chairman. Mica has promised no new gasoline tax revenues for money-starved surface transporta-

tion programs, such as trails. However, Mica last week did resist, albeit unsuccessfully, a new House rule that leaves Highway Trust Fund money exposed to diversion to other uses. (*See related article page 5.*)

In addition to transportation the committee also has responsibility for water resource projects that are key to the recovery of the Everglades ecosystem.

Rep. John J. Duncan, Jr. (R-Tenn.) will chair the subcommittee on Highways and Transit. The committee has not yet named a chairman of the subcommittee on Water Resources.

HOUSE TRANSPORTATION COMMITTEE, MINORITY: Rahall will serve as ranking member.

HOUSE AGRICULTURE COMMITTEE: Rep. Frank Lucas (R-Okla.) will chair the committee. Democrats have not named ranking members.

SENATE ENERGY COMMITTEE: Sen. Jeff Bingaman (D-N.M.) returns as chairman and Sen. Lisa Murkowski (R-Alaska) is expected to return as ranking Republican. However, Republicans have not made the Murkowski appointment official, perhaps because she was reelected in November as an independent and defeated a Republican. Other possibilities as ranking member are Sens. John Barrasso (R-Wyo.) and Richard Burr (R-N.C.)

Sen. Mark Udall (D-Colo.) will continue to chair the subcommittee on National Parks and Sen. Ron Wyden (D-Ore.) the subcommittee on Public Lands and Forests. Burr last year served as the ranking Republican on the parks panel and Barrasso the ranking Republican on the public lands panel.

SENATE APPROPRIATIONS COMMITTEE: Sen. Dianne Feinstein (D-Calif.) is expected to continue as chair of the Interior subcommittee with Sen. Lamar Alexander (R-Tenn.) as the ranking Republican.

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE: Sen. Barbara Boxer (D-Calif.) remains as chairman and Sen.

James Inhofe (R-Okla.) remains as ranking minority member. Like the House Transportation Committee, the Senate committee has responsibility for both surface transportation programs as well as water resources projects.

Silence surrounding AGO report opens speculation

The Obama administration's silence about the future of its ambitious America's Great Outdoors (AGO) initiative is becoming deafening.

A final report was first scheduled for November 15, but that deadline was extended into December. It's now mid-January and still no word, raising the possibility that the report will not be issued at all, other than as a footnote to the fiscal year 2012 budget request in mid-February.

Some participants smell trouble. "When the draft was circulated war broke out because the Park Service was left out," said Larry E. Smith, executive director for Americans for Responsible Recreational Access. The group backs motorized use of the public lands. "Now I wonder if any recommendations will be handed down."

The big obstacle, everyone agrees, is money. To carry out any of the recommended federal initiatives such as acquisition of recreation land or an upgrade of the National Park System for its centennial would require new expenditures. And right now the White House and Congress, particularly the Republican-controlled House, are in no mood for significant additional spending.

That leaves some indirect – but important – recommendations that might tie park and recreation activities to the health of the nation's youth.

"Frankly, it's an embarrassment when you commit the time that cabinet members have spent on a project and have nothing come out of it," said Smith, a veteran lobbyist and former Congressional staff member.

The Council on Environmental Quality (CEQ) has been charged with writing

a final AGO report. A CEQ spokesman said January 12 the administration was still reviewing public comments. "Agencies are working through these comments as quickly as possible," said Sahar Wali, communications director for CEQ, "but plan to take additional time to fully evaluate and consider them as the report to the President is drafted."

Shannon Andrea, director of media relations for the National Parks Conservation Association, said, "Now we're hearing the report may be delayed until mid-February after the President's budget comes out."

In one inauspicious sign a principal architect of AGO, senior Interior Department official Tom Strickland, will leave next month. Strickland is serving as both Interior Department chief of staff and assistant secretary for Fish, Wildlife and Parks.

President Obama kicked off the America's Great Outdoors initiative at a White House conference April 16, 2010, and ordered his cabinet heads to go out into America and report back to him by November 15 on content.

Obama laid out four goals for the initiative report, to be fashioned under the lead of CEQ Chair Nancy Sutley. He suggested four substantive strategies: (1) build on efforts outside the beltway, (2) help property owners protect property, (3) help get young people outdoors and (4) build "a new generation of community and urban parks."

SAFETEA-LU money may be endangered by House GOP rule

House Republicans last week adopted a new rule that removes a guarantee that Highway Trust Fund money will be used only for surface transportation. Since 1998 the House has operated under a rule that prevented trust money from being diverted to other purposes, such as reducing the federal deficit.

Interest groups that receive the \$40 billion or so per year from the fund, and their champions, immediately raised alarms.

Senate Environment and Public Works Committee Chairman Barbara Boxer (D-Calif.) promised to resist any attempt by the House to reduce spending from the Highway Trust Fund on surface transportation. "I will fight to the end to prevent any efforts by the House to use this rules change to reduce much-needed job creating investments in our highways, bridges, and transit systems," said Boxer, who by definition will take the Senate lead on the issue.

She added, "This is wrong – the funds in the Highway Trust Fund come from user fees, paid by the people, and they have a right to know that those funds will be spent improving our transportation infrastructure. These long-standing guarantees provide certainty to States that allows them to plan for and construct important transportation projects, which create excellent jobs for today and tomorrow."

Boxer counts as her allies groups as varied as the Chamber of Commerce, labor unions, mayors and the American Association of State Highway and Transportation Officials (AASHTO).

Said Rep. Nick Joe Rahall (D-W. Va.), ranking Democrat on the House Transportation Committee, "Americans understand, and support, paying motor fuel taxes at the pump so long as they are guaranteed that those funds will be spent on transportation. The Republican rules package smudges that guarantee and will have a potentially devastating effect on the level of Federal investment in vital highway and transit programs."

But the Republican House majority, under enormous pressure from economic conservatives, is pursuing all options for reducing the federal deficit. The rule the Republicans adopted January 5 repealed a floor procedure that allowed any member to object to the diversion of Highway Trust Fund money, removing a barrier to such a diversion.

AASHTO Executive Director John Horsley disagreed, "There are two deficits facing the country today: the federal debt and the deficit in maintaining the infrastructure on which economic recovery depends. In their zeal

to address the first issue, we hope the new leadership will not take action that deepens the second."

The House rule may impact recreation programs financed by the Highway Trust Fund most severely. Those programs, particularly transportation enhancements and trails, are already under sharp attack from some Republicans and the American Automobile Association. Critics object to the use of highway money for non-road purposes.

As *FPR* reported in the December 3 issue, trails advocates such as the Rails-to-Trails Conservancy are having a major falling out with their old allies at AAA.

AAA in several recent incidents has advocated limiting the use of Highway Trust Fund money to road construction, leaving complementary programs such as transportation enhancements to find their own sources of revenue.

The dispute began in the September/October issued of *AAA World* magazine when AAA Mid-Atlantic President Don Gagnon wrote, "So why not let the Highway Trust Fund pay for our highways and let general revenues address the other expenses?"

The Highway Trust Fund currently supports the surface transportation law called the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) SAFETEA-LU now "guarantees" \$42.6 billion per year for highways, but the Highway Trust Fund produces just \$35 billion for gasoline taxes. So the fund and SAFETEA-LU are already running a deficit.

SAFETEA-LU expired on Sept. 30, 2009, but Congress has kept it alive until March 4 with a temporary extension to buy time to write a new law.

The House subcommittee on Highways and Transit did approve June 24, 2009, a version of a new, six-year highway bill. That measure would spend \$500 billion on highways and mass transit with a marked emphasis on outdoor programs. However, neither the House nor the Senate identified the money to pay for it.

Congress extends fiscal 2010 money bills into March

Congressional Democrats, unable to move either a full-year appropriations resolution or an omnibus appropriations bill, gave in December 21 and extended the current spending bill until March 4.

That sets up a titanic battle now that the Republican Party has taken over the House with a vow to slash federal spending. The Republican House will be up against a Democratic Senate and a Democratic President.

Meanwhile, the fiscal 2012 budget/appropriations process is just around the corner. The Obama administration has said that, although it won't have a fiscal 2012 budget ready for release on the scheduled date of February 7, it will lay out the budget sometime in February.

And the Office of Management and Budget has directed all agencies to come up with five percent reductions in spending.

For now the House and Senate December 21 approved in interim continuing resolution (CR) that extends fiscal year 2010 spending levels until March 4 for all 12 appropriations bills. That includes bills for the Interior Department and related agencies, Energy and Water, Transportation, and Agriculture. President Obama signed the bill into law December 22 as PL 111-332.

The interim CR also extends the surface transportation law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) until March 4. SAFETEA-LU technically expired on Sept. 30, 2009, but Congress keeps extending it while the House and Senate contemplate a new surface transportation bill.

Passage of the interim CR leaves in the lurch a full-year CR (HR 3082) that the House approved December 8 and an omnibus appropriations bill (unnumbered) that Senate Democrats introduced December 14. When Senate Majority Leader Harry Reid realized December 16 he

didn't have the votes to bring up the omnibus he capitulated and began negotiations on a temporary CR to keep the government alive through December.

Here's what the House CR and the Senate appropriations bill would have done. Although both failed this month they both provide a guide to what the Democrats may try to do next year.

THE HOUSE CR: Some specifics:

* SURFACE TRANSPORTATION: The Transportation bill portion of the CR would extend surface transportation spending through September 2011 at fiscal 2010 levels. However, interest groups, alarmed that the new House Republican majority plans huge cuts in surface transportation next year, were pushing for a two-year extension of the existing law,

* NATIONAL FOREST CABIN FEES: The Interior bill portion of the CR would place a cap on fees paid by cabin owners in the National Forest System. The CR would not allow the Forest Service to increase fees more than 25 percent above fiscal 2010 levels. A separate fee bill (HR 4888, S 3929) would have established a whole new system for establishing recreation residence payments,

* NPS REC AND PRES: The Interior bill portion of the CR would provide almost \$6 million less than the fiscal 2010 level, but nearly \$11 million more than the administration requested. NPS recreation and preservation would receive \$62.6 million compared to \$68.4 million in fiscal 2010 and a \$51 million administration request, and

* FOREST SERVICE NATIONAL FOREST SYSTEM: The Interior bill portion of the CR would provide \$1.581 billion, or \$30 million more than a fiscal 2010 appropriation of \$1.551 billion.

THE SENATE APPROPRIATIONS BILL: It would provide roughly the same amounts of money as in fiscal 2010. For instance an Interior and related agencies spending bill would receive a total of \$32.2 billion, or about the same as fiscal 2010 and as the House CR. In some specifics the Senate bill would:

* STATE LWCF: match a \$50 million request, compared to a fiscal 2010 appropriation of \$40 million;

* STATE WILDLIFE GRANTS: match a \$90 million request, compared to a fiscal 2010 appropriation of \$90 million;

* FEDERAL LWCF: provide \$305.387 million for land acquisition for federal agencies under the Land and Water Conservation Fund, compared to a request of \$384.1 million and compared to a fiscal 2010 appropriation of \$277.9 million;

* URBAN PARKS AND RECREATION RECOVERY: no money, the same as fiscal 2010;

* HISTORIC PRESERVATION STATE GRANTS: provide \$58 million, compared to a request of \$46.5 million and compared to a fiscal 2010 appropriation of \$46.5 million;

* SAVE AMERICA'S TREASURES: provide \$20 million, compared to a request of no money and compared to a fiscal 2010 appropriation of \$25 million;

* NPS OPERATIONS: provide \$2.299 billion, compared to a request of \$2.297 billion and compared to a fiscal 2010 appropriation of \$2.262 billion;

* NPS CONSTRUCTION: provide \$197.1 million, compared to a request of \$195.2 million and compared to a fiscal 2010 appropriation of \$239.8 million;

* NPS RECREATION AND PRESERVATION: provide \$67.958 million, compared to a request of \$51 million and compared to a fiscal 2010 appropriation of \$68.4 million; and

* NATIONAL FOREST SYSTEM: provide \$1.619 billion, compared to a request of \$1.586 billion and compared to a fiscal 2010 appropriation of \$1.551 billion.

SENATE APPROPRIATIONS BILL RIDERS:

* CABIN FEES: Like the House CR the Interior bill portion of the omnibus Senate bill would place a cap on fees paid by cabin owners in the National Forest System. The bill would not allow the Forest Service to increase fees more than 25 percent above fiscal 2010 levels.

* SACRAMENTO-SAN JOAQUIN NHA: Would establish a Sacramento-San Joaquin Delta National Heritage Area (NHA) in the State of California. A stand-alone bill (S 3927) was introduced by Sen. Dianne Feinstein (D-Calif.), by coincidence chairman of the Senate subcommittee on Interior appropriations. The NHA would acknowledge the largest inland delta in the world that includes 60 islands, 1,100 miles of levees and 3.5

million residents.

* NATIONAL WOMEN'S HISTORY MUSEUM: Would direct the General Services Administration to transfer property in Washington, D.C., for the establishment of a National Women's History Museum. A stand-alone bill (S 2129) was introduced by Sen. Collins. The property would be used as a site for a national women's history museum for 99 years.

* MONTANA WILDERNESS: Would designate 369,501 acres of recreation areas and 666,260 acres of wilderness in national forest and Bureau of Land Management land in western Montana. A stand-alone bill (S 1470) was introduced by Sen. Jon Tester (D-Mont.)

Major new Florida refuge might protect Everglades

Secretary of Interior Ken Salazar January 7 proposed the establishment of a new wildlife refuge and conservation area in south Florida that could cost \$700 million in land acquisition alone.

The 50,000-acre Everglades Headwaters National Wildlife Refuge and the 100,000-acre Everglades Headwaters Conservation Area would protect the Everglades headwaters north of Lake Okeechobee.

The Fish and Wildlife Service (FWS) is still studying the proposal so no appropriations requests have been submitted. Start-up costs would begin at \$250,000. But the proposal (on the web at <http://www.fws.gov/southeast/greatereverglades/>) would require appropriations from FWS's budget.

Says a preliminary study, "The price per acre for fee title acquisition in this area is estimated at \$7,000 per acre for a total estimated cost of \$350 million. The price per acre for conservation easements in this area is estimated at \$3,500 per acre for a total estimated cost of \$350 million if all 100,000 acres were protected with conservation easements."

The *Associated Press* reported that Sen. Bill Nelson (D-Fla.) said he would request appropriations for the project.

FWS anticipates that the Land and Water Conservation Fund will be the number one source of money for the project, but nine other financing sources would be available from federal, state and non-government sources.

The sources include the Migratory Bird Conservation Fund, the North American Wetlands Conservation Fund, Endangered Species Act Section 6 grants, State Wildlife Grants, Farm and Ranch-land assistance from the Department of Agriculture, the Wetland Reserve Program of the Department of Agriculture, Scenic Byways of the Department of Transportation, Florida Forever of the State of Florida, and donated conservation easements.

The donated easements would depend on private landowners securing federal tax benefits.

The 150,000-acre complex is but one part of an even more ambitious four-part plan to protect 4.5 million acres of land in central south Florida. The Peninsular Florida Landscape Conservation Cooperative (LCC) would extend from the outskirts of Orlando south through the Kissimmee River Valley and southwest to the Florida Panther Wildlife Refuge and the Big Cypress National Preserve.

The plan is not part of an \$8 billion Comprehensive Everglades Restoration Project (CERP) that Congress authorized in 2000, but is supplemental to it.

"The reason we're excited about this protect is because it complements the Comprehensive Everglades Restoration Project," said Stacy Shelton, spokeswoman for the southeast office of FWS. "If we can give greater protection to the headwaters where pollutants get washed into the Everglades, we can also protect the Everglades itself."

There are in effect three Everglades-related projects in the works in south Florida: (1) CERP, (2) the 4.5 million-acres Peninsular LCC and (3) the Headwaters refuge/conservation area.

Shelton said LCC will help FWS set priorities when it acquires land. "The

way we have been doing it, if a landowner is willing to sell land for a project we go ahead and buy the land for a particular project," she said. "If we do the LCC first we can set priorities and bring it altogether."

FWS said a study of the Headwaters refuge/conservation area will be completed by the end of the year. The Headwaters project is the first phase of the LCC. Work on the other three phases hasn't begun yet.

Salazar said of the Headwaters project, "The partnerships being formed would protect and improve water quality north of Lake Okeechobee, restore wetlands, and connect existing conservation lands and important wildlife corridors to support the greater Everglades restoration effort."

NPS makes final decision on motorized uses in Hatteras

The Park Service said December 28 that it has reached a final decision on off-road vehicle (ORV) use on Cape Hatteras National Seashore that will protect wild birds and turtles while providing some ORV access.

The decision will keep 28 miles of the seashore open to ORV uses and it will designate 26 miles of vehicle free areas. In addition the decision will impose addition ORV restrictions seasonally and nights. The seashore runs for 68 miles along the North Carolina coast.

The decision, which still must be implemented via regulations, is expected to satisfy no one. The Defenders of Wildlife conservation group wants more vehicle free areas. "The park service's preferred plan. . . allows ORV use on the majority of the seashore," Defenders said when the NPS proposal was first aired in November. "Twenty-eight of the seashore's 67 miles are set aside as year-round ORV routes, with only 26 miles designated as year-round vehicle-free areas for pedestrians, families, and wildlife."

But Dare County, N.C., the home

county for the seashore, said the plan will devastate its economy. Responding to the preferred alternative in a draft EIS NPS published last year, the county said, "Beach closures (under an interim rule) have already had a devastating and unfair impact on many Dare County businesses causing foreclosures, bankruptcies, lay-offs, cutbacks, expensive re-financing, and depleted college funds and savings accounts."

The Park Service is more sanguine. "While the selected action addresses the known risk factors for species at the Seashore, including the Seashore's threatened and endangered species, it also provides for the continued recreational use of the area, taking into account the known risk factors," said the seashore in its record of decision.

The seashore prepared the record of decision and attendant EIS to settle litigation brought by Defenders and other environmental groups in October 2007. The lawsuit protested Park Service and Fish and Wildlife Service management policies that they argue endanger the plovers, turtles and other species. The policies were laid out in a Park Service Interim Management Strategy of June 13, 2007.

A subsequent agreement between the parties settled the lawsuit. U.S. District Court Judge Terrence Boyle in North Carolina signed off on the agreement on April 30, 2008. It essentially forbids ORV use at night during the peak summer and shoulder seasons. And it bars ORV access within breeding zones.

The decree is supposed to stay in effect until NPS completes the new management strategy. The decree gives NPS a deadline of April 1, 2011. The record of decision was the last step before a final regulation.

Congress could become involved. Sen. Richard Burr (R-N.C.), ranking Republican on the Senate subcommittee on National Parks, has been on the ORV users side of this fight. He introduced legislation (S 1557) Aug. 3, 2009, that would authorize increased ORV use in Cape Hatteras.

And Rep. Walter Jones (R-N.C.) and five of his North Carolina House colleagues introduced a House version of the Burr bill (HR 718) in January 2009.

The NPS record of decision is available at: <http://parkplanning.nps.gov/caha>.

Conservation easement renewed by Congress in big tax law

President Obama signed into law December 17 (PL 111-312) a major tax bill that authorizes a straightforward extension of a conservation easement law until the end of 2011. That is not the major expansion of the program sought by farmers and conservationists.

The Senate approved its version of HR 4853 December 15 by an 81-to-19 vote that essentially carried out an agreement between President Obama and Congressional leaders. House Democratic leaders overcame a rebellion in the ranks and secured House approval December 17.

A broad coalition of sportsmen, outdoors enthusiasts, farmers, ranchers and national conservation groups worked for a major expansion of the conservation easement. They said they would seek legislation next year to both expand the provision and make it permanent.

For now Land Trust Alliance President Rand Wentworth said, "The land this incentive helps protect is an investment in clean water, fresh, local food, wildlife habitat, and scenic beauty."

The provision is retroactive to January 1, 2010, and covers all of calendar 2011. The Land Trust Alliance says the provision will lead to protection of more than one million acres per year.

Conservationists and farmers had been asking Congress to allow rural families to exclude 50 percent of the value of their land from federal taxes, if they put a permanent conservation easement on their properties. The maximum exclusion would be \$5 million.

Under existing law the exclusion is set at 40 percent and the cap is set at \$500,000. That is the provision that was through December 2011.

In a letter to House and Senate members last month, the agriculture industry joined with conservationists and preservationists to request that the provision be added to a new tax bill. Sen. Max Baucus (D-Mont.) wrote the tax bill that is best known for extending Bush administration income tax reductions.

There would be a cost. The Piedmont Environmental Council says that the Committee on Taxation has scored the provision at between \$90 million and \$132 million, but that's over ten years. Still, in a period of austerity any small new cost of government is greeted with skepticism

Sens. Mark Udall (D-Colo.), Mark Crapo (R-Idaho) and Judd Gregg (R-N.H.) in July introduced a stand-alone bill (S 3640) that would increase the inclusion to 50 percent and the cap to \$5 million.

Reps. Earl Blumenauer (D-Ore.) and Eric Cantor (R-Va.) have introduced a House version of the bill (HR 3050.)

Congress refuses to pass another omnibus; GOP opposes

A mammoth omnibus lands bill (S 303) died last month when supporters (1) ran out of time and (2) ran out of votes in the Senate.

The 1,003-page measure never got off the deck as western Republicans led the opposition to the measure packed with new park and recreation areas, land exchanges and more. Senate Majority Leader Harry Reid (D-Nev.) pulled the plug December 21.

Said ranking House Natural Resources Committee Republican Doc Hastings, "This latest omnibus package is also stuffed full of costly programs and wasteful spending – the scope of which will impact people and jobs across the entire county."

Perhaps more important was the opposition of Oklahoma Sens. James Inhofe (R) and Tom Coburn (R), who said privately they would place a "hold" on an omnibus lands bill in the Senate, forcing supporters to come up with a three-fifths majority. In addition supporters would have needed time procedurally under Senate rules to overcome a hold.

The BlueRibbon Coalition agreed with Inhofe and Coburn and urged its members to make this point, "I strongly oppose lumping scores of bills into one 'pass all or nothing' package. Each bill must be considered on its own merits, and a lot of these bills are BAD for public recreation, bad for rural economies, and reduce job opportunities!"

The measure would make the Land and Water Conservation Fund permanent, authorize additional summer recreation uses in ski resorts, transfer the Valles Caldera to the Park Service, designate a Waco Mammoth National Monument, expand Gettysburg National Military Park, designate a national heritage area, and much more.

Among the candidates for the National Park System omitted from the bill were measures to designate a First State National Historical Park in Delaware; a Coltsville National Historical Park in Connecticut; and a Longfellow House-Washington's Headquarters National Historic Site in Massachusetts.

The bill also does not include several major wilderness bills that were on environmentalists' wish list, including a California Desert Protection Act; an Eagle and Summit County Wilderness Preservation Act; a Montana Forest Jobs and Recreation Act; and a Buffalo Gap National Grassland Act.

Supporters of the bill, led by Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), had hoped to overcome criticism by including significant Republican projects in S 303, thus gaining enough support to obtain Senate and House passage. The strategy did not work.

Here's a small taste of what S 303

would have done, if it had been enacted:

* **LAND AND WATER CONSERVATION FUND (LWCF):** Would make the law permanent. It is now scheduled to expire in 2015. The bill would NOT guarantee payments each year. Annual allocations would still be subject to appropriations bills. The law authorizes spending up to \$900 million per year, but appropriators seldom put up that much money.

* **SKI AREA SUMMER AUTHORIZATIONS:** Would make clear what uses ski resorts may and may not provide on federal lands in the off-season. The ski industry asked Congress to provide specific authority so member resorts could offer additional services in the summer off-season.

* **VALLES CALDERA TRANSFER FROM NPS TO FS:** Would transfer 88,900 acres in the Valles Caldera of the Santa Fe National Forest to the National Park Service.

* **WACO MAMMOTH NATIONAL MONUMENT:** Would include in the National Park System a site that includes remains of mammoths in Waco, Texas.

* **GETTYSBURG EXPANSION:** Would add the Gettysburg Railroad Station to Gettysburg National Military Park and would add a 45-acre tract south of the battlefield to the park.

* **NATIONAL HERITAGE AREA SUSQUEHANNA:** Would designate a Susquehanna Gateway National Heritage Area in Lancaster and York Counties in Pennsylvania to recognize the cultural, economic and political history of the Susquehanna River bed.

* **FEDERAL LAND TRANSACTION FACILITATION ACT:** Would allow the Bureau of Land Management (BLM) to sell lands cleared by all land management plans, not just plans completed prior to 2000, as the old law does. Under an existing law BLM may only sell lands cleared for disposition by land management plans completed prior to 2000. BLM has raised more than \$100 million from the land sales. Most of that money is used for conservation and acquisition.

* **NATIONAL MONUMENT: CHIMNEY ROCK,**

COLORADO: Would designate a 62,000-acre monument in the San Juan National Forest in the San Juan Mountains of southwest Colorado.

* **BLM CONSERVATION AREA: RIO GRANDE DEL NORTE NATIONAL CONSERVATION AREA, NEW MEXICO:** Would designate a 235,980-acre Rio Grande Del Norte National Conservation Area in Taos and Rio Arriba Counties.

* **WILD AND SCENIC RIVERS (FOUR):** Would designate as wild and scenic rivers a Molalla River in Oregon, an Illabot Creek in Washington, and an Elk River in West Virginia. It would expand a White Clay Creek designation in Delaware and Pennsylvania.

* **NATIONAL TRAILS, NORTH COUNTRY EXPANSION:** Would expand the North Country National Scenic Trail by 1,400 miles from 3,200 miles to 4,600 miles in Minnesota.

* **NATIONAL WOMEN'S HISTORY MUSEUM:** Would direct the General Services Administration to transfer property in Washington, D.C., for the establishment of a National Women's History Museum.

Notes

Strickland to leave next month.

Tom Strickland, a top aide to Secretary of Interior Ken Salazar, next month will leave his dual posts of Interior Department chief of staff and assistant secretary for Fish and Wildlife and Parks. Salazar said Strickland was "a close friend of more than 30 years." Salazar said that Laura Daniel Davis, Strickland's principal aide in the chief of staff office, will become the new chief of staff. Will Shafroth, Strickland's principal deputy as assistant secretary, will take over as acting assistant secretary until a new assistant secretary is nominated and confirmed by the Senate. Among other things Strickland helped develop the America's Great Outdoors Initiative, the President's lead recreation initiative. Strickland was confirmed as assistant secretary on April 30, 2009. He came to Interior from a job as executive vice president and chief legal officer of UnitedHealth Group. Before that

he was a partner in the Hogan & Hartson law firm.

NPS will hold 17 no-fee days. Beginning tomorrow, January 15, the Park Service will begin a series of 17 days when it won't charge entrance fees this year. Secretary of Interior Ken Salazar, who announced the fee-free days, said the economy contributed to the decision. "In these tough economic times, our fee-free days will give families many opportunities to enjoy our nation's heritage and natural beauty in meaningful and affordable ways," he said. The Obama administration approved a number of fee-free days last year as most parks saw a rise in visitation. The 2011 fee-free dates will begin on this weekend of Martin Luther King, Jr. Day (January 15-17) and include National Park Week (April 16-24), the first day of summer (June 21), National Public Lands Day (September 24) and the weekend of Veterans Day (November 11-13). Some 147 of the 394 parks charge entrance fees. NPS also said many national park concessioners will offer discounts on fee-free days. For more information see: <http://www.nps.gov/findapark/feefreeparks.htm>.

Chambers ordered back to NPS. A federal appeals board January 11 ordered the Interior Department to reinstall Teresa Chambers as chief of the park police within 20 days. The Bush administration removed Chambers from that position in 2003 because she violated agency policy by talking to the press about budget needs. The Interior Department has not said whether it will follow the appeals board's direction or file an appeal. Chambers and the Public Employees for Environmental Responsibility (PEER) have fought a long legal battle to overcome her removal. In the January 11 ruling the Merit System Protection Board said the evidence against Chambers was weak. "We would expect the Interior Department to welcome Chief Chambers back with open arms," said PEER Executive Director Jeff Ruch. "We hope this case opens the path for other whistleblowers to return to public service."

NPS takes O&G regulation step. The Park Service December 30 said it would prepare an EIS to assess the impact of possible new regulations that

would require all oil and gas operations within the national parks to protect park resources. Under existing practice more than half of all oil and gas operations within the National Park System do not have to prepare a plan of operations or provide the feds with a bond. That's because NPS exempts from its regs all oil and gas projects adjacent to a park that don't require access through the park. That's 109 of the 693 operations within the system. NPS also exempts operations that were grandfathered when old NPS regs went into effect in January 1979 because they were subject to state regulations. On Nov. 25, 2009, NPS took a first step toward new regulations when it asked for public comment on the advisability of extending its regulations to all 693 operations. Comment on NPS's plan to write an EIS by mail by February 28 to: Sandy Hamilton, Environmental Quality Division, National Park Service, Academy Place, P.O. Box 25287, Denver, CO 80225, or by E-mail to the NPS planning website at <http://parkplanning.nps.gov/WASO>.

FS open space grants planned. The Forest Service proposed regulations January 6 that would set conditions for community grants that would help entities acquire private forests to protect open space. Not much money is involved. The fiscal 2010 appropriation for the program, established by the 2008 Farm Act (Section 8003), was only \$500,000. The administration asked for \$1,000,000 for fiscal 2011, but given the austere budget times that may not be realistic. At any rate the Forest Service said that after it completes regulations it intends to grant the awards competitively to local governments, tribal governments and nonprofits. Comment by March 7 to: *Community Forest Program, U.S. Forest Service, State and Private Forestry, Cooperative Forestry, 1400 Independence Avenue, SW., Code 1123, Washington, D.C. 20250* or by E-mail to: community-forest@fs.fed.us,

Y'stone snowmobile numbers mixed. Motorized winter visitation in December to Yellowstone National Park showed an increase in snowcoach use but a decrease in snowmobile use compared to December of the year before. All told the park reported an increase of snowmobile and

snowcoach visitation combined of 1.2 percent, or 9,409 in 2010 compared to 9,298 in 2009. However, the number of snowcoach passengers was up by 5.7 percent (5,059 visitors compared to 4,786 in 2009) and snowmobile users was down by 3.6 percent (4,350 visitors compared to 4,512 last year.) Yellowstone opened select roads to snowmobile use on schedule in mid-December under a controversial interim plan. By next winter the Park Service will attempt to complete a permanent rule to govern snowmobile use in Yellowstone. The previous three rules were thrown out by various courts, forcing NPS to issue temporary rules. The temporary rule now in effect allows up to 318 commercially-guided snowmobiles per day and up to 78 commercially-guided snowcoaches per day in the park. In late July 2010 the park outlined six alternatives that it will consider in a draft EIS for snowmobile use in the park, beginning with the winter of 2011-2012. The draft EIS is due out in February or March. This winter's temporary rule is among the tentative six alternatives, as is an alternative that would return to a 2004 plan with limits of up to 720 snowmobiles and 78 snowcoaches per day. Another alternative would eliminate both snowcoaches and snowmobiles.

Jackson Hole airport extended.

The Park Service December 29 granted a 20-year lease extension for Jackson Hole Airport to continue operating inside Grand Teton National Park. Although the National Parks Conservation Association (NPCA) called the extension "a step in the right direction," it also had concerns, particularly with flight patterns within the park. Said Sharon Mader, NPCA Grand Teton program manager, "The Board is aware of the need to reduce the airport's effects on the park, but has struggled to implement meaningful operational changes such as using the radar control tower to direct pilots to land and take off from the south – a voluntary provision in the existing use agreement. Despite the fact that this provision has been in place since the 1983 use agreement was signed, 85 percent of all flights still land from the north over Grand Teton National Park." The Interior Department in 1983 gave an initial approval for flights in and out

of the park, including jets. The old lease was not scheduled to expire until 2033, but the airport authority sought a longer term to obtain grants from the Federal Aviation Administration. The lease now extends through 2053. Grand Teton is the only national park with an airport within its boundaries.

Gettysburg casino vote put off.

The Pennsylvania Gaming Control Board punted January 6 on a vote to approve or disapprove a gambling casino a half-mile from Gettysburg National Military Park. The board put off until January 26 a vote on the selection of one of four sites for the state's next gambling casino. An application for a casino in Gettysburg has divided preservation groups. The National Trust for Historic Preservation opposes the proposed \$75 million resort that would be built in a converted Eisenhower Hotel and Conference Center in Adams County, Pa. The trust says the casino would "conflict" with the purpose of the military park. Gov. Ed Rendell (D-Pa.) also opposes it. But the oldest Civil War preservation group in the nation, the Gettysburg Battlefield Preservation Association, has endorsed the project. This is the second go-round for project applicant Dave LeVan, a local Harley-Davidson merchant. In 2005 he proposed a much larger casino (3,000 slots compared to 500 in the new facility), but it was defeated by the gaming board. The proposed Gettysburg facility, called Mason-Dixon Resort & Spa, would be located in a 300-room, first-class hotel, said LeVan. In addition to 600 slot machines the facility would have 50 table games. LeVan, who has reportedly contributed \$4 million to preservation projects in Gettysburg and other sites, said the project would create as many as 10,000 jobs.

PEER files Big Cypress complaint.

The Public Employees for Environmental Responsibility (PEER) environmental group filed a complaint December 29 against a Park Service decision to recommend only 47,000 acres of wilderness in Big Cypress National Preserve Addition lands. PEER said the recommendation, included in a land use plan for the 147,000-acre Addition, effectively reverses the findings of two previous analyses that would have included

an additional 40,000 acres of wilderness. PEER said the new analysis was conducted without public involvement. The final plan and EIS, announced Nov. 24, 2010, purported to provide a little for both off-road vehicle (ORV) users and environmentalists. For ORV users the plan would provide 130 miles of trails in the Addition to provide access to backcountry hunting and fishing. But the plan disagrees with a recommendation of sportsmen that no wilderness be designated in the backcountry; it calls for more than 47,000 acres of wilderness recommendations to Congress. For environmentalists the plan would gradually phase in the 130 miles of trail and would have NPS recommend the 47,000 acres for wilderness. But the plan offends the environmentalists by allowing any ORV use in the Addition. The park says it will "soon" publish a record of decision that will implement the plan. Congress expanded Big Cypress in 1988 when it approved the 147,000 acres of Additions. The initial preserve was established in 1974 with 582,000 acres.

Lands board okays shooting range.

The Interior Board of Land Appeals (IBLA) last month approved a decision by the Bureau of Land Management (BLM) to sell public lands to the State of Arizona for a shooting range. The Hualapai and Fort Mojave Indian Tribes appealed the BLM decision to IBLA, complaining that the bureau had failed to consult with them in a timely manner under Section 106 of the National Historic Preservation Act (NHPA). The tribes said BLM should have consulted with them before the state formally applied for the lands, and not waited until the application was filed. But IBLA Administrative Judge Roberts said BLM can't consult until it has an application. "(While BLM's section 106 guidelines state that 'consultation with [T]ribes should be initiated at the beginning of project planning,' Protocol at 4, an undertaking did not occur until the (state) filed its application. BLM can only consider conveying public lands pursuant to the R&PPA 'upon application filed by a duly qualified applicant.'" R&PPA stands for the Recreation and Public Purposes Act.

Conference calendar

JANUARY

18-20. **National Ski Areas Association** western conference in Snowbird, Utah. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

19-21. **U.S. Conference of Mayors** winter meeting in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, DC 20006. (202) 293-7330. <http://www.usmayors.org>.

20-23. **Outdoor Retailer Winter Market** in Salt Lake City. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

30-Feb. 2. **National Association of Conservation Districts** annual meeting in Nashville, Tenn. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, DC 20002. (202) 547-6233. <http://www.nacdnet.org>.

FEBRUARY

8-10 **National Ski Areas Association** eastern conference at Killington, Vt. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

21-24. **Association of Partners for Public Lands** annual convention in Dallas. Contact: Association of Partners for Public Lands, 2401 Blueridge Ave, Suite 303, Wheaton, MD 20902. (301) 946-9475. <http://www.appl.org>.

MARCH

7-8. **National Association of Counties** legislative conference in Washington, D.C. Contact: National Association of Counties, 440 First St., N.W., 8th Floor, Washington, DC. 20001. (202) 393-6226. FAX (202) 393-2630. <http://www.naco.org>.