

# Federal Parks & Recreation

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## Approps bill with outdoor assistance begins to move

A House Appropriations subcommittee June 11 approved significant increases for park and recreation conservation programs in a fiscal year 2009 money bill.

The bill was scheduled for full House Appropriations Committee consideration June 18 but was postponed because the House began work on an emergency Iraq war spending bill.

The House subcommittee on Interior and Related Agencies approved \$25 million more than the administration requested for the state side of the Land and Water Conservation Fund (LWCF), almost \$90 million more for federal LWCF and \$43.5 million more for a Forest Legacy program.

In subcommittee, chairman Norman Dicks (D-Wash.) criticized President Bush's overall budget request for the Interior Department, the Forest Service and EPA.

"His proposal would have reduced the budgets for Interior and Environment programs by almost \$1 billion," Dicks said. "I do not believe it is an understatement to say that members on both sides of the aisle were appalled by many of his specific proposals and the impacts they would have had on the public."

Conservationists were pleased. "We were thrilled to see the administration's cuts were soundly rebuffed," said Alan Front, senior vice president for the Trust for Public Lands. "Congressman Dicks deserves a lot of praise. He not only rejected the administration cuts but added new money."

The Senate subcommittee on Interior Appropriations is tentatively

scheduled to mark up a counterpart bill June 25 followed by the full Senate Appropriations Committee June 26.

Because of political gridlock in the Senate virtually no one expects an Interior bill to make it all the way through Congress this year. Rather, most anticipate that Congress will simply extend the fiscal 2008 money bill deep into fiscal 2009, perhaps mid-spring when a new Congress takes charge.

But House and Senate Democrats do want to make a statement with their bill vis-à-vis the administration's budget request. "Ultimately, there will be a fiscal year 2009 appropriations bill," said Front, "and the subcommittee's action will set a standard for that bill."

In total the House subcommittee bill would provide \$1.3 billion more than a comparable fiscal 2008 bill, increasing from \$26.555 billion to \$27.867 billion in fiscal 2009. Moreover, the subcommittee approved \$2.1 billion more than the Bush administration's request of \$25.714 billion.

On June 4 and June 5 respectively the Senate and House opened the way for the subcommittee to act by approving a fiscal 2009 Congressional budget (S Con Res 70.) In the natural resources portion of the budget (Function 300) S Con Res 70 authorized a large \$7.3 billion increase in budget authority, rising from \$33.1 billion in fiscal 2008 to \$40.5 billion in fiscal 2009.

House Democratic leaders translated the spending caps in S Con Res 70 into ceilings for individual appropriations bills (budget functions don't parallel individual money bills), including the extra \$1.3 billion for the Interior and related agencies bill.

Here are some numbers the subcommittee approved, compared to the administration's request and to fiscal 2008 appropriations:

\* STATE LWCF: Approved \$25 million, the same as last year and \$25

million more than the administration request.

\* FEDERAL LWCF: Approved almost \$90 million more than the administration requested. Subcommittee, \$132.2 million; administration, \$42.5 million; fiscal 2008, \$129.7 million.

\* URBAN PARKS AND RECREATION RECOVERY: Approved no money, administration asked no money and the fiscal 2008 law provided no money. It is understood committee will call for federal oversight of old projects to limit diversion to other uses.

\* FOREST LEGACY: Approved \$43.5 million more than the administration requested. Subcommittee, \$56 million; administration, \$12.5 million; fiscal 2008, \$52.3 million.

\* FOREST SERVICE RECREATION: Approved \$41.5 million more than the administration requested and almost \$16 million more than the fiscal 2008 appropriation. Subcommittee, \$278.5 million; administration, \$237 million; fiscal 2008, \$262.6 million.

\* FOREST TRAILS: Approved \$28.5 million more than the administration requested. Subcommittee, \$78.9 million; administration, \$50.4 million; fiscal 2008, \$76.4 million.

\* HISTORIC PRESERVATION: Approved \$15 million more than the administration requested and almost \$12 million more than the fiscal 2008 appropriation. Subcommittee, \$82 million; administration, \$66.7 million; fiscal 2008, \$70.4 million.

\* SAVE AMERICA'S TREASURES (within Historic Pres line item above): Approved \$10 million more than the budget request. Subcommittee, \$25 million; administration \$15 million; fiscal 2008, \$24.6 million.

\* PRESERVE AMERICA (within Historic Pres line item above): Approved \$5 million LESS than administration requested. Subcommittee, \$5 million; administration, \$10 million; fiscal 2008, \$7.4 million.

## House subcommittee helps federal agencies a little

A House appropriations subcommittee June 11 approved less ambitious increases for federal land management agencies for fiscal year 2009 than it did for conservation programs.

The bill from the House subcommittee on Interior and related agencies had been scheduled for full committee consideration June 18 but was postponed because an Iraq war funding bill was nearing the House floor.

For the Park Service, the subcommittee actually approved \$7 million less than the administration requested in a fiscal 2009 money bill for the Interior Department and Related Agencies. For the Forest Service the subcommittee did approve \$159 million more than the administration asked, but that was still just \$2 million more than a fiscal 2008 appropriation.

The head of a coalition of retired Forest Service officials said he was "disappointed" with the Forest Service allotment. Said George Leonard, chairman of the board of the National Association of Forest Service Retirees, "The bright side is that the committee did not accept the reductions proposed in the President's budget; but by only providing increases over the FY 2008 appropriation needed to offset rising costs, they have done nothing to restore the capability of the Forest service to carry out its multiple use mission."

The National Park Conservation Association (NPCA), despite the \$7 million decrease for national park operations, praised the architect of the bill, House subcommittee on Interior Appropriations Chairman Norman Dicks (D-Wash.)

"We greatly appreciate the leadership of Chairman Dicks, and the bipartisan work of the subcommittee to provide support for our national parks, including increased operating funds for rangers and public education programs, and restoring harmful, proposed cuts to

national park construction and land acquisition needs," said NPCA President Tom Kiernan.

In a separate action the House subcommittee on Energy and Water Appropriations June 17 approved its fiscal 2009 bill with modest increases in spending for the Corps of Engineers and the Bureau of Reclamation.

Here are some specific allocations in the Interior bill and the Energy and Water bill. As noted in the previous article the Senate Appropriations Committee is tentatively scheduled to take up a counterpart Interior bill next week:

\* NPS OPERATIONS: Approved \$7 million less than the administration requested but \$154 million more than fiscal 2008. Subcommittee, \$2.125 billion; administration, \$2.132 billion; fiscal 2008, \$1.971 billion.

\* NPS CENTENNIAL INITIATIVE: Met the administration request for core operations in the above line item, but provided no money for the Centennial Challenge, leaving that job to the House Natural Resources Committee that is writing an authorization bill. Congress approved \$25 million as a start-up for the program in fiscal 2008.

\* NPS WASHINGTON, D.C. MALL: Approved \$100 million to upgrade the National Mall even though it wasn't requested. New program.

\* NATIONAL FOREST SYSTEM: Approved an increase of \$159 million over the administration request but only \$2 million more than the fiscal 2008 level. Subcommittee, \$1.508 billion; administration, \$1.349 billion; fiscal 2008 appropriation, \$1.506 billion.

\* FIRE FIGHTING: Approved \$141 million more than the administration requested. Subcommittee: \$2.969 billion; administration, \$2.828 billion; fiscal 2008, \$2.752 billion.

\* BLM MANAGEMENT: Approved \$26 million more for the Bureau of Land Management (BLM) programs than the ad-

ministration requested and \$5 million more than a fiscal 2008 appropriation. Subcommittee: \$1.013 billion; administration \$987 million; fiscal 2008, \$1.008 billion.

\* FWS REFUGE MANAGEMENT: Approved \$35 million more than the administration requested and \$35 million more than a fiscal 2008 appropriation. Subcommittee, \$469 million; administration, \$434 million; fiscal 2008, \$434 million.

\* CORPS OF ENGINEERS: approved \$592 million more than the administration requested, \$5.333 billion compared to a request of \$4.741 billion.

\* BUREAU OF RECLAMATION: approved \$109 million more than the administration requested, \$1.094 billion compared to a request of \$985 million.

## **Carolina delegation has own ideas on Hatteras OHVs**

Five North Carolina House members and the state's two senators introduced legislation June 11 to restore full off-highway vehicle (OHV) use to Cape Hatteras National Seashore.

Their bills (S 3113, HR 6223) would undo a court-approved agreement between the Park Service and environmentalists designed to minimize OHV damage to beaches and species.

"I share the concerns of many North Carolinians about the negative ramifications that severely restricting off-road vehicle use at CHNS will have on the local community and economy," said Sen. Elizabeth Dole (R-N.C.), who along with Sen. Richard Burr (R-N.C.) introduced S 3113.

Their legislation would effectively restore a Park Service Interim Management Strategy of June 13, 2007, that the agreement superseded. The agreement was signed off on by U.S. District Court Judge Terrence Boyle in North Carolina April 30.

Said Burr, who also serves as ranking Republican on the Senate subcom-

mittee on National Parks, "I am certain we can come to a compromise that allows people to have access while at the same time addressing any potential environmental concerns."

Rep. Walter Jones (R-N.C.) is the lead sponsor of the House bill. In addition to five North Carolina Republicans, Rep. Virgil Goode (R-Va.) cosponsored HR 6223.

The consent decree essentially forbids OHV use at night during the peak summer and shoulder seasons. And it bars OHV access within breeding zones. The decree would last until NPS completed a travel management plan.

The pertinent language in the bill says: "During the period beginning on the date of enactment of this Act and ending on the date on which the Secretary of the Interior, acting through the Director of the National Park Service, issues a special regulation and long-term off-road vehicle management plan for the use of Cape Hatteras National Seashore, North Carolina (referred to in this section as the 'Seashore'), the Seashore shall be managed in accordance with the Interim Protected Species Management Strategy/Environmental Assessment issued by the National Park Service on June 13, 2007."

The Defenders of Wildlife, lead plaintiff in the litigation that led to the consent decree, criticized the legislation. "This attack on the laws that safeguard our parks and seashores could set a dangerous precedent," said Jason Rylander, attorney for Defenders of Wildlife. "Basing the management of Cape Hatteras on the desires of a handful of special interests would do a disservice not only to the wilderness and natural resources the seashore was created to protect, but also to the thousands of visitors who travel to the seashore to enjoy those same resources each year."

The decree settled a lawsuit brought on behalf of Defenders and the National Audubon Society against the Park Service and Dare and Hyde Counties in North Carolina. The case is cited as

*Defenders of Wildlife et al. v. NPS, No. 2:07-CV-45-BO.*

The environmentalists filed suit in October 2007 to protest Park Service and Fish and Wildlife Service management policies that they argue endanger plovers, turtles and other species. One of their first demands was a ban on beach driving on 12 percent of the shoreline.

Under the decree OHV use is banned at night from May to November, except for educational purposes. The highly-technical, complex 23-page agreement also establishes barriers around breeding grounds.

The decree requires NPS to complete an OHV management plan and to begin implementing it by April 1, 2011. At that time the consent decree would expire.

The decree and background information are available at:  
[http://www.defenders.org/newsroom/press\\_releases\\_folder/2008/04\\_16\\_2008\\_hatteras\\_beach\\_driving\\_negotiations\\_successful.php](http://www.defenders.org/newsroom/press_releases_folder/2008/04_16_2008_hatteras_beach_driving_negotiations_successful.php).

## **Federal entry fees critics ask Congress to repeal FLREA**

Critics of the Bush administration's strategy for implementing a federal recreation fee law got their day in the sun June 18.

At a hearing held by the House subcommittee on National Parks, Forests and Public Lands the critics blasted the Forest Service and the Bureau of Land Management (BLM) for charging entrance fees to undeveloped recreation areas even though they say the 2004 law forbids it.

"They are charging fees at thousands of trailheads that provide access to dispersed undeveloped backcountry, and they are stretching the Special Recreation Permit authority to cover virtually any type of recreational activity," said Kitty Benzar, president of the Western Slope No-Fee Coalition and a critic of the law. "As a result, de facto entrance fees are controlling

access to huge tracts of public land."

Benzar urged House Natural Resources Committee members to act. "The only way to accomplish that, I believe, is to repeal the Federal Lands Recreation Enhancement Act (PL 108-447 on Dec. 8, 2004) and return to the policies that served America well for thirty years under the Land and Water Conservation Fund Act." The act, called FLREA, sets the ground rules for federal land management agencies to charge entrance and user fees.

Subcommittee chairman Rep. Raúl Grijalva (D-Ariz.) was clearly troubled. "In the past two weeks since we announced this hearing we have received a flood of testimonials from people who are all asking us to repeal the law," he said. "After ten years of experience in implementing this law I would hope we were beyond these issues." However, Grijalva didn't say he supported repeal.

Under Secretary of Agriculture Mark Rey said repeal would be devastating. Asked by Rep. Rob Bishop (R-Utah) on the impact of total repeal of FLREA, Rey said, "The Forest Service manages 17,000 recreation sites with both appropriated and fee dollars. The legislation would call into question our ability to operate 7,300, or 43 percent of sites. It's possible we could offer about 2,000 of those sites to concessionaires who will also charge fees, albeit at a higher rate. Roughly a third of the sites on the national forests would be called into jeopardy

Deputy Secretary of Interior Lynn Scarlett said various surveys in recent years has shown support for the fees from 80 percent of BLM visitors, 83 percent of national forest visitors and 90 percent of NPS visitors.

Sen. Max Baucus (D-Mont.) has taken the lead in the Senate. He introduced a repeal bill (S 2438) on Dec. 10, 2007. He was joined by Sens. Ken Salazar (D-Colo.), Mike Crapo (R-Idaho) and Jon Tester (D-Mont.) The Senate Energy Committee had scheduled a hearing on S 2438 for April 15 but postponed it because of the press of other business.

At the June 18 House subcommittee hearing the Bush administration defended its practice of charging fees to enter high impact recreation areas (HIRAs.) Critics say the HIRAs violate the law because they require a fee to use undeveloped recreation areas. But the administration says that because developed recreation areas are within the HIRAs, the fees are within FLREA's sweep.

FLREA established a permanent program that included authority for federal land management agencies to collect user fees; the Park Service and the Fish and Wildlife Service to collect entrance fees; the Forest Service, BLM and the Bureau of Reclamation to collect access fees to developed recreation sites; and all agencies to sell and honor the new All-American Passport.

S 2438 would leave in place only Park Service entrance fees (as established in a previous law), with 80 percent of revenues still retained by collecting NPS units. In other areas S 2438 would:

- \* eliminate collection of "standard amenity fees" at developed sites that the 2004 law authorized for the Forest Service, BLM, and the Bureau of Reclamation,

- \* eliminate retention of recreation fees by the agencies and return use fees to the U.S. Treasury,

- \* cap entrance fees charged by NPS at \$25 for a single visit by car, \$12 by foot or bicycle, and \$40 for an annual pass (instead of \$15),

- \* eliminate a multi-agency American Passport and reinstate the old Golden Eagle and Golden Age Passports charged by the Park Service, and

- \* increase the Golden Eagle passport fee from \$25 to \$65.

Critics say FLREA went awry in part because it returned fee revenues to federal land management agencies. That gave agencies an incentive to charge fees in undeveloped areas, they say.

But Rep. Ralph Regula (R-Ohio), the architect of an original fee prototype law in 1997, asked the subcommittee to keep FLREA in place. "I hope you

don't abandon it," he said. "The evidence is very strong as you will hear from the people in the Interior Department about how important this is."

## **Climate bills with outdoor money are slowed; not dead**

Although the Senate earlier this month resoundingly rejected an ambitious climate change bill that contained billions of dollars for conservation, the legislation is far from finished.

The Senate bill (S 3036) is almost certain to revive next year in a more politically palatable form. And the November elections may provide a more supportive Congress and White House.

In addition, while the Senate bill is pretty much done for the year, the House is still working on a counterpart bill (HR 6186.) It was introduced last month by House Committee on Energy Independence and Global Warming Chairman Edward Markey (D-Mass.)

Markey has scheduled two hearings on the subject this week and is expected to keep up a steady drumbeat for the rest of the year.

Larry Schweiger, president and CEO of the National Wildlife Federation, summed up the ambitions of climate change supporters after the Senate vote: "Despite (the) vote, the results are vital to our plans for passing strong global warming legislation next year. We now know which senators are paying attention to science and listening to the public, and which ones are instead listening to oil companies."

"(The vote) was just round one," he continued. "Round two will be when voters have their say in November. Round three will happen in 2009 when we have a new President and a new Congress who will listen to the vast majority of Americans who want real action."

Most of the conservation assistance in the Senate bill would come from a National Wildlife Adaptation Fund and a State Wildlife Adaptation Fund. The

funds would receive money from a share of \$6.2 trillion in the sale of emission allowances. According to a coalition of 170 environmental groups, the provision would allocate an average of \$7.2 billion per year for 20 years to federal, state and local conservation programs.

The Land and Water Conservation Fund (LWCF) would receive enough guaranteed money to meet its current authorization of \$900 million per year. Within LWCF the provision would subdivide the money further, providing one-third or \$300 million for Interior Department land acquisition, one-third or \$300 million for Forest Service land acquisition, one-sixth or \$150 million for state-side LWCF grants with an emphasis on adaptation projects, and one-sixth or \$150 million to states for a Forest Legacy program managed by the Forest Service.

The provision would authorize the state LWCF grants program to receive other streams of revenues, presumably allowing LWCF to exceed its \$900 million cap with money from appropriations, a new program providing extra royalties from offshore oil and gas leasing, and other sources.

The House bill from Markey would finance conservation programs from a Natural Resource Conservation Fund for "adaptation activities." Like the Senate bill HR 6186 would draw revenues from billions of dollars in emissions payments. Like the Senate bill HR 6186 would guarantee full funding for LWCF. Like the Senate bill HR 6186 would provide billions of dollars per year for other conservation programs administered by the Interior Department, the Forest Service and EPA.

As *FPR* reported in the last issue the obstacles facing the legislation in this Congress are immense. The Bush administration objects to the \$6.2 trillion price tag and promises a veto.

Second, Congress is deeply divided about how best to address climate change with several Democratic senators opposing S 3036. Congress almost certainly won't complete a bill this year. Third,

Sen. Bob Corker (R-Tenn.) has prepared major amendments that, if the bill reaches the Senate floor, would cancel the adaptation funds. In their place Corker would distribute the money directly to taxpayers in a rebate.

For all those problems, S 3036 still puts on the table in a serious proposal a lifesaver for conservation programs that have been starved for money for the last decade. Even if S 3036 goes nowhere this year, it establishes a template for the next Congress.

## **Kempthorne signs off on FY 08 state LWCF grants, finally**

With less than four months to go in fiscal year 2008 Secretary of Interior Dirk Kempthorne June 11 finally approved the distribution of state grants from the Land and Water Conservation Fund (LWCF.)

Time matters because states have three years from the beginning of a fiscal year when the money is appropriated to obligate an appropriation. In this fiscal year \$24.6 million is at stake. States have already lost more than eight months from the three years.

It is understood the Park Service completed its recommended allocation - established by formula in law - in January. Michael Wilson, chief of the NPS State and Local Assistance program, said he was unaware of any problems with the formula contributing to the delay. Wilson said the fiscal 2007 allocation was signed in April.

Meanwhile, *FPR* has received an estimate from the Minerals Management Service (MMS) on the amount of supplemental money that offshore, Gulf of Mexico oil and gas revenues will provide for state grants in fiscal 2008 - \$8 million. "Once MMS has adjudicated and accepted the leases, MMS will distribute 12.5 percent to the LWCF - around \$8 million," confirmed the service in an E-mail to us.

Finally, as we report on page one of this issue the House appropriations

subcommittee on Interior and related agencies June 11 approved \$25 million in regular appropriations for fiscal 2009 state LWCF grants. That will be supplemented by royalties, rents, fees and other revenues from the Gulf of Mexico oil and gas lease sales. (The Bush administration recommended no appropriation for regular state LWCF grants in fiscal 2009.)

When President Bush was elected in 2001, he promised to fully fund the state side of LWCF at \$450 million per year. But his administration soon turned against the program. For the last four fiscal years the administration budget has requested no money.

Congress has consistently provided at least a survival appropriation for the program, approving \$28 million in grants in fiscal 2006, \$28 million in fiscal 2007 and \$23 million in fiscal 2008.

The Gulf of Mexico Energy Security Act of 2006 directs MMS to allocate 12.5 percent of "revenues" from Gulf of Mexico offshore oil and gas lease sales from the 181 Area and the 181 South Area. Revenues from 2008 through 2016 include bonus bids, rents and royalties. As production increases royalties in out-years will also increase and the allocation to the state side of LWCF will grow.

The money is guaranteed and does not rely on an appropriation. In addition it is supplemental to any regular appropriation that Congress might make to the state side of LWCF.

After the \$8 million allocation for fiscal 2008, supporters of state grants anticipate modest allocations for the next few years. Cleve Hardman, director of Outdoor Recreation for the Louisiana Office of State Parks, said, "There will be a brief boost through lease sales, then not much for the next several years until drilling begins to produce some oil. It likely will be 2015-2016 before the program really gains much from those monies, but that will help eventually." Hardman's home state of Louisiana is of course head-

quarters for Gulf oil drilling work.

The lead author of the Sale 181 provision, Sen. Lamar Alexander (R-Tenn.), said at a Senate hearing this spring he wants to expand the program to future offshore oil and gas lease sales. And he said he would hope eventually to secure guaranteed funding of \$900 million per year for LWCF.

For more information on state LWCF grants go to <http://www.nps.gov/lwcf>. For information on grant money click on "Funding Status."

## **NPS vets name five quiet parks and five not so quiet**

A coalition of Park Service retirees said last week five national parks are threatened by serious noise. For four parks the noise comes from aircraft and for the fifth land-based motors.

The Coalition of National Park Service Retirees (CNPSR) listed the five as Minute Man National Historical Park, Mass.; Mojave National Preserve, Calif.; Mt. Rushmore National Park, S.D.; Hawaii Volcanoes National Park, Hawaii; and Everglades National Park, Fla.

The coalition did not include Grand Canyon National Park and Yellowstone National Park on the list because the problems of overflights and snowmobiles in those parks, respectively, are universally recognized.

To balance its list of five threatened parks the CNPSR named five park units where visitors can find quiet, some of them unexpected, such as Muir Woods National Monument in the San Francisco Bay area. Despite daily visits from tour buses the retirees say Muir Woods has undertaken numerous steps to preserve a natural soundscape, such as testing quiet days and quiet zones.

The other four quiet parks are more predictable: Great Basin National Park, Nev.; Isle Royale National Park, Michigan; North Cascades National Park, Wash.; and Big Hole National Battlefield, Mont.

CNPSR did not include Alaska parks on its quiet parks list in part because so much territory in the parks is remote. Although the retirees said Alaska parks have their share of aircraft and snowmobile noise, they added, "Compared to sites in the lower 48 states, a trip to a national park in the Alaska bush still provides for plenty of peace and quiet and lots of natural sounds."

CNPSR Executive Council Member Abby Miller, the former NPS deputy associate director for Natural Resources and Stewardship, said: "We have put together some tips on a variety of parks to go to enjoy quiet or the sounds of nature, as well as some places you may need to avoid if what you are looking for is peace and quiet. While our park selections are naturally subjective, they are based on the thousands of years of experiences of CNPSR members who are among those who know best of all."

The retirees described the over-flight problems in the four threatened parks. For Minute Man National Historical Park, it's the possible expansion of Hanscom Field, a regional airport north of the park that also contains some Air Force facilities. The airport is set amid the historic communities of Lexington, Concord, Lincoln and Bedford. It is located in Bedford.

For Mojave National Preserve CNPSR said the main noise threat is posed by a proposed new airport in the town of Primm, Nev., near Las Vegas. Clark County hopes 35 million visitors per year will use the airport eventually.

For Mt. Rushmore the threat is posed by 5,000 flights per year now authorized under an Interim Operating Authority, even though the company that holds the rights to most of the flights has suspended operations for now.

For Hawaii Volcanoes National Park the threat is tens of thousands of air tour flights per year and, said the retirees, "orbiting time over eruption sites is uncontrolled."

Everglade's problems with water quality and quantity are well known. But the CNPSR said the park is also

impacted by the noise of "air boats, motor boats, generators, and other motors operating inside and outside the park."

## **Kempthorne breaks with NPS boss on Grand Canyon flows**

Secretary of Interior Dirk Kempthorne and Grand Canyon National Park Superintendent Steve Martin apparently have - or have had - a difference of opinion about the need for powerful water surges through the park.

At issue is the advisability of repeating a March 4 high-flow experiment from Glen Canyon Dam through the park. Superintendent Martin said March 19 that "additional high flow experiments" must be continued.

But On March 26 regional state water commissioners complained to Kempthorne that Martin's statement is not supported by positions taken by the Bureau of Reclamation and the Fish and Wildlife Service. Kempthorne agreed with the commissioners in a May 20 letter to them.

The letter was released by the environmental group Public Employees for Environmental Responsibility. Kempthorne said of Martin, "These statements do not reflect the Department's unanimous final decision regarding this matter." The water commissioners are worried about losing power generation from the dam because of the high flows.

The March 4 water release is supposed to help restore flora and fauna in Grand Canyon National Park and to replenish beaches in the park that serve as campsites. The Colorado River flows 277 miles through Grand Canyon.

However, Grand Canyon officials say the one-time release is not good enough - the department should authorize similar massive flows every year. Under a Bureau of Reclamation five-year plan the March 5-7 release is the last big one for five years.

Said superintendent Martin in February 19 comments to the Bureau of

Reclamation, "Analysis of the draft Environmental Assessment and proposed action (including strict limitations on future flows, a short-duration steady flow regime in the latter part of the monsoonal period, and other key factors) indicates these measures would likely result in impairment of the resources of Grand Canyon National Park."

But on March 26 Upper Colorado River Commissioners from Colorado, New Mexico, Utah and Wyoming wrote Kempthorne to complain about Martin's statements. "Mr. Martin's request to schedule additional high flow tests as part of this action in advance of complete synthesis of the data and learning from this test is contradictory to the concept of adaptive management and ignores the extremely high cost of conducting such work," the commissioners wrote.

Kempthorne responded to the commissioners May 20, "We are well aware of the inconsistent statements referred to in your letter," he said, adding that Martin's views don't reflect the Interior Department's position.

The Bureau of Reclamation said it released in the March 4 flow 41,500 cubic feet of water per second (cfs) for 60 hours from a power plant and bypass tubes at Glen Canyon Dam. The bureau said that releases from the dam generally range between 8,000 and 20,000 cfs.

The bureau said the increase to 41,500 cfs will change river conditions downstream of the dam as well as the availability of campsites.

Interior Department officials say they will closely monitor the results of the high flow and are not precluded from adding such flows in the future.

PEER has published relevant document at its website: [http://www.peer.org/news/news\\_id.php?row\\_id=1062](http://www.peer.org/news/news_id.php?row_id=1062).

## **Hill gridlock shouldn't block air tour plans**

Even though Congress has failed to approve new legislation governing over-

flights, federal agencies should still be able to write plans for each national park. Those plans have been stalled for eight years.

"We can still continue working on the plans," said Karen Trevino, manager of the air resources division of NPS. "The 2000 law (that requires the plans) is still on the books."

But Trevino admitted that the chances that the Federal Aviation Administration (FAA) and the Park Service will soon complete a flock of plans are not good. "The problem is between the agencies. We take two steps forward and one step back. We have two different agencies with two different missions. They (FAA) are a regulatory agency and we are land managers."

So, eight years after Congress wrote a major overflight law, the National Parks Air Tour Management Act of 2000 (PL 106-181 April 5, 2000), to guide the FAA and NPS in coping with ever larger numbers of air tours over the national parks, no plans have been completed. The law was written both to provide quiet over the national parks and in reaction to high-profile accidents.

FAA says it has received applications to fly over more than 100 national parks and six tribal lands from 91 different air tour operators. Currently, NPS and FAA allow air tours over 106 national parks under interim authority.

Congress this spring was trying to update the 2000 law and revise direction to FAA and NPS on writing their overflight plans. But that effort came a cropper May 7 in the Senate when Republicans objected to extraneous provisions in an underlying bill (HR 2881) to reauthorize FAA programs. The FAA authorization expires at the end of June but Congress is expected to extend the old law.

According to Senate Commerce Committee staff members, the overflights language in the bill was not an issue. The language would allow NPS and FAA to approve overflights of parks even if parks had not completed air tour manage-

ment plans. As an alternative to the plans the bill would allow NPS and FAA to write agreements with commercial air tour operators.

Second, the bill would exempt parks that hosted fewer than 100 overflights per year from preparing an overflight plan.

The House approved its version of HR 2881 Sept. 20, 2007. It would also have allowed NPS and FAA to write agreements with air tour companies in lieu of plans. In addition the House would authorize parks with fewer than 50 overflights a year to skip the writing of an overflight plan, compared to the Senate's 100.

Senate consideration of HR 2881 ended when Republicans objected to proposed amendments to HR 2881 dealing with airline employee pensions and the Highway Trust Fund.

The Republicans argued that the provisions are outside an agreement senators from both parties reached on the legislation in the Senate Commerce Committee and Senate Finance Committee. In a key 49-to-42 vote (60 votes needed) the Senate May 6 failed to defeat a filibuster, meaning the bill was removed from the floor.

A Senate Commerce Committee Democratic staff member said she had no idea when the legislation could be revived, or if it could be revived. She said the ball was now in the court of Senate Majority Leader Harry Reid (D-Nev.)

Under a second existing overflights law - the Grand Canyon Overflights Act of 1987 - the Federal Aviation Administration and NPS are to maintain quiet in Grand Canyon at least 75 percent of the day for half the park. The other overflights act of 2000 exempted Grand Canyon National Park and parks or tribal lands in the state of Alaska from the new planning rules because the Grand Canyon Act guides them. The 2000 act also prohibits air tours over Rocky Mountain National Park.

FAA and NPS say they have failed

to complete regulations governing air tour plans for a number of reasons, including the distraction of the 911 terrorist attacks, lack of funding, and disagreements between NPS and FAA.

## **Enviros: Newest FS planning lawsuit 'straightforward'**

A coalition of environmentalists that has filed a lawsuit against a new version of Forest Service planning rules says it is fighting the same battle it fought in court against a previous version of the rules.

That is, the coalition says the rules fail because the Forest Service failed to prepare an adequate, substantive EIS. When the Earthjustice environmental law firm filed essentially the same suit two years ago, a federal judge blocked 2005 Forest Service planning regulations.

The judge told the Forest Service to write a programmatic EIS. To accompany the newest regs of April 21, 2008, the Forest Service did prepare an EIS but it only included a perfunctory analysis of impacts on the grounds that substantive environmental analyses would come later when specific projects are proposed.

"We feel the legal issue is pretty straightforward," Timothy Preso, an attorney with Earthjustice, told us. However, the environmentalists will not press for an injunction, for now, because of the difficulty of proving immediate harm, Preso said.

In their lawsuit of May 6, the environmentalists said, "In sum, the 2008 Rule, like the 2005 Rule it so closely resembles, strips the NFMA (National Forest Management Act of 1976) Regulations of virtually all detailed substantive standards to protect and guide the management of the National Forest System."

The suit goes on, "Merely issuing a document entitled 'Environmental Impact Statement' that contains none of the required analysis of the environmen-

tal impacts of the proposed rule or any of the alternatives cannot pass muster under NEPA."

The Forest Service counters that the planning rule simply establishes a process and is not designed to establish specific standards to protect the environment.

In publishing an EIS to cover the rule in February the Forest Service said, "The proposed planning rule and alternative planning rules merely set forth processes to recognize and document these values and environmental protections. The proposed planning rule and alternative planning rules have no direct, indirect, or cumulative effect on the human environment."

But Preso likened the planning rule to zoning by a community. "It's a process that results in zoning decisions by the Forest Service," he said. "It has real impact because it decides what can be done on the land. If it is zoned for logging, you can't use it for other purposes."

The Forest Service said establishing environmental protection standards in a national planning rule does little good. "After 28 years of NFMA planning experience, the Forest Service has determined that plan EIS cumulative and landscape level effects analyses are mostly speculative and quickly out of date," said the agency.

On May 6 Earthjustice followed up on its previous lawsuit against the Forest Service's national forest planning rules of Jan. 5, 2005. The 2005 rule and the new rule are designed to give the 155 national forests guidance in writing land use plans that last for a decade.

In that previous lawsuit U.S. District Court Judge Phyllis J. Hamilton in Northern California ruled March 30, 2007, that the Forest Service violated NEPA by not writing a programmatic EIS.

In this latest case Earthjustice is representing Defenders of Wildlife, Sierra Club, The Wilderness Society, and Vermont Natural Resources Counsel.

The Forest Service rule, record of decision and final EIS are available at: [http://www.fs.fed.us/emc/nfma/2008\\_planning\\_rule.html](http://www.fs.fed.us/emc/nfma/2008_planning_rule.html). The Earthjustice complaint is at: [http://www.earthjustice.org/library/legal\\_docs/1750-complaint-final.pdf](http://www.earthjustice.org/library/legal_docs/1750-complaint-final.pdf).

## Notes

### **NPS inventories old war sites.**

After 12 years of research the Park Service June 12 published a comprehensive list of Revolutionary War and War of 1812 sites. NPS said it identified sites where almost 3,000 events occurred. Some 60 of them, including locations of major events, are already in the National Park System, such as Independence Hall in Pennsylvania and Minute Man National Historical Park in Massachusetts. NPS submitted the report to the House and Senate, which will decide what to do about at risk sites identified in the report. When Congress ordered the report in 1996 (The Revolutionary War and War of 1812 Historic Preservation Study Act of 1996 PL 104-333) it told NPS to identify important sites that were endangered. NPS says the report does "establish preservation priorities." The report is available at <http://www.nps.gov/history/hps/abpp/Rev1812Study.htm>.

**Fire money on the line.** The House is expected to consider shortly an emergency appropriations bill that, as passed by the Senate, would provide \$450 million for emergency fire fighting. The money is separate from appropriated fire money and would not count against spending caps for regular appropriations bills. House leaders have not decided yet if they will include the fire-fighting money in a bill (HR 2642) that the Bush administration says should be limited to assistance for the war in Iraq and Hurricane Katrina recovery. The House first approved HR 2642, an emergency supplemental appropriations bill, May 15 with some extraneous domestic provisions unwanted by the President, but no fire money. The Senate then approved HR 2642, but loaded it up with additional domestic spending. Now the ball is back in the House's lap. Meanwhile, emergency fire assistance is a

candidate for help from three other bills. First, the House Appropriations Committee June 18 approved a fiscal year 2009 appropriations bill with \$2.97 billion for fire fighting, including \$1.329 billion for emergency suppression. Second, the House Natural Resources Committee April 17 approved a bill (HR 5541) that would guarantee about \$500 million per year for emergency fire fighting without further appropriations. The third bill is a real long shot - the big climate change bill (S 3036) that stalled June 6 when the Senate failed to overcome a Senate filibuster. It would make available \$1.1 billion per year for emergency fire fighting above normal annual fire suppression costs.

**Fire prevention milestone noted.**

The Interior Department is praising itself for treating 10 million acres of public land to eliminate hazardous fuels during the Bush administration's tenure, beginning in 2001. The department is calling the Hazardous Fuels Reduction Program a "land management success story." Secretary of Interior Dirk Kempthorne made the announcement as he toured the Santa Monica Mountains National Recreation Area. Kempthorne said that by 2009 the department will have treated almost 4 million acres in the urban wildland interface. The department said it is "well-positioned to respond to the 2008 wildland fire season."

**NPS Centennial legislation quiet.**

This is usually when things happen, but several *FPR sources* indicate little motion in either the House or Senate in re a \$2 billion National Parks Centennial Challenge Fund. The Interior Department is reportedly negotiating with Democrats and Republicans on the House Natural Resources Committee to identify offsets to pay the \$100 million per year federal share of centennial grants. The committee approved a lead bill (HR 3094) May 7. In the Senate lead sponsor of a counterpart bill (S 2817) Sen. Ken Salazar (D-Colo.) has been bush with climate change and energy legislation. Supporters do hope to complete a bill this year. Most immediately, they are pushing for a House vote in July.

**Committee looks at road money.**

Faced with decelerating gas tax revenues for surface transportation programs and accelerating revenue needs the House Committee on Transportation continues to explore for new sources of money. The committee held a hearing June 10 on four modest proposals, but committee chairman James Oberstar (D-Minn.) reportedly suggested a much broader, two-tier approach. He would use gas taxes as a "cornerstone" and supplement gas taxes from new fees based on the length of trips and the weight of vehicles. The House committee is laying the groundwork for the writing next year of a successor bill to the current surface transportation law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act, of August 10, 2005 (SAFETEA-LU.) The counterpart Senate Committee on Environment and Public Works has been consumed with an all-out war over climate change legislation this year and has paid relatively little attention to a successor to SAFETEA-LU. At the June 10 hearing the House committee looked at these proposals: (1) a bill (HR 3401) to establish a National Infrastructure Bank to provide up to \$60 billion in bonds for regional and national projects, from Rep. Keith Ellison (D-Minn.); (2) a bill (HR 3896) to establish a National Infrastructure Development Corp., with \$9 billion to launch projects and future revenues from user fees, Rep. Rosa DeLauro (D-Conn.); (3) a bill (HR 5102) to assess a tax on imported and exported goods with the money (\$63 billion) used for transportation corridors near ports, Rep. Ken Calvert (R-Calif.); and (4) a bill (HR 5976) to establish a commission to study infrastructure needs, Rep. Earl Blumenauer (D-Ore.)

**Trails grants available.** The American Hiking Society announced last week that it is taking applications for small grants to assist trails. The society will allocate two sets of grants: One set, ranging from \$500 to \$5,000, is sponsored by L.L. Bean, Therm-a-Rest, and MSR. A second set of \$5,000 grants is sponsored by Nature Valley. American Hiking has allocated \$382,000 to 105 different trail projects over the last decade. Applications are due by August 15 and are available at <http://www.americanhiking.org>.

## Boxscore of Legislation

### LEGISLATION

### STATUS

### COMMENT

#### Appropriations 2009

No bill number yet.

House subcommittee approved June 11.

Would provide modest increases for most park and rec programs.

#### Congressional Budget 2009

H Con Res 312 (Spratt)  
S Con Res 70 (Conrad)

House approved June 5 and Senate approved June 4.

Would increase natural resources spending but mostly for Hurricane Katrina.

#### NPS Centennial Challenge

S 1253 (Bingaman)  
HR 2959 (Rod Bishop)  
HR 3094 (Rahall)  
S 2817 (Salazar)

House committee approved HR 3094 May 7. Senate hearing Aug. 2, 2007.

S 1253 and HR 2959 would establish \$2 billion program to help the parks.

#### NPS tax assistance

HR 1731 (Baird)

Baird introduced March 28, 2007.

Would authorize NPS improvement fund financed by income tax check-off.

#### FLREA repeal

S 2438 (Baucus)

Baucus introduced December 10. House hearing June 18.

Would repeal most of 2004 federal agency recreation fee law.

#### Heritage areas national

S 278 (Thomas)  
HR 1483 (Regula)

Senate committee approved July 25, 2007. House approved Oct. 25, 2007.

Would establish national standards for new NHA designations. HR 1483 Would designate six new NHAs.

#### Farm bill

HR 2419 (Peterson)

Enacted May 23 as PL 110-2334 Over President's veto.

Authorizes major conservation programs for five years, including new Open Fields program.

#### Conservation tax credits

S 469 (Baucus)  
HR 1576 (Thompson)

Senate committee approved Sept. 20, 2007. Thompson introduced March 19, 2007.

Would make semi-permanent conservation tax credits Congress approved last year.

#### Wildlife conservation grants

HR 3221 (Pelosi)  
HR 2338 (Dicks)

House approved August 4, 2007. Dicks introduced May 16, 2007.

Both would make grant program permanent, open way for new source(s) of money.

#### American Discovery Trail/National Discovery Trails

HR 74 (Bartlett)

Bartlett introduced Jan. 4, 2007.

Would designate an American Discovery Trail and discovery trail system.

#### Trail acquisition authority

S 169 (Allard)  
HR 1847 (M Udall)

Allard introduced Jan. 4, 2007. Udall introduced March 29, 2007.

Would authorize land acquisition authority for nine national trails.

#### Trail expansion authority

S 580 (Hatch)

Senate committee approved June 26, 2007.

Would authorize route variations for four national historic trails.

#### Arizona trail

S 1304 McCain  
HR 2297 (Giffords)

Senate hearing Sept. 11, 2007. Giffords introduced May 14, 2007.

Would designate 807-mile trail from bottom to top of Arizona.

#### NLCS for Bureau of Land Management

HR 2016 (Grijalva)  
S 1139 (Bingaman)

Senate panel approved May 23, 2007. House approved April 9.

Would give Congressional blessing to national conservation system.

#### Rim of the Valley (SMMNRA)

S 1053 (Feinstein)  
HR 1835 (Schiff)

President Bush signed law May 8 in omnibus bill (PL 110-229.)

Authorizes a study of a major expansion of SMMNRA.

#### Paleontological Resource Protection

S 320 (Akaka)  
HR 554 (McGovern)

Senate panel approved Feb. 15, 2007. House hearing April 17, 2007.

Would stiffen penalties for disturbing paleontological resources on federal land.