

Federal Parks & Recreation

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Spending dispute at deadline; Congress provides fire money

Congress and the White House were going down to the wire at press time in a dangerous game of brinkmanship over fiscal year 2008 appropriations.

Congress did approve an interim spending provision that would extend a temporary money bill through December 14, attaching it to a larger bill (HR 3222) that would provide money for the Defense Department. President Bush signed HR 3222 into law November 13 (PL 110-116.)

But three appropriations bills that finance park and rec programs are in various states of disarray and may not be completed this calendar year. Those bills cover the Interior Department and related agencies; Energy and Water (Corps and Bureau of Reclamation); and Transportation.

Meanwhile, the Department of Defense appropriations law does include some money for outdoor-related programs. A House-Senate conference committee November 6 included in the bill a \$500 million allotment to the Forest Service and the Interior Department to defray fire-fighting costs.

Of the \$500 million, \$329 million will go to the Forest Service and \$171 million to the Interior Department.

The \$329 million for the Forest Service includes \$110 million for emergency suppression, \$100 million to pay back money borrowed from other accounts, \$80 million for hazardous fuels reduction, \$25 million for restoration of federal lands, and \$14 million for facility construction.

The \$171 million for the Interior Department includes \$40 million for emergency suppression, \$115 million for

repayment to other accounts, \$10 million for hazardous fuels reduction and \$6 million for rehabilitation of federal lands.

In the larger war over spending, President Bush and Congressional Democrats continue to trade insults over domestic fiscal 2008 appropriations bills. Because of that dispute Congress will need another month to complete an Interior and related agencies money bill (HR 2643) before the new interim spending measure in HR 3222 expires December 14. And there is an increasing chance Congress will not complete a fiscal 2008 Interior bill before the end of this calendar year.

President Bush opened fire on all domestic spending November 13 on vetoing a Labor, Health, Education and Welfare appropriations bill: "This bill spends too much. It exceeds the reasonable and responsible levels for discretionary spending that I proposed to balance the budget by 2012. The Congress is on a path to spend \$205 billion more over the next 5 years than I requested. This puts a balanced budget in jeopardy and risks future tax increases."

House Appropriations Committee Chairman David Obey (D-Wis.) blamed the White House. "It is simply not credible for the President to ask us to spend ten times as much again this year for the never ending war in Iraq and then with a straight face object to our efforts to invest one tenth of that amount in key education, health, science, law enforcement, energy research and medical research on the grounds of fiscal rectitude," he said.

Obey said the Democrats have no alternative but to continue the confrontation. "That leaves us with two choices," he said. "We can either sit by like potted plants and do nothing but meekly comply, or we can try to make it as difficult as possible for the President to be irresponsible and artificially confrontational."

Congress and the White House haven't reached agreement on appropriations bills because they differ on how

much money to spend on domestic programs. The Democrats in Congress are asking for major increases after a decade of declining appropriations for natural resources programs.

The House approved its version of an Interior bill (HR 2634) June 27 with \$2 billion more than the President recommended, \$27.6 billion compared to a request of \$25.6 billion. The Senate Appropriations Committee approved a counterpart to HR 2634 (S 1696) June 21 with \$1.5 billion more than the administration request.

Similarly, the House approved an energy and water bill (HR 2641) July 17 that would increase fiscal 2008 spending for the Corps of Engineers alone by \$713 million more than the administration requested, \$5.584 billion compared to an administration request of \$4.871 billion. The Senate Appropriations Committee approved its version of an Energy and Water bill June 28 that would increase Corps spending by \$577 million above the administration request.

Finally, Congress was near completion at press time of a Transportation appropriations bill (HR 3074) that exceeds an administration request by \$3 billion. *(See related article page eight.)*

Two giant omnibus park, rec bills are readied in Senate

The Senate Energy Committee is laying the groundwork for floor consideration of two omnibus measures that are packed with individual park and recreation bills.

The packages (S 2179, S 2180) would designate eight new National Heritage Areas, three new national trails, a wild and scenic river, a conservation area and a national monument. S 2180 would also provide major new authority for existing national trails.

Pulling the train may be a somewhat controversial bill (S 1139) to give Congressional blessing to the Bureau of Land Management's (BLM's) 26 million-

acre National Landscape Conservation System (NLCS.) The Senate Energy Committee approved S 1139 May 23, but the bill has not moved since. The NLCS was established by administrative fiat.

The idea of the omnibus bills is to appeal to so many people that their sheer weight will persuade recalcitrant senators to remove "holds" on individual bills or to override holds. Some senators have reportedly applied such holds to all bills produced by the committee ostensibly because of concerns about the expense of the measures.

It's a long shot but the bills may reach the floor by the end of the year, said a Senate Energy Committee staff member. "We set these bills up at the request of (Senate Majority Leader Harry Reid (D-Nev.)), " said the staff member. "I presume at some point he will call them up and bring them to the floor for a cloture vote . . . The hope is to get them done this year but I haven't heard any details yet."

A cloture vote of a three-fifths majority would be needed to break the holds. Reid probably can't get to the bills for a while because the Senate floor is tied up with appropriations bills and a big farm bill.

There are no guarantees, even if S 2179 and S 2180 are called up. Private property rights groups will undoubtedly resist. The American Land Rights Association (ALRA) in August asked its members to demand votes on individual bills rather than on a package of bills. While it was at it, ALRA asked its supporters to petition their senators to place a hold on any NLCS bill.

"You can rest assured we will be letting their constituents know so that when (the senators) come home they will get the appropriate reception," ALRA President Chuck Cushman said this week.

"We think Congress ought to vote individually on each bill," he said. "Each Congressman is responsible to his constituents to vote for a bill. This way no one is responsible because the public doesn't know what a Congressman voted for."

The House has already approved many of the bills in the Senate Energy Committee packages, but an NLCS bill has not reached the House floor yet. The provision is supported by the Bush administration and moved through the Senate committee May 23 without controversy.

That changed at a June 7 hearing on a counterpart House NLCS bill (HR 2016) in the House subcommittee on National Parks, Forests and Public Lands. Ranking subcommittee Republican Rob Bishop (R-Utah) rebelled and said the legislation might impose Park Service-like restrictions on the management of NLCS lands.

In June 2000 the Interior Department under then Secretary of Interior Bruce Babbitt established the 26 million-acre NLCS in BLM to protect special areas. The NLCS consists of major conservation areas in 12 western states, including 15 national monuments, 13 national conservation areas, a Steens Mountain management area in Oregon, a Headwaters Forest Reserve in northern California, 36 wild and scenic rivers, 148 wilderness areas, 4,264 miles of national trails, and more than 600 wilderness study areas.

Here is a taste of what else S 2179 and S 2180 would do:

NHA AREAS: The Senate committee bills include seven new NHAs: Journey Through Hallowed Ground NHA in Pennsylvania, Maryland, West Virginia and Virginia; Abraham Lincoln NHA in Illinois; Niagara Falls NHA in New York; Quinebaug and Shetucket Rivers Valley National Heritage Corridor in Massachusetts and Connecticut; Sangre de Cristo NHA in Colorado; South Park NHA in Colorado; and a Chattahoochee Trace National Heritage Corridor in Georgia and Alabama. S 2179 would also authorize a study of a Columbia-Pacific NHA in Oregon.

The House approved a multi-faceted national heritage areas bill (HR 1483) October 25 that would designate six new NHAs including three in the Senate bill - Journey Through Hallowed Ground, Abraham Lincoln and Niagara Falls. In addition the House bill would designate

a Muscle Shoals NHA in Alabama; a Freedom's Way NHA in Massachusetts and New Hampshire; and a Santa Cruz Valley NHA in Arizona.

NHA SPENDING: Both Senate bill S 2180 and the House NHA package bill would increase a spending ceiling on these nine NHAs from \$10 million to \$15 million: National Coal Heritage Area in West Virginia; the Tennessee Civil War Heritage Area; the Augusta Canal NHA in Georgia; the Steel Industry American Heritage Area in Pennsylvania; the Essex NHA in Massachusetts; the South Carolina National Heritage Corridor; America's Agricultural Heritage Partnership in Iowa; the Ohio & Erie Canal National Heritage Corridor in Ohio; and the Hudson River Valley NHA in New York.

TRAILS NEW: Senate bill S 2180 would designate an Ice Age Floods National Geologic Trail in Montana, Idaho, Washington, and Oregon; and a Washington-Rochambeau Revolutionary Route National Historic Trail between Rhode Island and Virginia. S 2179 would designate a Star Spangled Banner National Historic Trail in Maryland, Virginia and the District of Columbia.

TRAILS MISCELLANEOUS: Senate bill S 2180 would authorize a study of route variations for four existing national historic trails - Oregon National Historic Trail, California National Historic Trail, Pony Express National Historic Trail and the Mormon Pioneer National Historic Trail. S 2180 would also authorize land acquisition authority for nine national trails.

RIVERS: Senate bill S 2179 would designate the Eightmile River in Connecticut as a wild and scenic river.

CONSERVATION AREAS: S 2180 would designate a Fort Stanton-Snowy River Cave National Conservation Area to protect 3.5 miles of caves in Lincoln County, New Mexico.

MONUMENT: S 2180 would designate a 5,280-acre Prehistoric Trackways National Monument to protect fossils in southern New Mexico.

NPS Centennial bill still in works; more approps asked

The House Natural Resources Committee was unable to get its ducks in a row this week in time to mark up a po-

tentially historic bill (HR 3904) that would pay for a Park Service Centennial Challenge program.

The main sticking point as usual is money, but committee Democrats are reportedly still negotiating other details among themselves, committee Republicans and a diverse coalition of interest groups.

Said a committee spokeswoman November 14, "The committee will move the bill to a mark-up when a version of the bill has been worked out among committee members on both sides of the aisle and the administration."

In a related development 75 interest groups joined together November 1 to ask Senate appropriators to provide \$50 million in a fiscal year 2008 Interior appropriations bill (HR 2643) to kick-start the program this year. The House threw in \$50 million in the version of HR 2643 it approved June 27.

The interest groups wrote the committee in anticipation of a House-Senate conference committee on the bill. The Senate Appropriations Committee approved its version of HR 2643 June 21.

"We are asking for your support to include the \$50 million Centennial Challenge start-up money in the final FY 2008 Interior spending bill," said the groups. "While we will continue to work to enact Centennial Challenge authorizing legislation, the start up money is a needed bridge to allow the program to begin this year."

The coalition includes groups varying from the powered recreation industry as represented by the American Recreation Coalition, to the human-powered recreation industry as represented by the Outdoor Industry Association, to environmental groups such as The Wilderness Society, to park advocates such as the National Parks Conservation Association and the Coalition of National Park Service Retirees, and to concessioner reps such as the National Park Hospitality Association. Numerous "Friends" of the parks groups also signed the letter.

Concurrently, many of the interest groups are petitioning both the House Natural Resources Committee to move HR 3904 and the Senate Appropriations Committee to support the \$50 million supplement for the Centennial Challenge in fiscal 2008.

For instance the Outdoor Industry Association (OIA) sent an "Action Alert" to its members last week asking support for those twin initiatives. Of HR 3094 OIA said, "We need your active efforts to get HR 3094, the National Park Service Centennial Challenge Fund Act, marked up by the Committee on Natural Resources before Thanksgiving and readied for House floor action by the end of 2007." (The deadline has now passed as Congress is on a two-week Thanksgiving break.)

Of the extra \$50 million for fiscal 2008 OIA said, "We need your active efforts to pass the 2008 Interior appropriations bill now, including the House proposal to fund both the President's requested increase in park operating funds and a \$50 million start-up fund for the Centennial Challenge Fund."

Finding a source of money to pay for the Centennial - as much as \$100 million per year of new money - is a major obstacle for committee chairman Nick Joe Rahall (D-W.Va.) and subcommittee on National Parks chairman Raúl Grijalva (D-Ariz.), the authors of HR 3094.

As originally drafted, HR 3094 would pay the \$100 million tariff by imposing new fees on commercial users and lessees of public lands. But that provision is considered a marker at best and a nonstarter at worst.

The Interior Department, working with committee Democrats, has suggested an alternative based on three pots of money derived from energy development on public lands. They include: a \$1,866 fee for each application for permit to drill on oil and gas leases (\$23 million and up per year); a two percent deduction on the state share of oil and gas royalties (\$41 million plus per year); and cancellation of an ultra-deepwater

oil and gas research program (\$50 million per year.) Those suggestions are generally endorsed by the coalition supporting the Challenge program.

The suggestions are not supported by backers of public lands energy development in the West, as *FPR* reported in the last issue. Sen. Pete Domenici (R-N.M.), ranking Republican on the Senate Energy Committee and ally of the oil and gas industry, Wyoming Gov. Dave Freudenthal (D-Wyo.) and the Independent Petroleum Association of America all objected to diverting the revenues.

In addition a spokesman for important House Natural Resources Committee Republican Steven Pearce (N.M.) said the revenues should come from Park Service operations, not from unrelated sources.

But as we have noted, the oil and gas industry is reaping record profits from drilling on federal lands. And public lands states are reaping \$2 billion per year in royalties. Wyoming alone receives as much as \$1 billion per year in royalties and New Mexico more than \$500 million.

In the House Natural Resources Committee no deal is on paper and discussions were continuing in preparation for a possible November mark-up of a Centennial Challenge bill (HR 3094) in the House committee. A working paper that all parties are aware of would pay for the program from the three sources of money.

If an agreement is brought off, it would help Congress and the administration overcome the single biggest barrier to a Centennial Initiative designed to upgrade the National Park System by its 100th anniversary in 2016 - money.

There is a further complication. A fiscal year 2008 Interior appropriations bill (HR 2643) as passed by the House counts on the three sources of revenues. If that money were removed from the bill, Congress would have to make it up the \$100 million from other revenues or by spending reductions.

The Senate Appropriations Commit-

tee version of HR 2643 only includes the two percent deduction from state royalties, with the money allocated to federal expenses in administering the oil and gas leasing program.

The Bush administration, the originator of the Centennial Initiative idea, has developed its own bill (S 1253, HR 2959) that would pay for the Centennial Challenge with \$100 million per year in guaranteed off-budget funding matched by up to \$100 million per year in contributions from nonfederal partners.

However, Rahall and Grijalva have criticized important provisions of that bill, such as the prominent role it would assign private interests in national park matters.

The \$200 million per year in the Bush bill would be allocated to the Centennial Challenge for non-core operations projects. The third leg of the initiative consists of an additional \$100 million per year of appropriations for core projects. Congress is well on the way to approving increased appropriations for core projects in the fiscal year 2008 Interior and related agencies money bill. Both the Senate Appropriations Committee and the House have approved the \$100 million.

The discussions centering around revenues for the Centennial Challenge have reportedly been conducted by top Interior Department officials with both Democratic and Republican leaders of the House Natural Resources Committee.

Congress overrides veto, enacts WRDA/Everglades law

The Senate gave final Congressional approval November 8 to a new Water Resources Development Act (WRDA) by overwhelmingly rejecting President Bush's veto of the bill (HR 1495) 79-to-14. The bill became law (PL 110-114) November 9.

The House overrode the President's November 2 veto on November 6 by a resounding 361-to-54 vote. The new law authorizes - but does not actually put

up - \$900 million in federal money for restoration of the Everglades.

Although Bush and Congress fought this battle over money, the \$23 billion in projects in HR 1495 can't begin until Congress appropriates money for them. And there are already several billions of dollars worth of projects in the pipeline.

Sen. Barbara Boxer (D-Calif.), chairman of the Senate Environment and Public Works Committee, affirmed the bill doesn't actually cost anything, yet. "It doesn't spend a penny," she said. "This is just an authorization bill, but it's very important because it says that we believe these projects are worthy of funding."

Still, the enactment of HR 1495 is the most significant step toward restoring the waters of Everglades National Park since Congress approved a Comprehensive Everglades Restoration Project (CERP.) Attached to a 2000 WRDA law, CERP authorized \$7.8 billion for Everglades restoration.

However, CERP called for Congress to subsequently authorize a dozen major projects and then finance them in new WRDA actions. Congress last week took the major step of authorizing two projects - Indian River Lagoon and Picayune Strand.

Sen. Bill Nelson (D-Fla.) said, "We committed ourselves (in 2000) to the largest restoration project in the world, and when we pass this legislation, despite those who have tried to detour it, the federal government will have made a significant step in living up to its commitment."

Sara Fain, Everglades restoration program manager for the National Parks Conservation Association, said the action may get CERP moving. "This stalled legislation has limited progress for restoration projects that have not been able to receive authorization, and threatened the overall success of Everglades' restoration," she said.

"Now we need Congress to continue its commitment to Everglades restoration

by appropriating the necessary funds in the upcoming budget cycle to build many of the projects authorized by WRDA," Fain continued. "Restoring America's Everglades must remain a national priority."

In his veto message President Bush also identified the Everglades as a priority that the bill should support. But he said his problem was with "pork" projects in HR 1495. "This bill promises hundreds of earmarks and hinders the Corps' ability to fulfill the Nation's critical water resources needs - including hurricane protection for greater New Orleans, flood damage reduction for Sacramento, and restoration of the Everglades. . .," he said.

The law provides boosts to park and rec areas besides Everglades National Park. The measure would authorize a demonstration project to test the benefits of enhanced recreation facilities in Corps of Engineers lake projects in Oklahoma.

And the bill would make a down payment on a massive project to convert the Los Angeles River from a cement ditch to enhanced parkland in Los Angeles. The bill would provide \$25 million for a study and for pilot projects.

In addition the bill would authorize dozens, if not hundreds, of water projects around the country with recreation implications. All told the bill would pre-authorize \$23 billion in projects. However, Congress would have to appropriate money in a separate step to actually pay for work on the projects.

The conferees did NOT include in HR 1495 authority for the Corps of Engineers to charge entrance fees to recreation areas. Here is more on the provisions in the law.

EVERGLADES: HR 1495 authorizes a \$1.365 billion Indian River Lagoon project, with half of the money - \$682.5 million - coming from the feds and half from the State of Florida. It also authorizes a \$375 million Picayune Strand project with half the money -

\$187.5 million - provided by the feds and half by Florida.

CORPS ENTRANCE FEES: HR 1495 would NOT authorize the Corps to collect entrance fees. The Corps presently collects use fees at its 4,300 recreation areas in 43 states, but is not allowed to collect entrance fees. The White House says Congress must appropriate \$267 million per year in recreation management money for the Corps.

According to Congressional staff, Congressional PAYGO rules require legislation to offset expenditures with income, and the sponsors were unable to come up with offsets.

The administration proposal would have allowed the agency to retain all revenues above \$37 million - about \$10 million in fiscal year 2007 - for use at the facilities that collected the money.

OKLAHOMA LAKES: The Oklahoma Lakes provision from Sen. James Inhofe (R-Okla.) authorizes the Corps of Engineers to enlist private enterprise in expanding recreational opportunities on Corps facilities. It would build on an existing program that was designed to expand recreation opportunities in Skiatook Lake in northeast Oklahoma.

It would extend the Skiatook Lake initiative to all Corps of Engineers lakes in Oklahoma. The provision is open-ended. It does not specify a spending authorization. Nor does it specify what activities public-private partnerships can undertake.

The provision simply says that one year after enactment the Corps will undertake a demonstration lakes program that will "pursue strategies that will enhance, to the maximum extent practicable, recreation experiences at the lakes included in the program."

LOS ANGELES RIVER PARK: HR 1495 provides a \$25 million down payment on a huge project to convert the 32-mile Los Angeles River from a giant concrete ditch to a giant park and rec area. Boxer said the money would be used not only for a joint Corps of Engineers-Los Angeles city study, but also for "initial demonstration projects."

The city of Los Angeles approved in May a sweeping plan to reclaim the

river. City officials expect the \$2 billion Los Angeles River Revitalization Plan will be financed by a combination of federal funds, state bonds, local government contributions and private money.

Conferees okay highway money, minus rescission limits

A House-Senate conference committee reached agreement November 8 on a fiscal year 2008 Transportation appropriations (HR 3074) bill minus a provision to require fair treatment of enhancements projects in rescissions.

The House approved the conference bill November 14 by a 270-to-147 margin. The Senate was expected to address the measure after press time, but before Congress takes a two-week Thanksgiving break.

Going in to the conference the House version of HR 3074 would have required states to treat all programs equally in rescinding billions of dollars from prior allocations. The Senate had disagreed and specified that states be free to take rescissions from whatever programs they choose.

The Senate won. But the sponsor of the equal treatment provision, House Transportation Committee Chairman James Oberstar (D-Minn.), is not giving up. "We have similar language in an energy bill (HR 3221) that is now in pre-conferencing," said a spokesman for Oberstar.

"We're going to keep working on this," he said. "At some point we want to get this done. We didn't have all our chips just on the transportation money bill."

Meanwhile, President Bush will almost certainly veto the Transportation appropriations bill, if and when the Senate approves the conference bill.

When the measure was before the Senate in September the Office of Management and Budget complained that it exceeded the President's recommendation by \$3.1 billion and should be vetoed.

The final conference bill hardly changed, exceeding the President's recommendation by \$3 billion.

In conference the House and Senate approved a new rescission of \$3 billion, the fourth in the last three fiscal years. In a fiscal 2006 rescission, states turned back from transportation enhancements \$601,763,022 out of a total rescission of \$3.845 billion.

In a first round of fiscal 2007 rescissions states turned back \$199,180,527 from transportation enhancements out of a total rescission of \$3.472 billion. In a second round of fiscal 2007 rescissions of \$870 million, the Federal Highway Administration (FHWA) does not yet have a breakout of enhancements give-backs. But the Surface Transportation Program (STP) would give back only \$88 million and enhancements is a small piece of STP.

FHWA does have a breakout of \$901,415.52 for recreational trails in the second fiscal 2007 rescission. Most of that comes from the District of Columbia, \$568,293.35.

The transportation enhancements program receives more than \$600 million per year from the STP program of the multi-year 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.)

In another provision of HR 3074 that could have consequences for park and rec programs the House and Senate included \$630 million to accommodate increased spending under SAFETEA-LU.

The Bush administration has argued a provision of the law called Revenue Aligned Budget Authority (RABA) requires a decrease. But House and Senate Democrats argued that the RABA money should be spent to keep programs up with inflation.

Of interest, when HR 3074 was on the Senate floor the first time September 12, the Senate rejected by an overwhelming 80-to-18 margin a proposal to bar the construction of bicycle paths with bill money.

The sponsor of the amendment, Sen. Tom Coburn (R-Okla.), called for the bicycle path money to be used for bridge and road safety projects. But Republican and Democratic senators rose to the defense of bicycle paths.

The Oberstar provision the House-Senate conferees struck that would require equal treatment of all programs in rescissions called for rescissions "in the ratio that the amount of funds apportioned for each program under such chapter for such fiscal year, bears to the amount of funds apportioned for all such programs under such chapter for each fiscal year."

The provision contained a second paragraph singling out transportation enhancements as a program to be treated fairly. However, the legislation would be prospective and would not apply to the most recent FHWA rescission request.

The American Association of State Highway and Transportation Officials objected to the transportation committee July 23, "A provision in the bill that would require the States to distribute the rescission proportionately among all program categories would further interfere with States' ability to manage their highway programs, set priorities and craft long-term financial strategies."

Bush administration proposes new World List candidates

After four months of being criticized for allegedly conspiring to remove the Everglades National Park from an international list of endangered sites, the Bush administration is effectively changing the subject.

It proposed last month to submit a new list of 35 recommended additions to a World Heritage List. All 35 are in the United States. There are presently 20 United States sites on the list.

"The preparation of a new Tentative List, led by the U.S. Department of the Interior, is the first such endeavor in 25 years and signals a new era in

U.S. engagement with the World Heritage Convention, following on the re-entry of the U.S. to full membership in UNESCO in 2003," the Park Service said in a release.

Despite the timing, a Park Service official said the proposed list is not connected to the Everglades brouhaha. "The commitment to take a new look began in 2005 when the U.S. decided to run for a seat on the World Heritage Committee," said Stephen Morris in NPS's international affairs office. Morris said the list was "not at all" related to the Everglades controversy.

Tom Hill, a legislative representative for the National Parks Conservation Association, agreed that the Everglades situation did not prompt the proposed new list. "I don't think it's related," he said. "I do know that this administration is interested in protecting the Everglades and that interest did not diminish with the (endangered site list) change."

The Everglades is now on the list of World Heritage Sites. It used to be on a separate World Heritage in Danger list, but was removed June 24 by the World Heritage Commission. That set off a major controversy with Sen. Bill Nelson (D-Fla.) charging that the delisting was the work of Bush administration officials critical of expensive Everglades recovery projects. He said the removal of the Everglades from the list "could jeopardize ongoing federal efforts to save this national treasure."

To drive home the point Nelson held a hearing on the delisting in September in the International Operations subcommittee that he chairs. At the hearing the Interior Department official who represented the U.S. at the June 24 World Heritage Committee, Deputy Assistant Secretary of Fish and Wildlife and Parks Todd Willens, offered a defense.

He said the United States had met all its benchmarks for restoring the Everglades requested by other nations. Thus, "The unanimous decision of the 21-member World Heritage Committee, the governing body of the Convention, to

remove Everglades National Park from the Danger List of World Heritage Sites is the international community's way or recognizing the progress that has been made in addressing key issues that led to the listing of the park in 1993," Willens said in prepared testimony.

But at the same Senate hearing the Government Accountability Office (GAO) told a different story. It said the World Heritage Committee had charged the U.S. with meeting nine benchmarks before the Everglades could be removed from the endangered list. But, GAO said, just one of those benchmarks has been met.

"(O)nly one of the nine projects has been completed; four projects are ongoing and will not be completed until at least 2012; and four projects are still in planning and design and are not expected to be completed until some time between 2015 and 2035," said Anu Mittal, director of the GAO Natural Resources and Environmental Team.

The new proposed list of 35 possible United States additions to the World Heritage List has been two years in the making, Willens told the Senate subcommittee. So it wasn't a rush job to respond to the controversy over the Everglades.

Private property rights advocates may rebel. Said Chuck Cushman, president of the American Land Rights Association, "Local people don't realize that when they want to do a project near a park, such as a water resources project or build a road, it will be held against them because their project is near a World Heritage Site. This is another way to ratchet down land use."

The new proposed list includes three natural resources properties (including Petrified Forest National Park, Arizona); one mixed property, (Papahānaumokuākea Marine National Monument, Hawaii); 13 cultural properties (including Civil Rights Movement Sites, Alabama); two extensions of existing sites; and four cultural properties (including Shaker Villages in Maine, New Hampshire, New York and Kentucky.)

Of the 20 United States sites already on the list 17 are managed by the National Park Service, including most icon parks.

Bush, Senate become further estranged on farm bill

With the Bush administration threatening a veto, the Senate will probably fail to complete a farm bill (HR 2419) this week, throwing that hot potato into next year. And because next year is an election year the future of HR 2419 may become problematic.

The Senate has already begun work on the farm bill, but at press time late this week had made little progress. With a two-week Thanksgiving break looming, that would give Congress only a fortnight in early December to complete a conference committee bill and reach agreement with the Bush administration.

At this point the Bush administration isn't buying. Last week Acting Agriculture Secretary Chuck Conner tore into the bill that is before the Senate. He objected mostly to money. "We believe this bill simply makes a mockery of the budget process," he said. "It contains nearly \$22 billion in budget gimmicks, and nearly \$15 billion in new taxes. This is simply unacceptable."

The implications of this contretemps for outdoor recreation are of major importance. Past iterations of farm bills (each one usually covers five years) have removed millions of acres of open land from farming and devoted the acreage to conservation purposes, preserving habitat across the country.

The version of HR 2419 approved by the Senate Agriculture Committee and now on the Senate floor, includes basic agricultural conservation programs including a conservation reserve program, a wildlife habitat improvement program, a wetlands reserve program, a grasslands reserve program, and an environmental quality incentives program. It also includes a new program to encourage private landowners to open their property to hunters and fishermen.

The House approved its version of HR 2419 July 27. It too includes most of the conservation programs advocated by hunters and fishermen, including the private landowner hunting and fishing program.

The Congressional Budget Office (CBO) says the Senate bill would increase spending by \$3.2 billion over the five fiscal years between fiscal 2008 and 2012. Given the size of the Congressional budget that doesn't sound like too much money, but the total amount of money the bill would approve over the five-year period, \$283 billion, does.

Senate Agriculture Committee Chairman Tom Harkins (D-Iowa) responded to the Bush administration critique, "Farm families, rural communities and the nation are counting on the investments we make in this farm bill toward farm income protection, nutrition, conservation, renewable energy and rural development. A veto of this measure will only delay those critical investments, which are needed now more than ever."

HR 2419 comes in two pieces - the Senate Agriculture Committee bill that details programs and authorizes money for them and a \$15-to-\$16 billion Senate Finance Committee package of taxes and other revenue provisions.

The Senate Finance Committee would collect money for conservation through tax credits on conservation programs and make those revenues available for the entire farm bill. The tax credits would generate \$4 billion over ten years.

Conservationists are worried about the provision because they fear it could transfer conservation money to other farm programs. Said the Environmental Defense group, "Since these funds are being generated from conservation programs, the agriculture committee must reinvest the money in conservation to avoid a reduction in the conservation baseline."

The Office of Management and Budget (OMB) said in a November 6 Statement

of Administration Policy, "The Administration opposes the option of shifting Conservation Reserve Program funding from the traditional cost-share and incentive payments to tax credits. Providing program participants this option will cost \$770 million more than current law without increasing the number of acres enrolled or obtaining the desired associated environmental benefits."

The sportsmen's access program, called "Open Fields", would authorize state and Indian tribes to apply for grants to encourage private owners of farms, ranches and forests to make that land available for hunters, fishermen and wildlife watchers. The provision (Section 1299 of the Senate bill) would make \$20 million per year available for grants.

Senate leadership is giving the farm bill top priority because the existing law technically expired October 1. However, the Department of Agriculture is continuing most programs under a prior farm bill enacted in 2002.

OMB July 25 also threatened a veto of the House bill, primarily because House Democrats would finance it by increasing taxes on companies that use foreign tax havens, and not by direct spending offsets. In a different area OMB criticized the bill for "failing to consolidate the (conservation) programs."

Utah RS 2477 case may set crucial precedent for ROWs

Environmentalists set the stage last month for legal action against an initial application for an RS 2477 right-of-way in Utah that they say could set a precedent for thousands more such applications.

In a 68-page letter to BLM the environmentalists objected not only to the specific RS 2477 right-of-way (ROW) request, but also to the Interior Department policy that established procedures for handling RS 2477 applications.

The Bureau of Land Management

(BLM) uses the policy guidance of March 22, 2006, promulgated by former Secretary of Interior Gale Norton, to evaluate applications for RS 2477 ROWs. BLM also processes RS 2477 ROWs on behalf of other land management agencies, including NPS.

BLM does not have authority to approve such ROWs because the Tenth U.S. Circuit Court of Appeals ruled in 2005 that only a court has that authority. But BLM can issue a "non-binding determination," shortened to an NBD.

Said the environmental groups in their letter to BLM Utah State Director Selma Sierra, "The Norton policy is illegal because it violates the Congressional ban on final rules related to R.S. 2477, because the policy is a rule that was promulgated without notice and comment as required by the Administrative Procedure Act and because effectively surrendering an interest in a right-of-way exceeds BLM's legal authority."

Besides, said the groups, led by the Earthjustice environmental law firm, the applicant - Kane County, Utah - has not justified an RS 2477 ROW and the case would set a bad precedent. "If BLM approves this NBD on the basis of the evidence that BLM states it is relying on, the agency would set a low bar for reviewing evidence, accepting applications for NBDs, and ensuring the public has access to all evidence and agency files," said Earthjustice on behalf of The Wilderness Society, the Southern Utah Wilderness Alliance and other groups.

The environmentalists submitted to BLM old photos and county maps that they say proves the Bald Knoll road in Kane County was not used as a public road prior to 1976, the cut-off date for valid RS 2477 ROWs.

While the courts say BLM may not make the final call on the validity of RS 2477 ROWs, the Norton policy authorizes BLM to make the non-binding determinations, and that worries environmentalists. Said Kristen Brengel of The Wilderness Society, "This will allow the

county to maintain the line while paperwork is processed. Who knows what will happen under that scenario."

The Earthjustice letter to BLM is not a lawsuit but it puts the Bush administration on notice that environmentalists are contemplating litigation against the Norton policy and any BLM decision in the Bald Knoll case.

Western states and counties have been fighting with environmentalists for more than a decade over the validity of assertions to RS 2477 ROWs across public lands. Under the law states and counties can gain control of RS 2477 ROWs, if they can prove to federal courts that the ways were used as roads prior to 1976.

The battles have involved both the courts and Congress. In one landmark decision, *Southern Utah Wilderness Alliance v. BLM*, Nos. 04-4071 & 04-4073 of Sept. 9, 2005, the Tenth U.S. Circuit Court of Appeals ruled that BLM could not adjudicate the validity of RS 2477 ROW assertions. It said only a federal court had that power. Subsequently, Secretary of Interior Gale Norton on March 22, 2006, issued a comprehensive new RS 2477 policy based on the Tenth Circuit decision.

In 1995 and 1996 Congress got into the act by prohibiting the Interior Department from issuing rules or regulations to govern the settlement of RS 2477 ROW assertions. According to the environmentalists' letter, that prohibition is still in effect.

The environmentalists' letter to BLM asserts that the Norton policy violates the Congressional order. "Legislative history suggests that the Norton Policy is exactly the type of rule Congress meant to prohibit when it barred rules pertaining to recognition of an R.S. 2477 rights of way," they said.

Notes

National mall partners set. Secretary of Interior Dirk Kempthorne lent his presence November 15 to the announcement of a new friends-of-the-parks

group to help restore and preserve the National Mall in Washington, D.C. The Trust for the National Mall is a non-profit group that will help raise money to protect the mall and its dozens of park sites, including the Washington Monument, the Lincoln Memorial, the Jefferson Memorial and the White House. Chip Akridge, a prominent Washington, D.C., realtor, will chair the trust.

Crapo would protect packhorses.

Sen. Mike Crapo (R-Idaho) introduced legislation (S 2283) November 1 that endorses packhorse use by outfitters on federal lands and would require an environmental review before land managers could reduce the use. When similar legislation came before the House last year, Democrats faulted the bill but did not oppose it. They complained the bill would give outfitters preferential treatment and would limit the flexibility of land managers to reduce outfitter numbers. The legislation is intended to arbitrate an ongoing dispute between environmentalists and outfitters. Environmentalists demand that the use be cut back to minimize damage, particularly in wilderness areas. Outfitters say the bill would prevent agencies from arbitrarily reducing use. The Bush administration, at least in its early years, opposed the bill because it said the mandatory NEPA review was redundant.

Whittington new NPS Denver boss.

The Park Service said November 9 that Sam Whittington, deputy director of the NPS Denver Service Center, has been promoted to director. He will oversee almost \$1 billion in construction projects, among other things. He has served as the deputy director since 2003. Whittington assumed the new position November 11.

FWS outdoor survey completed.

The Fish and Wildlife Service (FWS) first announced early results in May. It now has completed a detailed version of a National Survey of Fishing, Hunting, and Wildlife-Associated Recreation. That report, prepared every five years, shows significant gains in non-game recreation watching and significant decreases in hunting and fishing. FWS reported June 18 that Americans' participation in observing wildlife increased 19 percent

in 2006 compared to 1996. Over the same time participation in fishing decreased by 15 percent and hunting 10 percent, FWS said. Altogether Americans spent \$120 billion on hunting, fishing and observing wildlife in 2006, FWS said. Americans spent more on observing wildlife (\$45 billion) than on fishing (\$41 billion) or hunting (\$23 million.) The survey is available at <http://federalasst.fws.gov/surveys.html>.

Schafer nominated to head USDA.

The Bush administration announced October 31 that former North Dakota Gov. Ed Schafer would be nominated to replace Mike Johanns as Secretary of Agriculture. Schafer was governor of North Dakota from 1992 to 2000. Mike Johanns stepped down as Secretary of Agriculture September 19. He intends to return to his native Nebraska, where he is expected to run for Senate next year to replace Sen. Chuck Hagel (R-Neb.) Johanns's deputy, Chuck Conner, is serving as acting secretary. Conner is from Indiana.

BLM backed on rock climbing guide.

The Interior Board of Land Appeals (IBLA) last month upheld a Bureau of Land Management (BLM) decision to award a rock climbing guide permit in the Red Rock Canyon National Conservation Area in Nevada to the Red Rock Climbing Center. Three other applicants appealed the decision to IBLA, claiming they were better qualified than BLM's choice. IBLA Administrative Judge James F. Roberts agreed with BLM that it has considerable discretion in selecting rock-climbing guides in a conservation area. In this case BLM convened a panel of five experts to review four applications to serve as guides in conservation area. "We recognize, as did the panel-of-five and the Area Manager in making the final selection, that all the applicants have strengths and weaknesses," held Roberts. "Again, however, the burden is on an objecting party to show, by a preponderance of the evidence, that BLM's decision is improper." Case identification: *Acadia Mountain Guides, Inc., et al*, 173 IBLA 1. October 18, 2007. Appeals from a decision of the Las Vegas Field Office of BLM, which awarded a special recreation permit for commercial rock climbing services. NV Permit No. 2931.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Congressional budget 2008 S Con Res 21 (Conrad)	House and Senate gave final approval May 17.	Makes room for a \$2 billion hike in natural resources spending.
Appropriations 2008 (Interim) HR 3222 (Murtha)	President Bush signed into law November 13 as PL 110-116.	Keeps federal agencies in money through December 14 at fiscal year 2007 levels.
Appropriations 2008 (Interior) HR 2643 (Dicks) S 1696 (Feinstein)	House approved June 27. Senate committee approved June 21.	Both Houses would increase park and rec spending across-the-board. Veto is more than likely.
Appropriations 2008 (Energy & Water) HR 2641 (Visclosky)	House approved July 17. June 6. Senate committee approved June 28.	Would increase Corps and Reclamation spending more than OMB will accept.
Appropriations 2008 (Transportation) HR 3074 (Olver)	House, Senate conference committee approved Nov. 8.	Would provide full funding for park and rec programs, as called for by SAFGTEA-LU.
NPS Centennial Challenge S 1253 (Bingaman) HR 2959 (Rod Bishop) HR 3994 (Rahall)	House and Senate hearings August 2.	S 1253 and HR 2959 would establish \$2 billion program to help the parks. Rahall would impose new DOI fees.
NPS tax assistance HR 1731 (Baird)	Baird introduced March 28.	Would authorize NPS improvement fund financed by income tax check-off.
FWS tax assistance HR 2735 (Young)	Young introduced June 14.	Would authorize FWS improvement fund financed by income tax check-off.
Heritage areas national S 278 (Thomas) HR 1483 (Regula)	Senate committee approved July 25. House approved October 25.	Would establish national standards for new NHA designations. HR 1483 Would designate six new NHAs.
Farm bill HR 2419 (Peterson)	Senate committee approved October 25. House approved July 27.	Would authorize major conservation programs for five years, including new Open Fields program.
Conservation tax credits S 469 (Baucus) HR 1576 (Thompson)	Senate committee approved September 20. Thompson introduced March 19.	Would make semi-permanent conservation tax credits Congress approved last year.
Wildlife conservation grants HR 3221 (Pelosi) HR 2338 (Dicks)	House approved August 4. Dicks introduced May 16.	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.	Would designate an American Discovery Trail and discovery trail system.
Trail acquisition authority S 169 (Allard) HR 1847 (M Udall)	Senate panel approved Sept. 17. Udall introduced March 29.	Would authorize land acquisition authority for nine national trails.
Trail expansion authority S 580 (Hatch) HR 1336 (Blumenauer)	Senate panel approved June 26. Blumenauer introduced March 6.	Would authorize route variations for four national historic trails.