

Federal Parks & Recreation

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Senate bill with sure LWCF money faces tough sledding

Legislation to provide full funding for the Land and Water Conservation Fund (LWCF) has an uncertain future in the Senate next month.

The LWCF provision is attached to an energy bill (S 3663) that responds to the Gulf oil spill, but support for S 3663 is waning as the Gulf crisis fades from the headlines.

Republicans say S 3663 was already in trouble because it contains provisions unrelated to the spill, such as the LWCF guarantee. "Let's leave out those unrelated provisions that may be worthy and good, but they are not what the spill is about," said Robert Dillon, spokesman for Senate Energy Committee Republicans.

As for the LWCF provision itself, Dillon said it emphasizes federal land acquisition too much and revenue sharing for coastal states too little. Coastal states receive at best a small share of offshore oil and gas royalties. Onshore states receive 50 percent of royalties.

"What the majority has done is to kill revenue sharing for Louisiana and Alaska and given the money to the federal government for land acquisition," said Dillon.

Still, the LWCF guarantee is alive in two places. First, the Senate could still move S 3663. Second, the House July 30 approved a more comprehensive energy bill (HR 3534) that would guarantee money for LWCF for the next 30 years. So if the Senate approves any kind of energy bill, at some point this fall a House-Senate conference committee could patch together a final bill with LWCF money.

The Senate is not scheduled to

return to work until September 13 and the House September 14. And both houses have set a tentative adjournment date of October 8.

The House and Senate LWCF provisions are quite different. The House would simply guarantee \$900 million per year for 30 years. The Senate would begin with full funding and then change the guarantee in out-years.

THE HOUSE BILL: The measure makes the guarantee clear. It says: "Permanent Funding - Of the moneys covered into the fund, \$900,000,000 shall be available each fiscal year for expenditure for the purposes of this Act without further appropriation." Appropriators could still allocate money to specific projects within the cap.

The House would also set aside at least 1.5 percent of the money to provide access to public lands managed by the Interior Department for "hunting, fishing, and other recreational purposes through easements, rights-of-way, or fee title acquisitions, from willing sellers."

THE SENATE BILL: The Senate measure is more complex than the House bill. After five years of guaranteed full funding \$ 3663 would guarantee only \$500 million in fiscal 2016. It would then remove the guarantee from fiscal years 2017 through 2020, subjecting LWCF to appropriations. But beginning in fiscal 2021 it would again guarantee \$500 million per year.

A Senate Energy Committee staff member said the provision is convoluted to comply with Senate budget guidelines. Asked why the erratic allocations, the staff member said, "The quick answer is the funding levels were the maximum available without running into budget issues. For example, maximum direct spending in any 10-year period is limited to \$5 billion, which works out to \$500 million per year. We decided to front-load the initial 10-year period, which is why the first five years are fully funded."

FISCAL 2011 APPROPRIATION: In a

closely related development the House subcommittee on Interior appropriations July 22 approved a \$518 million appropriation for LWCF for fiscal year 2011, or \$68 million more than a fiscal 2010 appropriation of \$450 million. (The subcommittee number is \$72 million less than the administration request of \$590 million, largely because it would not fund a \$42 million acquisition by the Bureau of Land Management to store excess wild horses in the Mid-West and East.) Out of the \$518 million for LWCF, \$55 million would go to the state side of LWCF.

BLM reviews ORV policy after California race accident

The Bureau of Land Management (BLM) will carefully scrutinize each upcoming off-road-vehicle (ORV) race scheduled for public lands in the wake of a catastrophic accident in a California race August 15.

Eight people were killed when a converted truck went out of control during the California 200 race on BLM land in the Mojave Desert.

BLM Director Bob Abbey said August 20, "We have launched an internal review of the tragedy and we will be taking a very close look at all approved permits and pending requests and determine whether they are appropriate on a case-by-case basis."

Asked if BLM is considering an outright moratorium on ORV racing in the California Desert, a BLM spokeswoman in the California State Office would only say, "We are hoping to issue a statement." The spokeswoman did say the bureau was not responsible for safety at the site because the race organizer, Mojave Desert Racing, was. BLM August 19 did suspend events hosted by the organizer until a crash investigation is completed.

Meanwhile, the Nevada State Office of BLM allowed the organizers of a 534-mile Vegas-to-Reno race to hold the event August 20 as scheduled.

A BLM spokeswoman in Nevada said

the two races are very different. "In California the race was run on a loop. They rode round-and-round," she said. "(The Nevada race) is point-to-point. We have set up pit areas for spectators and they know to go to those pit areas."

The spokeswoman said that the Vegas-to-Reno race has been run for 14 years without any spectator injuries. All in all she said, "We feel very confident about the safety procedures we have outlined for this event."

The Public Employees for Environmental Responsibility (PEER) conservation group is not so sure about the safety of the Vegas-to-Reno run. "Just like last weekend, this race has high danger risk and is nearly impossible to patrol, but BLM puts its head in the sand during every one of these big events," said Southwest PEER Director Daniel Patterson, an ecologist who formerly worked with BLM in the Mojave Desert.

The California 200 is one of many major ORV racing events held in southern California each year. Only the huge tracts of federal desert are large enough to hold meaningful events. But environmentalists have pressed BLM for years to close the desert to such events.

At the August 15 California 200 some 1,000 people watched converted trucks circle a 50-mile track through the desert four times. In addition to the eight people killed in the crash, another 10 were injured.

The driver of the truck in the crash, Brett M. Sloppy, 28, of San Marcos, Calif., was not injured and was not charged by the police. He was reportedly driving 40 to 50 miles per hour.

Everyday ORV users contrasted their activities on public lands with the California race. "The California 200 featured full-sized, race-prepped vehicles designed specifically for racing," said Larry Smith, executive director of Americans for Responsible Recreational Access. "This is very different from the average motorcycle or all-

terrain vehicle rider who visits public lands for riding opportunities on virtually stock vehicles that could never be confused for the full-sized racing machines used in the California 200 and other races."

California Sens. Dianne Feinstein (D) and Barbara Boxer (D) entered the fray August 18 when they charged in a letter to BLM Director Bob Abbey that the accident was preventable. "What makes this accident even more troubling is that with proper precautions, it could have been prevented," they said.

The senators asked Abbey to report to them on safety measures that were in place and if BLM staff members were at the race.

House blocks 'livability' money; highway law first?

Just before heading out for summer vacation in late July the House dealt the Obama administration's pet livability program a major blow. It refused to put up \$200 million in seed money for the program in a fiscal year 2011 transportation appropriations bill (HR 5850.)

The motivation, said House Transportation Committee Chairman James Oberstar (D-Minn.), was not to oppose the program. Rather, the House is attempting to persuade the administration to support a six-year, \$500 billion transportation bill.

Said Rep. Peter DeFazio (D-Ore.), author of the amendment, "But now the Secretary would like a little cherry, which would be like an office of livability, not defined, and he'd like \$200 million, at his discretion, whatever he defines livability as, to give grants to whomever he wishes under whatever criteria he might, in the future, propose. . . It's not going to meaningfully address the problems of the system. We need a comprehensive approach."

DeFazio chairs the House subcommittee on Highways and Transit. It approved a bill (unnumbered) June 24, 2009, to authorize a \$500 billion surface transportation program. But the

bill has gone nowhere because of the unwillingness of the Obama administration to raise the additional \$100 billion-plus needed to finance the program (gasoline taxes would pay the other \$400 billion.)

The House approved the DeFazio amendment without a recorded vote, but Rep. Earl Blumenauer (D-Ore.) did criticize it. "I am saddened by an ill-advised amendment by my friend and colleague, Mr. DeFazio from Oregon, targeting transportation livability programs that, in fact, if they were allowed to move forward, would give us a head start on what I think the Transportation and Infrastructure Committee wants to happen with their reauthorization," said Blumenauer, also known as bicyclists best friend in the House.

In its fiscal 2011 budget request the Obama administration proposed a \$527 million livability appropriation for the Department of Transportation that would provide grants to state and local agencies. Of the \$527 million, \$200 million would help communities plan transportation alternatives to integrate housing, shopping and other activities in more, well, livable ways. Trails and open space are integral elements of a livability program.

The Senate Appropriations Committee approved a counterpart fiscal 2001 Transportation appropriations bill (S 3644) July 22 that would not establish a new livability office, but it would provide some additional money for livability programs.

Congress still has a little time to write a new surface transportation law. On March 18 it extended the existing law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users - until December 31 (PL 111-147.)

Meanwhile, highway interest groups August 13 launched a campaign to persuade Congress to write a new highway law this fall. The Infrastructure Campaign Pledge asks House and Senate members to commit to supporting investment in surface transportation. The campaign is led by the Associated Equipment Dis-

tributors and the Association of Equipment Manufacturers.

Going in the opposite direction the Federal Highway Administration gave state transportation departments until August 25 to submit rescissions of \$2.2 billion in prior-year highway contract authority that has not been used. Congress ordered the rescissions in an economic stimulus law (PL 111-226 of August 10.) The rescissions would help pay for the law.

House moves ski bill; lead candidate for new omnibus?

If the political support can be mustered this fall for House and Senate passage of a big omnibus bill, plenty of individual bills will be candidates for the measure.

Before Congress left for an extended summer vacation several more bills took significant steps forward.

Among those actions was House passage July 30 of legislation (HR 2476) that would authorize ski resort owners that operate on national forests to provide year-round recreational opportunities on the public lands.

And on August 5 the Senate Energy Committee approved a bill (S 3452) that would transfer the Valles Caldera area in New Mexico from the Forest Service to the Park Service.

In addition, although no action has been taken yet, Sen. Barbara Boxer (D-Calif.) introduced a bill (S 3744) August 5 that would upgrade Pinnacles National Monument to Pinnacles National Park.

As we have been reporting for several months, single bills are almost always blocked from Senate consideration in the form of "holds." So the Senate Energy Committee and the House Natural Resources Committee move as many lands bills singly as far as they will go to put them in position to be added to an omnibus bill late in the year. The idea is to give as many senators and House members as possible plums in the omnibus

to gain the votes needed to break a hold.

The House and Senate committees have now approved dozens of bills that are reasonable candidates for inclusion in an omnibus bill later this year. Secretary of Interior Ken Salazar has also promoted the idea of an omnibus bill similar to an omnibus lands bill Congress approved last year (PL 111-11 of March 30, 2009.)

The Senate Energy Committee, which usually assembles the ingredients for an omnibus measure, has not yet begun to put together a new omnibus, but that doesn't mean one will not be prepared. The ultimate call will be made by Senate Majority Leader Harry Reid (D-Nev.)

Obvious candidates for the omnibus are the ski areas bill and the bill to transfer Valles Caldera to the Park Service, as well as measures to designate wilderness and trails in central Idaho, to extend a popular federal land sales bill, to designate a national park in Delaware (the state has none now), designate a handful of national heritage areas, and much more. Here's a summary of a few candidates:

SKI AREA BILL: S 607, HR 2476. The Senate Energy Committee July 21 approved its bill and the House its bill July 30. Because Forest Service policy is unclear about what uses ski resorts may authorize on federal lands in the off-season the industry asked Congress to provide explicit authority. The Senate measure, introduced by Sen. Mark Udall (D-Colo.), would allow year-round recreational activities.

The House-passed bill responds to administration concerns about vague authority. Thus HR 2476 rules out inappropriate uses, such as golf courses, tennis courts, amusement parks. Rep. Diana DeGette (D-Colo.) introduced the House bill.

FS CABIN FEE BILL: HR 4888. House committee approved July 22. The cabin fee bill was introduced by ranking House Natural Resources Committee Republican Doc Hastings (D-Wash.) The committee approved it under a unanimous consent

procedure. Under existing Forest Service practice fees can shoot up dramatically when new appraisals of the value of the cabins are performed. There are 14,000 cabins in the national forests that are privately owned. The owners in turn pay the Forest Service a yearly fee to retain use of their lots.

To prevent fee spikes the bill would establish five levels of flat fees based on the value of cabins. Tier one would pay \$500, tier two \$1,000, tier three \$2,000, tier 4 \$3,000 and tier 5 \$4,000. The legislation would also establish a flat transfer fee of \$1,000 plus five percent for sales between \$250,000 and \$500,000 and 10 percent on sale of more than \$500,000.

VALLES CALDERA BILL: S 3452. The Senate Energy Committee approved this bill August 5. When Congress designated the preserve on 88,900 acres of Santa Fe National Forest land in 2000, it transferred management to a Valles Caldera Trust with the idea the trust could raise money and be self-sustaining.

But, said chief bill sponsor Jeff Bingaman (D-N.M.), who chairs the Senate Energy Committee, the trust needs to come up with \$15 million for construction and maintenance and he doubts that will happen. So he called for a transfer to the Park Service.

Faced with a potential turf battle between NPS and the Forest Service, the Obama administration essentially (1) let each agency make its case and (2) deferred a final call to Congress.

CENTRAL IDAHO ECONOMIC DEVELOPMENT AND RECREATION ACT (CIEDRA): S 3294, HR 5205. The Senate committee held a hearing June 16 on this bill from Idaho's two Republican senators. While the Obama administration generally endorsed the bill, Idaho Gov. C.L. "Butch" Otter (R) opposed it.

Motorized recreation interests are also mounting a last-minute attack against the bill because it would close snowmobile and mountain bike trails. The Blue Ribbon Coalition (BRC) said in a bulletin to its members, "BRC and the Idaho Recreation Coalition are working

hard to stop CIEDRA, but the situation looks grim, as both Idaho's Senator's are now co-sponsors. Hope is not lost, however, as Idaho's Governor Butch Otter has written a letter opposing CIEDRA."

Still, with two Republican senators behind it, S 3294 has crucial support in the Senate and the House passed a predecessor bill on July 24, 2006. Rep. Mike Simpson (R-Idaho) introduced a new version of the bill (HR 5205) this year.

FEDERAL LAND TRANSACTION FACILITATION ACT: S 1787, HR 3339. The Senate Energy Committee June 21 approved this legislation that would allow the Bureau of Land Management (BLM) to sell lands cleared by all land management plans, not just plans completed prior to 2000, as the old law does. Sen. Bingaman and Rep. Martin Heinrich (D-N.M.) introduced the legislation. Under an existing law BLM may only sell lands cleared for disposition by land management plans completed prior to 2000. BLM has raised more than \$100 million from the land sales. Most of that money is used for conservation and acquisition.

MONUMENTS: An omnibus bill could also provide a home for national monuments that the Interior Department is evaluating, if the monuments aren't designated by Presidential proclamation under the Antiquities Act of 1906. An internal Interior Department document indicates that the department is evaluating 14 such monuments.

DELAWARE NATIONAL PARK: S 1801, HR 3893. Sens. Thomas Carper (D-Del.) and Edward Kaufman (D-Del.) introduced this bill to establish a National Park System unit in their state of Delaware. Rep. Mike Castle (R-Del.) introduced a counterpart bill October 21. The energy committee held a hearing on it May 19. Delaware, the first state to vote to join the union, is also the only state without a unit of the National Park System. Carper and Kaufman would change that by designating a First State National Historical Park. The park would include historical sites, such as an area in Dover where local officials decided to ratify the U.S. Constitution.

PINNACLES NATIONAL PARK: S 3744, HR 3444. Boxer introduced S 3744 August 5. The House subcommittee on National Parks held a hearing Nov. 17, 2009, on HR 3444, which was introduced by Rep. Sam Farr (D-Calif.) Both bills would designate a national park out of the existing national monument. The 26,000-acre monument is located in an area of expanding population. For the first time in a century a condor chick was born there in March.

GETTYSBURG EXPANSION: S 3159, HR 4395. The House approved HR 4395 March 19. The Senate Energy Committee approved S 3159 August 5. Pennsylvania Sens. Arlen Specter (D) and Robert B. Casey (D) introduced the Senate bill that would add the Gettysburg Railroad Station to Gettysburg National Military Park. The bill would also add a 45-acre tract south of the battlefield to the park. The National Trust for Historic Gettysburg currently operates the railroad station. Rep. Todd Russell Platts (R-Pa.) introduced the House-passed bill.

NATIONAL HERITAGE AREAS: At least a dozen bills have been introduced that would designate new national heritage areas around the country and at least three study bills.

Despite full fall agenda Congress may not do much

When Congress returns to work in mid-September it is expected to move few park and rec bills before adjourning for elections on October 8. Despite a full plate of legislation.

That means no fiscal year 2011 appropriations bills, no guarantee of Land and Water Conservation Fund appropriations, no new surface transportation law and no new permitting rules for wetlands.

The political gridlock on the Hill - particularly in the Senate - is now exacerbated by looming elections on November 2. Among others Senate Majority Leader Harry Reid (D-Nev.) is up for re-election.

Of the highest priority are the fiscal 2011 appropriations bills, led by one for the Interior Department and related agencies. The House subcommittee on Interior appropriations approved its bill July 22 but the measure has not moved since.

The Senate subcommittee on Interior appropriations is reportedly stymied by a dispute over climate change regulations. Senate Republicans may just have enough Democratic votes in hand to add an amendment to the bill that would prevent EPA from issuing such regulations, forcing Democrats to postpone action on a bill. However, subcommittee chairman Dianne Feinstein (D-Calif.) said she is ready to mark up. In other money bills:

ENERGY AND WATER: The full Senate Appropriations Committee approved this bill (S 3635) July 22 that finances the Corps of Engineers and the Bureau of Reclamation. The House subcommittee on Energy and Water Appropriations approved a counterpart bill (no number) July 15.

TRANSPORTATION: The full Senate Appropriations Committee approved this bill (S 3644) July 22 that pays for highway and transit programs. The full House approved its counterpart bill (HR 5850) on July 29.

AGRICULTURE: The Senate subcommittee on Agriculture Appropriations approved this bill (no number) July 15 and the House Agriculture Committee July 27 postponed a scheduled mark-up of a subcommittee-passed bill.

If the House and Senate fail to act on the money bills over the next six weeks, they will almost certainly (1) extend current spending levels temporarily and (2) wrestle with the problem in a lame-duck session after the November 2 elections.

Appropriations bills are not the only measures caught in the political logjam. Reid all year has been unable to move climate change legislation.

Similarly, on August 3 he delayed until September a drastically-weakened energy bill (S 3663) that would provide

guaranteed money for the Land and Water Conservation Fund. Because the Gulf oil spill crisis has abated, the momentum behind S 3663 may be waning. (See page one article.)

Even more likely to go nowhere is legislation to authorize surface transportation programs for six years. The House subcommittee on Surface Transportation approved a bill (unnumbered) June 24, 2009, but it has gone nowhere because of concerns about the \$500 billion price tag.

Still, Congressional staff and lobbyists say there is considerable interest in approving a structure for a multi-year law, with the numbers to be filled in over the next three years.

Congress has a little time to work. On March 18 it extended the existing surface transportation law - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users - until December 31 (PL 111-147.)

Although House Transportation Committee Chairman James Oberstar (D-Minn.) seems determined to move this year his bill (HR 5088) to make clear that most wetlands must receive Clean Water Act permits, the legislation remains a long shot. The committee has not begun to mark up a bill yet.

There has been some action in the Senate. The Senate Environment and Public Works Committee June 18, 2009, approved a counterpart bill (S 787) but the measure has not moved any further toward Senate floor action. The American Land Rights Association, among other private property rights advocates, has helped keep S 787 off the Senate floor with repeated attacks.

Oberstar's committee did approve July 29 a giant Water Resources Development Act (WRDA) bill, HR 5892. There is no Senate bill yet. HR 5892 includes almost 300 project-specific provisions, worth \$6 billion. Despite Republican promises to oppose all earmarks this year, the WRDA bill includes significant GOP projects.

Finally, the House Natural Re-

sources Committee and the Senate Energy Committee continue to approve dozens of individual lands bills that could be candidates for a sweeping omnibus bill in the lame-duck session. (See *previous article*.)

Everglades put back on World Heritage endangered list

The Obama administration persuaded the World Heritage Committee in late July to reverse field and designate Everglades National Park as an endangered heritage site. The Bush administration in 2007 had persuaded the committee to remove the Everglades from the list, where it had been since 1993.

The Bush administration had argued that an \$8 billion Comprehensive Everglades Restoration Project (CERP) had put the park well on the road to recovery.

"However," said the World Heritage Committee in a July 30 statement, "the degradation of the site has continued. Water inflows have been reduced by up to 60 percent and nutrient pollution increased to the point where the site is showing significant signs of eutrophication, loss of marine habitat and a subsequent decline in marine species."

Said Secretary of Interior Ken Salazar, "The Everglades remains one of our world's most treasured - and most threatened - places. The federal government must once again stand up and meet its responsibilities to Everglades restoration so that one day we can remove the park from the list of sites that are in danger."

Salazar said the Obama administration has demonstrated a "strong commitment" to restoring the Everglades through budget requests and economic stimulus funding for CERP.

The 21-nation World Heritage Committee met in Brazil in July and August to consider nominations to the List of World Heritage in Danger. Political conservatives in the United States have long resisted international designation

of conservation areas within this country.

Representatives from these 21 countries served this year on the World Heritage Committee: Australia, Bahrain, Barbados, Brazil, Cambodia, China, Egypt, Estonia, Ethiopia, France, Iraq, Jordan, Mali, Mexico, Nigeria, Russian Federation, South Africa, Sweden, Switzerland, Thailand and United Arab Emirates.

The committee identifies outstanding cultural and natural properties around the world and places them on a World Heritage List. Then the committee identifies which of the properties is in danger and deserves to be included on the Danger List.

NPCA says Grand Canyon merits 'Great Outdoors' assistance

Conservationists said this week that the President Obama's America's Great Outdoors Initiative would be a good place to start in the restoration of Grand Canyon National Park.

In releasing a major report on the state of Grand Canyon (not good) the conservationists said the President's initiative focuses on the nation's treasured landscapes, and few landscapes are more treasured than Grand Canyon.

"I don't think there is another landscape more treasured on earth than the greater Grand Canyon ecoregion," said Ron Tipton, vice president of the National Parks Conservation Association (NPCA), which led in the preparation of the report. "So I think our report has some very good ideas how the administration, how the Congress, how we as a nation should preserve this park unimpaired for future generations."

The report's individual recommendations are not new - insure adequate water flows, limit overflights, withdraw adjacent lands from consumptive uses. But NPCA and its fellow conservation groups put together their report now because (1) the Park Service is ap-

proaching its 100th anniversary in 2016 and (2) Grand Canyon is one of the nation's premier parks.

Over the last few years NPCA has published State of the Parks reports for some 80 units. It held a press conference August 23 to highlight the importance of the Grand Canyon report, titled *Grand Canyon National Park: Resource Challenges and Future Directions*. The report recommends:

COLORADO RIVER WATER FLOWS: Increase water flows through the park. The Bureau of Reclamation periodically releases huge amounts of water from Glen Canyon Dam into the Colorado River that flows through Grand Canyon, mimicking spring snow melts. Conservationists are pushing for more frequent releases to nourish the ecosystem.

OVERFLIGHT REGULATIONS: Limit air tours over the park. Some 500,000 of the park's annual five million visitors take sightseeing flights. NPS and the Federal Aviation Administration are preparing a new air tour plan. The report recommends the plan increase "natural quiet to a greater percentage of the park 75%-100% of the day."

MINING on ADJACENT LANDS: Withdraw public land from mining. Hundreds if not thousands of uranium mining claims have been filed on Bureau of Land Management and Forest Service land near the park. The Interior Department has temporarily withdrawn 1 million acres of those public lands from mining and is working on a 20-year withdrawal. The report recommends a permanent withdrawal.

AIR POLLUTION: Limit new and existing sources of pollution. Air pollution threatens not only visibility within the park but also the health of visitors, according to the conservationists. The report recommends that nearby states and Indian tribes reduce air pollution with tougher regulations.

A copy of the Grand Canyon National Park report and fact sheet is available at: www.npca.org/stateoftheparks/grand_canyon/.

House members prod conferees on Senate overflight proviso

Joined by an influential Republican, eight House Democrats last month urged House conferees to accept Senate-passed legislation governing air tours over national parks.

The Senate provision would more clearly delineate the responsibilities of the Federal Aviation Administration (FAA) and the Park Service in regulating overflights. According to some NPS officials and interest groups, disagreements between the two agencies have been partially responsible for the failure of the agencies to complete any air tour plans in the last decade.

So the House members, led by Rep. Raúl M. Grijalva (D-Ariz.), wrote the four House leaders who are in conference on the legislation, urging them to accept the division-of-labor provision. Grijalva chairs the House subcommittee on National Parks.

"This language is necessary to effectively utilize taxpayer money and break the bureaucratic stalemate that has kept air tour plans from being completed," wrote the House members. "We respectfully request that this provision be retained in the final FAA bill that will be sent to the President."

Cosigning the letter were such powerful Democrats as Reps. Norman Dicks (Wash.), former chairman of the House subcommittee on Interior appropriations, and his successor Jim Moran (Va.) Also signing was Republican Rep. John Duncan (Tenn.), a senior member of the Grijalva subcommittee.

The overflights provision was written by Sen. Ron Wyden (D-Ore.) as an amendment to a broader bill to reauthorize most FAA programs. The Senate March 22 approved the broader bill and sent it to the House, which had approved an initial version a year earlier on March 19, 2009. The two Houses are now close to a final agreement, according to House Transportation Committee Chairman James Oberstar (D-Minn.) A main stick-

ing point has been a provision in the House bill that would make it easier for FedEx workers to unionize.

(At this point it is not clear what bill number the House and Senate are using because the original FAA reauthorization bill (HR 1586) was preempted by the House and Senate last month for assignment to an economic stimulus bill.)

The overflights provision addresses the inability of NPS and FAA to complete any park air tour plans in the decade since Congress wrote the National Parks Air Tour Management Act of 2000 (PL 106-181 April 5, 2000.)

While Wyden was at it, he included language in his provision that would allow Crater Lake National Park to reject an application for air tours over the park even though an air tour management plan has not been written yet.

The Senate also included in its bill an amendment that would assess fees on air tour operators large enough to pay for air tour management plans. The amendment was sponsored by Sen. Tom Coburn (R-Okla.), frequently a critic of initiatives to expand the National Park Service. His amendment simply gives the Interior Department authority to assess a fee, with the amount to be "determined."

A major potential disagreement on the Senate floor was avoided when Sen. John McCain (R-Ariz.) withdrew an amendment that would have barred a reduction in the number of air tours over Grand Canyon National Park. He backed off after Sen. Jeff Bingaman (D-N.M.) objected.

McCain's Grand Canyon amendment would also have set a new standard for allowable air tour noise in the park. The rider would have defined natural quiet in the park as when 50 percent of it is quiet 75 percent of the time. In other words the other half of the park would not have to be free from air tour noise. McCain was the lead sponsor but Senate Majority Leader Harry Reid (D-Nev.), Sen. Jon Kyl (R-Ariz.) and Sen.

John Ensign (R-Nev.) were cosponsors.

Salazar enters RS 2477 ROW debate with Utah confabs

Secretary of Interior Ken Salazar in late July took the first tentative steps toward settling a long-simmering dispute over the validity of old routes across public lands in the West known as RS 2477 rights-of-way (ROWS.)

Counties have claimed many of those routes for their own use, including some across national parks.

As a first step Salazar effectively revoked a 2006 policy memo issued by former Secretary of Interior Gale Norton that favored local governments in their validity assertions.

As a second step Salazar offered to negotiate in a pilot project with Utah Gov. Gary Herbert (R) and Iron County, Utah, to settle the county's RS 2477 claims. Those negotiations may require a federal district court order because the Tenth U.S. Circuit Court has held that only district courts have the authority to arbitrate the validity of disputed claims. However, the Interior Department doubts court action would be needed if there were no dispute.

Salazar did not go so far as to direct BLM to revoke a Feb. 5, 2003, Bush administration rule that establishes a new procedure for settling RS 2477 claims using recordable disclaimers of interest. But BLM Director Robert Abbey did rule out using the disclaimers in the negotiations with Utah officials.

In a July 30 letter to Mark Ward, senior policy analyst with the Utah Association of Counties, Abbey said, "Your suggestion that the Department agree to the potential use of recordable disclaimers of interests represents the kind of controversy that we intend to avoid through this process. The Department has never used a recordable disclaimer to recognize the validity of an RS 2477 claim, involving (such disclaimers) in the pilot process might prove unacceptable to, and estrange, stake-

holders whose involvement and concurrence we agree are indispensable to the success of the pilot process."

Ward kicked off the most recent discussion about RS 2477 ROWs with a June 8 letter proposing a pilot process to settle RS 2477 assertions in Iron County. The county includes Cedar Breaks National Monument, part of Zion National Park, part of Dixie National Forest and part of Fishlake National Forest.

In responding to Ward, Abbey called for simple conditions for negotiations, to wit: begin with noncontroversial claims, reach conclusive agreements that RS 2477 ROWs either do or do not exist, obey all laws, insure full public involvement, and insure support of all Utah governments.

Gov. Herbert's office did not respond by press time to our requests for the governor's position on the Salazar proposal.

Environmentalists are on board. "We applaud Secretary Salazar's participation in resolving longstanding R.S. 2477 road disputes that affect National Parks and other public lands in Utah," said Kristen Brengel, legislative director, National Parks Conservation Association. "We look forward to participating in an open, cooperative public process that seeks to settle conflicts over road claims."

She added, "Zion National Park, Dinosaur National Monument, and Cedar Breaks National Monument are among the national park units where R.S. 2477 claims have been asserted in the past. We welcome an opportunity to work with federal, state and local officials to bring some closure to this issue."

RS 2477 ROWs are roughly defined as roads or paths that communities worked on and used for transportation prior to 1976. Towns, counties and states across the West are poised to claim thousands of such ROWs across public lands.

In the event of a disagreement over RS 2477 assertions only a federal

court - and not the Interior Department - has authority to determine if a community holds a valid right. The Tenth Circuit Court of Appeals laid out that basic interpretation of law in a benchmark decision, *Southern Utah Wilderness Alliance v. BLM*, Nos. 04-4071 & 04-4073 of Sept. 9, 2005. The Tenth Circuit said that BLM could not adjudicate the validity of RS 2477 ROW assertions, only a federal court could.

But the Interior Department told us the opinion does not necessarily mean federal court action will be required if all parties agree to the validity of an assertion. "The negotiation process that we are proposing seeks to resolve RS 2477 claims by finding agreement and consensus among all the affected stakeholders," said a spokesman. "When there is success in finding common ground, there should be no need to obtain a court ruling since all participants will be in agreement on the RS 2477 claims. In fact, one of the purposes of this process is to avoid entirely the need for costly and time-consuming court litigation."

Congress has been involved. In the mid-1990s it forbid the Interior Department from writing regulations to guide the adjudication of RS 2477 ROW claims. In his letter to Utah counties Abbey acknowledged that in negotiations over pilot projects BLM may not violate that Congressional order.

BLM issued the recordable disclaimer rule on Feb. 5, 2003. The rule is designed to resolve disputed claims to land by (1) allowing a party other than the owner of record to claim land (i.e., it entitles counties and states to file claims) and (2) eliminating a 12-year statute of limitations for filing claims by states.

BLM said at the time that without the regulation entities that believed they had rights to federal land would have to go to court or ask Congress to write legislation to obtain relief.

Subsequently, former Secretary of Interior Gale Norton issued a sweeping order on March 21, 2006, that favored local governments in RS 2477 assertions.

Notes

Court lets stand Calif. landfill decision. The Ninth U.S. Circuit Court of Appeals July 30 refused to reconsider a decision by a three-judge panel that blocked a giant landfill near Joshua Tree National Park in California. The three-judge panel had upheld a U.S. District Court judge who ruled that the Bureau of Land Management (BLM) had prepared an inadequate EIS in support of the project proposed by Kaiser Ventures LLC. The Interior Department had already dealt a grievous blow to the proposed landfill February 24 by not participating in the appeal of the circuit court decision. The Eagle Mountain landfill would be located on BLM land within two miles of Joshua Tree. The landfill would be the largest in the nation. It would accept 200,000 tons of trash each day for 117 years. In a proposed land exchange that is part of the deal Kaiser would receive 3,481 acres of BLM land and permanent rights-of-way to the landfill. In return the company would transfer to BLM 2,846 acres of private land that contain critical habitat for the desert tortoise. The landfill itself would cover 4,654 acres. The lead plaintiff in the case, the National Parks Conservation Association, said the landfill was not needed for disposal of Los Angeles basin trash.

New law avoids boat permits.

President Obama in late July signed legislation (PL 111-207) that blocks for three years an impending federal order that all recreational boats obtain water discharge permits. Under a federal court order EPA would have been required to approve the permits for 13 million recreation vessels in the country, beginning October 1. The new law says simply that no permit is needed for the discharge of gray water, bilge water, engine oil, etc, "if the discharge is from a recreational vessel." The new law will, theoretically, last long enough for EPA and the Coast Guard to review permitting of discharges and report back to Congress. Six Senate Democrats and eight Republicans teamed up to introduce the legislation, led by

Sens. Barbara Boxer (D-Calif.) and Lisa Murkowski (R-Alaska.) The U.S. District Court in Northern California issued the permit mandate in a Sept. 18, 2006, decision. Fifteen sport fishing and environmental groups had brought the original lawsuit against EPA's 1973 regulation because they were concerned about the spread of non-native species around the country via wastewater. They argued that the Clean Water Act does not provide an exemption from the requirement.

23 Outdoor listening sessions, thus far. The Obama administration was scheduled to hold its 23rd listening session today (August 27) in Nashville, Tenn., as part of President Obama's America's Great Outdoors Initiative. Additional listening sessions are scheduled for Chicago on August 31; Pierre, S.D., on September 1; and Bangor, Me., on September 2. Administration officials have participated in sessions in New York City, the University of California Davis and the San Gabriel Mountains of California. President Obama kicked off the initiative at a White House conference April 16 and ordered his cabinet heads to go out into America and report back to him by November 15 on content. He charged the Council on Environmental Quality with assembling a report with proposed strategies. If and when the initiative is fleshed out, insiders believe it could include full funding for the Land and Water Conservation Fund, revitalization of the National Park System, the designation of a number of national monuments on BLM land, and/or an omnibus public lands and parks bill (as is in the works now in Congress.) However, some participants wonder if the administration will be able to deliver a cogent report on time in November because the sessions have elicited so much public input. The initiative website is at: <http://www.doi.gov/americasgreatoutdoors/>.

Duck season not altered by Gulf spill. The Fish and Wildlife Service (FWS) said it won't change its upcoming duck hunting seasons and bag limits because of the Deepwater Horizon oil spill in the Gulf of Mexico. In proposing late hunting seasons for this winter

FWS said it was "very concerned" about the spill on migratory birds. "However," said FWS, "current information suggests that regulatory restrictions on waterfowl hunting are unnecessary." FWS formally proposed seasons and bag limits August 25. As for the nation as a whole FWS said the duck population is about the same as last year - almost 41 million birds - and is 21 percent above the long-term average. So FWS proposed limits analogous to last year. For more information go to <http://www.fws/govp/migratorybirds/>.

Washburn to head NPS ed group.

The Park Service August 23 said that it has established a new position to oversee education policy and has named Julia Washburn to fill the position. Washburn, a former park ranger and senior vice president of the National Park Foundation, will become associate director for Interpretation and Education next month. She will manage all areas of education and interpretation. Washburn most recently worked as a consultant to conservation and preservation groups.

Ban on lead in ammo sought. Conservationists and their allies petitioned EPA earlier this month to ban the use of lead in hunting ammunition and fishing gear. EPA has banned the use of lead shot in the hunting of migratory birds for the last 19 years. The American Bird Conservancy and its allies want EPA to bar the use of lead in all hunting. The petitioners said that 10 million to 20 million birds and other animals are killed each year by ingesting lead shot. The petition to EPA is at: <http://www.abcbirds.org/conservationissues/threats/Final%20TSCA%20lead%20ban%20petition%208-3-10.pdf>.

San Juan lands bill in works? San Juan County, Utah, commissioners have asked county staff to begin drawing up maps to delineate land uses in the event a federal lands bill for the county is prepared, according to the *Moab Times-Independent*. But environmentalists fear that they will be left out if the maps are used to draft a lands bill later this year, or next year. Sen. Bob Bennett (R-Utah) had been spearheading

an effort to develop a consensus lands bill that would designate wilderness and set aside other public lands for commercial uses in the county, which is home to Canyonlands National Park. The county commissioners may also attempt to use the bill to clarify ownership of routes across public lands and national parks, called RS 2477 rights-of-way. However, Utah Republicans refused to nominate Bennett in a primary this spring, making him a lame duck. "Now development of San Juan County wilderness legislation has devolved into a rushed effort being cooked up in a back room by county commissioners, without allowing the voices of those who would protect these special places to be heard," said Richard Peterson-Cremer, legislative director of the Southern Utah Wilderness Alliance.

Statute of Liberty safety steps offered. The Park Service August 13 said it has completed a draft environmental assessment (EA) that analyzes possible safety upgrades for the Statue of Liberty National Monument in New York Harbor. The preferred alternative in the EA contemplates replacement of existing stairs and elevators and improvements to fire safety, ventilation and lighting system. After the 9/11 attacks the Bush administration eliminated access to the Statue of Liberty's crown for safety reasons. The Obama administration has reopened access to the crown but under limited conditions for limited number of visitors. Comment by September 13 to <http://parkplanning.nps.gov/STLI> or by mail to: *Park Superintendent at Statue of Liberty National Monument, National Park Service, Liberty Island, New York, NY 10004.*

Yellowstone visitor center launched. Luminaries from all quarters gathered at Yellowstone National Park August 25 to dedicate a new, \$27 million visitor center at Old Faithful. The Yellowstone Park Foundation raised \$15 million of the cost. The visitors center will cover 26,000 square feet over two floors. Assistant Secretary of Interior for Fish and Wildlife and Parks Tom Strickland and NPS Director Jon Jarvis attended the ceremony. Also present were historian Paul Schullery and the Wyoming National Guard band.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations 2011 (Interior)		
No bill number yet	House subcommittee approved July 22.	Would roughly maintain FY 2010 spending with some increase for LWCF.
Appropriations fiscal 2011 (Energy and water)		
No House bill number yet S 3635 (Dorgan)	House subcommittee approved July 15. Senate committee approved July 22.	Would roughly maintain FY 2010 spending.
Appropriations fiscal 2011 (Agriculture)		
No House bill number yet S 3606 (Kohl)	House subcommittee approved June 30. Senate committee approved July 15.	Would reduce spending somewhat compared to FY 2010.
Appropriations fiscal 2011 (Transportation)		
HR 5850 (Olver) S 3644 (Murray)	House approved July 29. Senate committee approved July 22.	House would increase spending somewhat, Senate would maintain status quo.
Appropriations Stimulus		
HR 1 (Obey)	President Obama signed into law Feb. 17, 2009, as PL 111-5.	Allocates some \$4 billion to federal land management agencies to help revive the economy.
LWCF revival		
HR 3534 (Rahall) S 2747 (Bingaman) S 3663 (Reid)	House approved July 30. Bingaman put in Nov. 6, 2009. Reid introduced July 28.	All would guarantee full funding of \$900M per year. All depend on energy legislation.
UPAR revival		
HR 3734 (Sires)	Sires introduced Oct. 6, 2009.	Would establish \$445 million urban park grant program in HUD.
Omnibus Lands Bill		
S 22 (Bingaman) HR 146 (Holt)	President signed into law March 30, 2009, as PL 111-11.	Includes 160+ individual bills, including NLCS, new national parks.
National Landscape Conservation System		
HR 404 (Grijalva) S 22 (previous item)	Included in omnibus law (previous item.)	Gives NLCS official designation by Congress.
California Desert protection		
S 2921 (Feinstein)	Senate committee hearing May 20.	Would establish monument to protect 1 million acres of BLM-managed desert.
Grand Canyon withdrawal		
HR 644 (Grijalva)	House subcommittee hearing July 21, 2009.	Would withdraw 1 million acres of federal land near Grand Canyon NP to prevent uranium mining.
Surface Transportation		
HR 1329 (Blumenauer) S 575 (Carper) S 1036 (Rockefeller) Unnumbered (Oberstar)	Blumenauer put in March 5, 2009. Carper put in March 11, 2009. Rockefeller put in May 12, 2009. House subcommittee approved Oberstar bill June 24, 2009.	Blumenauer would establish a piece of a surface transportation law with climate change money. Rockefeller would establish broad goals for law. Oberstar would extend outdoor programs for six years.
FLREA (rec fee law) repeal		
S 868 (Baucus)	Baucus introduced April 22, 2009.	Would repeal the comprehensive federal rec fee law.
Fire suppression		
HR 1404 (Rahall) S 561 (Bingaman)	Included in Interior money bill above.	Establishes an emergency fire-fighting fund to limit agency borrowing.
Ski area uses		
S 607 (M. Udall) HR 2476 (DeGetter)	Senate committee approved July 21. House approved July 30.	Would specify that ski resorts on national forest land may allow non-skiing recreation uses.