

Federal Parks & Recreation

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Appropriations bill will keep government going to March 6

President Bush signed into law September 30 a temporary spending bill (PL 110-329) that extends fiscal year 2008 appropriations levels until March 6. Fiscal 2009 began October 1.

The law does NOT include legislation to establish a \$2 billion National Park Centennial program. In fact the bill contains almost no authorizing riders. The Senate did include the program (S 3604) in an economic stimulus bill, but the bill was defeated on the Senate floor. (See following article.)

In addition to interim spending for fiscal 2009, PL 110-329 includes a separate section that provides emergency supplemental appropriations for fiscal 2008. That includes \$910 million for fire fighting. Of that, \$500 million would go to the Forest Service to repay line programs that have been forced to cough up money for fire fighting.

The law calls for quick action on repaying fire money, directing that "\$300,000,000 shall be transferred to Forest Service accounts within 15 days of enactment of this Act so that all such transfers for wildfire suppression in fiscal year 2008 are fully repaid." The bill would also require repayment to other programs that have provided fire-fighting money.

The House approved the legislation, called a continuing resolution (CR), September 24 in a 370-to-58 vote and the Senate approved a nearly identical version September 27 in a 78-to-12 vote. The bill number is HR 2638.

The CR would penalize highway projects compared to the level authorized for fiscal 2009 under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

of 2005 (SAFETEA-LU.) SAFETEA-LU set aside \$41.2 billion for highways in fiscal 2009 but the fiscal 2008 level is \$40.2 billion. Although SAFETEA-LU guarantees money for highway projects in a Highway Trust Fund financed by gasoline taxes, an annual appropriations bill still must be passed to free up the money.

As always with CRs, HR 2638 is unclear as to what agencies should spend on earmarked projects - land acquisition, construction, heritage area initiatives, etc. - in fiscal 2009. A House staff member said some earmarks that support ongoing projects would probably continue but that earmarks are still unidentified.

The staff member said fiscal 2009 earmarks might be fleshed out if and when Congress writes a formal appropriations bill or a CR that extends through all of fiscal 2009.

Congressional leaders did not attempt to add legislation to the CR to settle the financial "institution" crisis. That could have complicated things. The explosive financial "institution" crisis may still take a toll on all other federal programs. The Bush administration's plans to bail out investment companies could cost the U.S. Treasury as much as \$700 million, putting the squeeze on all other appropriations for the next few years. How that cost would be accommodated in appropriations legislation still must be decided.

Under the CR for fiscal 2009, almost all park and rec programs will receive more money by the extension of fiscal 2008 spending levels than under the Bush administration's budget request. At the same time most programs will receive less money than under Congressional committee fiscal 2009 money bills. (See *breakdown below.*)

Congress may use a lame-duck session after the November 4 elections beginning November 17 to embellish the CR or to replace it with a year-long CR. A lame-duck session may also provide Congress with an opportunity to approve the \$2 billion Park Service Centennial Challenge program.

With a straight extension of fiscal 2008 spending, here's how some individual programs will make out early in fiscal 2009, compared to Bush administration recommendations and House Appropriations Committee recommendations:

- * STATE LWCF: \$25 million; the same as the House subcommittee on Interior; \$25 million more than the administration request of no money,

- * FEDERAL LWCF: \$129.7 million; House subcommittee, \$132.2 million; administration, \$42.5 million,

- * URBAN PARKS AND RECREATION RECOVERY: No money; House subcommittee approved no money; administration asked no money,

- * FOREST LEGACY: \$52.3 million; House subcommittee, \$43.5 million; administration, \$12.5 million,

- * FOREST SERVICE RECREATION: \$262.6 million; subcommittee, \$278.5 million; administration, \$237 million,

- * FOREST TRAILS: \$76.4 million; House subcommittee, \$78.9 million; administration, \$50.4 million,

- * HISTORIC PRESERVATION: \$70.4 million; House subcommittee, \$82 million; administration, \$66.7 million,

- * SAVE AMERICA'S TREASURES (within Historic Pres line item above): \$24.6 million; House subcommittee, \$25 million; administration \$15 million,

- * PRESERVE AMERICA (within Historic Pres line item above): \$7.4 million; House subcommittee, \$5 million; administration, \$10 million,

- * NPS OPERATIONS: \$1.971 billion; House subcommittee, \$2.125 billion; administration, \$2.132 billion,

- * NPS CENTENNIAL INITIATIVE: \$25 million. The House subcommittee met the administration request for core operations in the above line item, but provided no money for the Centennial Challenge. However, the fiscal 2008 appropriations law did allocate \$25 million to launch the program and would presumably be carried forward into fiscal 2009,

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

- * NATIONAL FOREST SYSTEM: \$1.506 billion; House subcommittee, \$1.508 billion; administration, \$1.349 billion,

* BLM MANAGEMENT: \$1.008 billion; House subcommittee, \$1.013 billion; administration, \$987 million,

* FWS REFUGE MANAGEMENT: \$434 million; House subcommittee, \$469 million; administration, \$434 million, and

* TOTAL FOR INTERIOR SUBCOMMITTEE BILL: \$26,555 billion; House subcommittee, \$27.867 billion; administration, \$25.764 billion.

NPS Centennial Challenge bill fails; does money CR help?

It had a chance, but a signature Bush administration proposal to dress up the national parks with \$2 billion over the next decade suffered a grievous defeat September 26.

Senate leaders included the legislation in an economic stimulus bill (S 3604), but the bill was killed when the leaders were unable to round up the 60 votes needed to defeat a hold. The vote was 52-to-42.

The House approved its own version of an economic stimulus bill (HR 7110) September 26 but HR 7110 did not move after that. Besides, the House bill did not include the Park Service Centennial Challenge legislation.

FPR has learned that Senate Majority Leader Harry Reid (D-Nev.) told Secretary of Interior Dirk Kempthorne October 2 that he is still looking for a vehicle for the Challenge legislation this year. However, Kempthorne was not very optimistic, said our source who talked with Kempthorne.

The Senate does intend to come back to work November 17 for a three-day, lame-duck session to address among other things a giant omnibus lands bill (HR 5151.) However, adding the Challenge legislation to the delicately-balanced HR 5151 could topple the omnibus. Whether Congress will be tempted to take up other legislation in the lame duck is not clear.

Congress approved \$25 million in seed money in fiscal year 2008 to launch the Centennial Challenge program. Be-

cause Congress extended that fiscal 2008 appropriations law to March 6 of next year, on paper some of the \$25 million is available in fiscal 2009.

Said a Park Service spokeswoman, "Since \$25 million was part of the budget last year and the law is extended until March 6, 43 percent (of the \$25 million) is in our budget."

That doesn't mean Congress wants the money spent. "Since no awards were made in (fiscal) 08 until later in the year, between now and March 6 there would be no anticipation any money would be spent," said one appropriations committee staff member.

For one thing he said Congress intends for the administration to spend the least amount of money possible to keep the government in business until March 6. "The continuing resolution also includes language that the executive branch should spend money as conservatively as possible during this period of time only to meet minimum requirements," said the staff member.

Congress still has not had its final say on the issue, said the staff member. "If we extend the CR all year with no changes, yes, they would get \$24.6 million," he said. "However, everyone anticipates that one way or other there will be some resolution of this matter by March 6."

The House Natural Resources Committee approved a Centennial Challenge bill (HR 3094) May 7, but failed to identify offsets to pay the \$100 million per year federal share.

In the Senate the lead sponsor of a counterpart bill (S 2817), Sen. Ken Salazar (D-Colo.), wrote into his bill two offsets - \$90 million from Outer Continental Shelf oil and gas revenues that exceed projections and \$10 million from special postage stamps. Salazar's bill has not moved in the Senate.

The NPS Centennial Challenge provision in the Senate economic stimulus bill did not contain a specific economic offset. But the substance of the legis-

lation followed S 2817 and HR 3094. All would give priority to projects that have a dedicated match, i.e. major parks with friends groups, but the bills would also authorize projects without matches.

The bills would allow NPS to spend money for seven kinds of projects with the only major limit that no more than 50 percent of the money could be spent on construction of facilities that cost more than \$5,000,000. The seven areas are: education, diversity, personnel, environmental leadership, natural resource protection, cultural resource protection, and health and fitness.

The provision would authorize the transfer of \$1 billion total to the Challenge program from general funds, with annual allocations beginning in fiscal year 2009 and lasting through fiscal 2018, or two years after the Centennial.

Congress doesn't address omnibus; it may in November

A giant Senate omnibus lands bill (HR 5151) is headed for a three-day, lame-duck session of Congress beginning November 17. At least that's what Senate leaders plan.

House leaders have not agreed to a lame-duck session yet but House members can be summoned quickly if needed.

Meanwhile, western House Republicans continue to attack a key piece of HR 5151, a measure to give Congressional certification to the National Landscape Conservation System (NLCS) managed by the Bureau of Land Management (BLM.)

Three House members October 1 asked Senate leaders to postpone action on the NLCS legislation (S 1139 as a stand-alone bill) until the Interior Department Inspector General investigates allegations of illegal communications between NLCS managers and program supporters.

Reps. Bill Sali (R-Idaho), Darrel Issa (R-Calif.) and Louie Gohmert (R-Texas) submitted their request to Senate

Majority Leader Harry Reid (D-Nev.) and Senate Minority Leader Mitch McConnell (R-Ky.)

"Waste, fraud, or abuse by federal officials should never be tolerated," the three wrote. "Acting to codify a department while an investigation into the conduct of its top officials is ongoing, we believe would violate the responsibility we owe to the American people."

The House letter to Reid and McConnell follows a separate August letter from 27 House members to President Bush asking him to veto the NLCS bill if it came to him on its own, although they didn't mention an omnibus bill. The Republicans said the NLCS bill would "lock up" 26 million acres of BLM-managed land. However, the Bush administration has consistently supported Congressional certification of the NLCS.

Senate Energy Committee Chairman Jeff Bingaman (D-N.M.) put together the omnibus bill September 26 and introduced it in the Senate as amendment SA 5662 to HR 5151. HR 5151, approved initially by the House April 22, would designate wilderness lands in West Virginia.

The Bingaman amendment would designate three new national parks, authorize additions to 17 NPS units, designate several national trails, designate several wild and scenic rivers, designate 10 national heritage areas, and designate a Snowy River Cave National Conservation Area in New Mexico, to name a few items. (See summary below.)

The Senate is taking the lead. When it returns in November leaders must first defeat a "hold" applied by Sen. James Coburn (R-Okla.), or work out an agreement with him. Sixty votes are needed to defeat a hold.

If the Senate approves the bill, the House would also have to act. Again, while Senate leaders are committed to a lame-duck session, House leaders are not.

The Bingaman package includes 90

individual bills that were part of a previous committee omnibus bill (S 3213), plus almost 70 bills approved by the committee since S 3213 was put together.

On September 11 the committee approved two bills and added them to the package that may ease Republican criticism of the omnibus: One (S 3499) would allow visitors to carry firearms in national parks and national wildlife refuges, where states provide such rights to state parks and refuges.

Another measure (S 1680) much desired by Alaska Republicans would authorize construction of a road through the Izembek National Wildlife Refuge, thereby dedesignating wilderness. The road would connect the communities of King Cove and Cold Bay and provide an emergency exit route for citizens of King Cove.

In addition to the NLCS, guns in the parks and the Alaska road the Bingaman amendment to HR 5151:

* NEW NATIONAL PARK UNITS: Would establish a Paterson Great Falls National Historical Park in New Jersey, a William Jefferson Clinton Birthplace Home National Historic Site in Arkansas, and a River Raisin National Battlefield Park in Michigan.

* ADDITIONS TO NATIONAL PARK UNITS: Would authorize additions to 17 existing national parks.

* STUDIES OF NATIONAL PARKS: Would authorize studies of 12 sites, most as possible additions to the National Park System.

* NATIONAL HERITAGE AREAS: Would designate ten new national heritage areas (NHAs) and authorize studies of two NHAs. The new NHAs would be: Sangre de Cristo National Heritage Area, Colorado; Cache La Poudre River National Heritage Area, Colorado; South Park National Heritage Area, Colorado; Northern Plains National Heritage Area, North Dakota; Baltimore National Heritage Area, Maryland; Freedom's Way National Heritage Area, Massachusetts and New

Hampshire; Mississippi Hills National Heritage Area; Mississippi Delta National Heritage Area; Muscle Shoals National Heritage Area, Alabama; and Santa Cruz Valley National Heritage Area, Arizona. The study areas include a Chattahoochee Trace bill in Alabama and Georgia and a Northern Neck bill in Virginia.

* PALEONTOLOGICAL: Would establish stiff new penalties for disturbance of paleontological resources on federal lands.

* NATIONAL TRAILS: Would designate an Arizona National Scenic Trail; a New England National Scenic Trail; an Ice Age Floods National Geologic Trail in Montana, Idaho, Washington and Oregon; a Washington-Rochambeau Revolutionary Route National Historic Trail between Newport, Rhode Island, and Yorktown, Virginia; a Pacific Northwest National Scenic Trail from Glacier National Park, Mont., to the Pacific Ocean Coast in Olympic National Park, Wash.; and a Trail of Tears National Historic Trail in Alabama, Arkansas, Oklahoma, and Tennessee.

* TRAILS - WILLING SELLER: Would extend willing seller authority to the Oregon National Historic Trail; the Mormon Pioneer National Historic Trail; the Continental Divide National Scenic Trail; the Lewis And Clark National Historic Trail; the Iditarod National Historic Trail; the North Country National Scenic Trail; And the Ice Age National Scenic Trail.

* WILD AND SCENIC RIVERS: Would designate the following three, plus several in wilderness bills: Fossil Creek, Arizona; Snake River Headwaters, Wyoming; and Taunton River, Massachusetts.

* WILDERNESS: Would designate wilderness proposed in 14 different bills, including wilderness in Sequoia and Kings Canyon National Park and in Rocky Mountain National Park.

* OWYHEE: Would not only designate more than 500,000 acres of BLM-managed wilderness in central Idaho, but also

establish a travel management plan for off-highway vehicles.

* CONSERVATION AREAS: Would designate in BLM a Snowy River Cave National Conservation Area in New Mexico and a Dominguez-Escalante National Conservation Area in New Mexico.

* BATTLEFIELD PROTECTION: Would extend an existing American Battlefield Protection program through 2013 (it tentatively expired September 30.)

* PRESERVE AMERICA: Would formally establish a Preserve America program to provide grants to communities and historic preservation offices for "soft" preservation activities.

* SAVE AMERICA: Would formally establish a Save America's Treasures program to provide grants to federal, state and local governments as well as nonprofits to physically preserve historic facilities and items.

House gets early climate change initiative; big bucks

House Energy Committee Chairman John Dingell (D-Mich.) October 7 began laying the groundwork for climate change legislation next year that could provide billions of dollars for conservation programs.

He introduced a discussion draft bill that, like similar climate change bills that were active in the House and Senate this year, would provide new money for the Land and Water Conservation Fund (LWCF), perhaps enough to reach a \$900 million per year cap.

The bill would also provide significant boosts to other natural resources initiatives, in particular the Pittman-Robertson sport-hunting program and to line agencies for managing climate policy programs.

Dingell said the mammoth 461-page discussion draft tries to avoid the complexities that doomed a lead Senate bill (S 3036) June 6. That measure needed 60 votes to end debate but re-

ceived only 48, with 36 opposed.

Rather than impose a new program on top of the Clean Air Act, Dingell said he would merge climate change rules with clean air rules. "Particular care was given to crafting various provisions to minimize the creation of new institutions, streamline regulatory development and program implementation, and build upon existing institutional expertise," he said. "In addition, rather than layering a program to reduce greenhouse gases on top of the existing Clean Air Act, the draft bill directly modifies existing authority so there would be one sensible, comprehensive program."

The Senate bill, introduced by Sens. Joe Lieberman (I-Conn.) and John Warner (R-Va.), but vigorously promoted by Democrats, will probably be back next year, assuming the economy recovers. In addition, if the polls are correct, Democrats who support the program may increase their majority next year in both the House and Senate.

The Senate bill and the Dingell draft would allocate money to natural resources programs slightly differently. The Senate bill would establish two separate funds (federal fund and state fund) while the House would combine them. All the funds would receive a share of trillions of dollars garnered from the sale of emission allowances. According to a coalition of 170 environmental groups, the Senate provision would allocate an average of \$7.2 billion per year for 20 years to federal, state and local conservation programs.

Under both the Senate bill and the House draft LWCF would receive guaranteed money, with the Senate bill providing enough to meet LWCF's current authorization of \$900 million per year. Both bills would subdivide the money, providing one-third (up to \$300 million) for Interior Department land acquisition, one-third (up to \$300 million) for Forest Service land acquisition, one-sixth (up to \$150 million) for state-side LWCF grants with an emphasis on adaptation projects, and one-sixth (up to \$150 million) to states for a Forest Legacy program.

The Senate provision would authorize the state LWCF grant program to receive other streams of revenues, presumably allowing LWCF to exceed its \$900 million cap with money from (1) appropriations, (2) a new program providing extra royalties from offshore oil and gas leasing, and/or (3) other sources.

In this last Congress the obstacles facing climate change legislation were immense. Most important, the Bush administration objected to the \$6.2 trillion price tag on the Senate bill and promised a veto.

Second, Congress was deeply divided about how best to address climate change with several Democratic senators opposing S 3036. Third, Sen. Bob Corker (R-Tenn.) prepared major amendments that, if the bill had reached the Senate floor, would have canceled the conservation allocations. In their place Corker would have distributed the money directly to taxpayers in a rebate.

For all those problems, S 3036 and the Dingell draft put on the table in serious proposals a lifesaver for conservation programs that have been starved for money for the last decade.

The Dingell bill and background information are available at <http://energycommerce.house.gov>.

Yellowstone to write new EA and rule on snowmobile use

Yellowstone National Park said October 1 it has begun preparing a regulation that would authorize snowmobile use in the park this winter. The rule must comply with a judge's September 15 landmark decision throwing out a pro-use Park Service rule.

That won't be easy. Judge Emmett Sullivan in the U.S. District Court for the District of Columbia, ruling broadly in the case, said the Park Service may not allow adverse impacts to a park unless those impacts are "necessary and appropriate."

Sullivan threw out a Dec. 13,

2007, NPS rule that authorized up to 540 snowmobiles per day in Yellowstone this winter. In one possible alternative Yellowstone would reinstate a 2004 temporary rule that governed in the winters of 2004-2005, 2005-2006, and 2006-2007. That rule has not been held invalid by a court.

However, the temporary rule authorized up to 720 machines a day in Yellowstone and 140 per day in Grand Teton National Park and the John D. Rockefeller, Jr., Memorial Parkway, even more than the final rule. And if Judge Sullivan didn't like the 2007 rule, he surely would not like the 2004 rule.

Besides, the Park Service is going ahead with the writing of an environmental assessment (EA) and regulation so that the bill will be ready to open for snowmobile use December 15. NPS said the proposed EA and regulation will be published in early November, or about four weeks from now.

When asked if the park had considered just reinstating the 2004 interim rule and its EA, Yellowstone spokesman Al Nash said the park had largely ruled it out. He said that's because (1) the rule expired when it was replaced by the 2007 rule and (2) the EIS that backed the 2004 interim rule was effectively struck down by Sullivan's decision.

"The 2004 NEPA (National Environmental Policy Act EA) was different than the 2007 EIS but we have done a lot of additional monitoring and analyses between then and now," said Nash. He said, "What we have on the books is a valid 2004 rule that has expired. So we felt a new rule was required and a new NEPA."

There is another voice to be heard from. A different federal judge, Clarence Brimmer in Wyoming, is about to issue his own ruling on the Yellowstone situation. In past snowmobile litigation Brimmer has taken the opposite tack from Sullivan, choosing to favor snowmobile use. Brimmer has before him a competing lawsuit brought by the State of Wyoming that demands more snowmobile use than the Park Service's December 2007 rule authorizes.

Brimmer may hand down a decision as early as November 1.

Sullivan's bar on adverse impacts was specific. He said, "NPS cannot circumvent this limitation through conclusory declarations that certain adverse impacts are acceptable, without explaining why those impacts are necessary and appropriate to fulfill the purposes of the park." He said NPS failed to describe why admittedly adverse air and noise pollution caused by snowmobiles was acceptable.

Advocates of motorized uses in the parks worry that Sullivan's ruling is so broad that it would effectively prohibit anything that impacts the parks in any way, such as driving through a park or allowing a long-distance race to course through an urban national park.

Further, Sullivan also put limits on "enjoyment" of national parks by the public, a right described by the 1916 Organic Act that guides the Park Service. Sullivan said enjoyment must not harm the parks so much that it degrades the parks.

Said the judge, "As Plaintiffs articulated at the hearing, the 'enjoyment' referenced in the Organic Act is not enjoyment for its own sake, or even enjoyment of the parks generally, but rather the enjoyment of 'the scenery and natural and historic objects and the wild life' in the parks in a manner that will allow future generations to enjoy them as well." In the decision Sullivan threw out NPS's rule, the EIS that backs it and NPS's decision statement.

Environmentalists, who brought the lawsuit before Sullivan, would prefer that the Park Service implement a modification of a January 2001 Clinton administration rule that would have phased out the use. The Clinton rule called for reducing by half the daily number of snowmobiles in Yellowstone beginning in the winter of 2003-2004 and elimination of snowmobile use altogether in 2004-2005. Snowcoach access would have been allowed in 2004-2005 and beyond.

Sullivan's decision, *National*

Conservation Park Association v. Department of Interior, CA No. 2007-2112 EGS of September 15, is available at <https://ecf.dcd.uscourts.gov/cgi-bin/Opinions.pl?2008>. Just scroll down by date to the decision.

Everglades report faults planning; U.S. Sugar help?

Eight years after Congress approved an \$8 billion Comprehensive Everglades Restoration Project (CERP), no tasks anticipated by CERP have been completed, according to the National Research Council.

Further, said the scientists in a biennial report, planning for the project is so complex, it delays progress even more than a lack of money.

"The committee judges that the lack of federal funding in the first eight years of the CERP is not the most serious cause of the CERP delays," said a panel of 13 scholars assembled by the research council. "Instead, the slow pace of federal funding has largely been a symptom of the problems caused by the complex and lengthy CERP planning and authorization process for each project."

There may a silver lining, said the panel, chaired by William L. Graf of the University of South Carolina, in the form of the State of Florida's agreement to acquire 187,000 acres of sugar farms outside the Everglades for \$1.75 billion.

Said the National Research Council committee report, "The acquisition of this large amount of land has the potential to alter basic CERP plans, but because of the structure of the purchase and the possibility of numerous land exchanges made after the purchase, direct effects of the deal may not be seen for a decade or more."

Under the agreement with U.S. Sugar the company would continue to farm the land for six more years. Still, said the scientists, even though the land was not considered when CERP was drawn up, it could still help meet the project's goals by providing "additional

surface storage, stormwater treatment areas and by preventing land use conversions that might negatively impact the restoration."

The September 29 report, *Progress Toward Restoring The Everglades: The Second Biennial Review 2008*, says federal land management agencies and the State of Florida in their joint efforts to restore the Everglades may be losing ground.

Warned the council committee, "If ecological resilience is not restored, the possibility exists that environmental changes could precipitate rapid and deleterious state changes that might be very difficult or impossible to reverse. Unless near-term progress is achieved on major restoration initiatives, including CERP and non-CERP efforts, opportunities for restoration may close with further loss of species numbers and habitat deterioration, and the Everglades ecosystem may experience irreversible losses to its character and functioning."

As one example of a delayed project, the council committee cited the Congressional approval last year of a \$375 million Picayune Strand project with half the money - \$187.5 million - provided by the feds and half by Florida. In 2005 the feds and the state estimated the project would be completed in 2009, but now they estimate 2015. And the estimated cost has risen from \$46 million in 1999 to \$393 million now.

Congress approved CERP in 2000, anticipating a price tag of \$8 billion. While a 2000 water resources development law began the program, Congress must still approve - and pay for - projects that the Corps of Engineers and the state identify as they go along. By 2004 the CERP price tag had jumped to \$10.8 billion.

Congress and the State of Florida have approved a number of other Everglades restoration projects besides CERP, including Modified Water Deliveries to Everglades National Park and Kissimmee River Restoration. By 2006, the National Research Council reported,

for both CERP and nonCERP projects the state had put up twice as much money as the federal government, \$4.6 billion to \$2.3 billion.

Progress Toward Restoring The Everglades: The Second Biennial Review 2008, is available at <http://www.nap.edu>. However, downloading the bits and pieces of the report is only slightly less complex than the CERP planning process.

Grand Canyon uranium claims halted; EIS to be prepared

The Forest Service and a uranium mining company have agreed to prepare an EIS to assess the impact of developing uranium claims near Grand Canyon National Park.

These are the claims the House Natural Resources Committee attacked June 25 when it ordered the Interior Department to halt in an emergency, million-acre withdrawal of federal land adjacent to the park.

The agreement settles for now a lawsuit brought by the Center for Biological Diversity and other environmental groups against the Forest Service and VANE Minerals LLC. The environmentalists objected when the Kaibab National Forest granted a categorical exclusion from further environmental review to VANE.

"This settlement repeals an illegal exploration project and requires a full environmental and public review of any new drilling proposed for those sites," said Taylor McKinnon, public lands director for the Center for Biological Diversity.

Says the agreement, "Federal Defendants (Kaibab National Forest) will not approve future exploratory uranium drilling and accompanying ground-disturbing activities at any of the seven sites that were part of the VANE project through a categorical exclusion or environmental assessment under NEPA."

The company must first prepare an

EIS and plans of operations before proceeding.

The House committee withdrawal resolution is supposedly binding on the Interior Department under a provision of the Federal Land Policy and Management Act of 1976 (Section 204 (e)). That provision authorizes the House committee and the Senate Energy Committee to order Interior to make emergency withdrawals that last up to three years. No further Congressional action is necessary.

House committee Republicans objected so strongly to the use of a resolution to invoke a withdrawal that they walked out of the June meeting. The Republicans contend that the House committee order is not binding on the Interior Department. Committee Democrats vigorously disagree.

House Natural Resources Committee Republicans have circulated a Congressional Research Service (CRS) memo that suggests the department can ignore the order from the committee because it is unconstitutional. CRS held in the June 20 memorandum that for a withdrawal order to be constitutional both houses of Congress must pass legislation.

The resolution sponsor, Rep. Raúl M. Grijalva (D-Ariz.), said he was concerned about the impact of uranium mining proposals on the park. Grijalva said the withdrawal resolution would protect the land until Congress could consider his formal legislation to mandate the withdrawal of 1,068,908 acres, HR 5583.

In recent years the demand for uranium has caused an explosion in mining claims on public lands. The Bureau of Land Management (BLM) estimates that uranium claims make up an increasingly large percentage of all hard rock claims. BLM said that 40-50 percent of 92,000 new mining claims in fiscal year 2007 were for uranium.

The Environmental Working Group said 2,215 new mining claims have been filed within 10 miles of Grand Canyon National Park since 2003 and that 805 of those claims are within 5 miles of the park.

White House boosts farm program in Bush's last days

The Bush administration last week announced a handful of initiatives to insure that agricultural land across the country would be used for both protecting habitat and for access for hunting, fishing and other recreational activities.

On the protection front the Department of Agriculture October 1 said it was sending out \$1.8 billion to pay farmers to keep their land in a Conservation Reserve Program (CRP) in fiscal year 2009. The money will pay farmers an average of \$50.93 per acre to establish and manage cover. The payments apply to the 34.7 million acres of CRP land already under contract.

On the access front Vice President Richard Cheney told a White House conference October 3 the administration intends to double the amount of CRP land available for hunters, fishermen and other recreationists. "Effective immediately, we are increasing the incentives for landowners to enroll in state access programs, which should allow us in the next five years to make available seven million acres of CRP lands for hunting," Cheney said.

Finally, Cheney said the President has ordered the administration to more than double the 3 million acres of wetlands already restored under the administration's watch. "Just last week (Bush) committed the federal government to protecting, restoring, and improving an additional four million acres of wetlands over the next five years," Cheney said. The administration said it has already protected 3 million acres of wetlands.

Ducks Unlimited (DU) is pleased with the initiatives. "This is excellent news for waterfowl hunters," said DU President Don Young. "Habitat loss and access are the biggest threats to America's sporting tradition, and the Department of Agriculture have continued to address both of them with this announcement."

There was one down note at the White House Conference on North American Wildlife Conservation Policy, convened at the President's demand. Secretary of Interior Dirk Kempthorne confronted head on the dwindling number of hunters and fishermen in the country, particularly among the young.

"The numbers of hunters and anglers are down," Kempthorne told the conferees. "People have trouble getting access to places to hunt. Parents aren't taking their children hunting and fishing as they used to."

He urged the conferees to help spur an interest in the outdoors among children. "We can come up with wonderful plans for the future of hunting and conservation in the next two days," he said. "But, if we lose the battle of our children's hearts, if we don't find a way to light that fire of passion in them, then we will not succeed."

He listed a half-dozen Interior Department initiatives to make federal lands more inviting for hunters, including a guide to hunting at National Wildlife Refuges, the first comprehensive compilation of all hunting programs on the wildlife refuge system.

Kempthorne concluded, "It's part of our effort to invite families to return to the hunting activities that have connected their generations to nature and to cultivate new hunters to share in wildlife conservation and our hunting heritage."

Sportsmen and hunters don't hold the administration blameless for the loss of hunting and fishing opportunities. The Theodore Roosevelt Conservation Partnership has conducted a guerrilla war over the last five years against Bush administration efforts to develop public lands\ oil and gas reserves in the Rocky Mountains. That war has included dozens of protests and a couple of lawsuits against specific development projects in Wyoming.

The litigation didn't prevent Cheney from telling the White House Conference, "We've been impressed with the record of oil and gas pilot offices

in the Bureau of Land Management ensuring our energy decisions properly account for wildlife and other conservation needs. These offices have done a fine job in bringing all the players together, getting everyone on the same page, gathering sound information, and making decisions in the public interest."

House, Senate don't move bills to regulate wetlands

Congress did not act on legislation (HR 2421, S 1870) to expand federal permitting of projects in wetlands before adjourning for the November elections October 3.

The Senate intends to return November 17 for a three-day, lame-duck session, giving the legislation one more slim chance this year. Although the House does not plan to return until the next Congress begins January 3, Speaker Nancy Pelosi (D-Calif.) can call the House back with short notice.

A House Transportation Committee staff member confirmed the legislation was not attached to any other must-pass bill last week. The counterpart Senate Environment and Public Works Committee also did not act on its bill, S 1870.

Interest groups have taken sides, with industry and their Republican allies opposing HR 2421 and the Senate bill. However, 176 House members have signed on in support of HR 2421, introduced by House Transportation Committee Chairman James Oberstar (D-Minn.)

Complicating things, neither HR 2421 nor S 1870 moved in committee, although the bills were subjected to highly-publicized hearings.

HR 2421 and S 1870 are designed to redress a June 19, 2006, Supreme Court decision, *Rapanos v. U.S. Nos. 04-1034 and 04-1384*. Sen. Russ Feingold (D-Wis.) is the lead sponsor of the Senate bill. Feingold has 20 cosponsors.

The Supreme Court decision effectively directed the Sixth U.S. Circuit Court of Appeals to determine when the

Corps and EPA should require permits for activities on navigable waters. While the decision was foggy at best about what constitutes navigable waters, the court left no doubt that only water bodies related to navigable waters should be regulated.

HR 2421 would make clear the Corps of Engineers must require a permit for dredging activities in all waters of the United States.

Opposition to the legislation was voiced at an April 16 House Transportation Committee hearing by Carl Shaffer, president of the Pennsylvania Farm Bureau on behalf of the American Farm Bureau Federation. "Expanding jurisdiction will sweep many agricultural and forestry activities into the scope of CWA regulation simply because such activities are conducted near some isolated ditch, swale, wash, erosion feature or ephemeral stream that would be deemed a 'water of the United States,'" he said.

Conservationists are in full support of HR 2421 and S 1870. "This legislation is of utmost importance to the future of clean water in the United States and demands our full support," said Alex Matthiessen, president of Hudson Riverkeeper.

At the House committee hearing John Paul Woodle, Jr., assistant secretary of the Army for Civil Works, said the administration was concerned that HR 2421 would disrupt "a careful balance between the legitimate and important federal interests in protecting water quality and the equally important and long-standing interests of states in managing and allocating land and water resources within their boundaries."

As introduced, HR 2421 and S 1870 would define waters of the United States that are subject to permitting this way: "The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows,

playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution."

Notes

Reclamation changes air rules.

The Bureau of Reclamation last month issued an interim final rule that makes clear that aircraft over Bureau of Reclamation lands will not be regulated by a rule the bureau published on April 17, 2006. That rule, published in the wake of the 9/11 attacks, forbid takeoffs and landings on bureau lands or waters, "except in special use areas so designated by an authorized official." The bureau said that rule was increasing confusion about what restrictions applied to aircraft. The new rule of September 24 makes clear that aircraft will be subject to policies in effect before the 2006 rule, that is "applicable Federal, State, and local laws." Although the bureau published the rule as interim final, it will take comments until November 24.

Trails system hits 40. The Interior Department joined with hiking association leaders October 2 to celebrate the 40th anniversary of the National Trails System. Deputy Secretary of the Interior Lynn Scarlett did the honors for the department, noting the system has reached nearly 60,000 miles with 26 scenic and historic trails. She was joined by Greg Miller, president of the American Hiking Society, and Ross Marshall, president of the Partnership for the National Trails System. The system may be about to grow: The Senate is scheduled to take up November 17 in a lame-duck session an omnibus bill (HR 5151) that would add six new trails to the system: an Arizona National Scenic Trail; a New England National Scenic Trail; an Ice Age Floods National Geologic Trail in Montana, Idaho, Washington and Oregon; a Washington-Rochambeau Revolutionary Route National Historic Trail between Newport, Rhode Island, and Yorktown, Virginia; a Pacific Northwest National Scenic Trail from Glacier National Park, Mont., to the Pacific Ocean

Coast in Olympic National Park, Wash.; and a Trail of Tears National Historic Trail in Alabama, Arkansas, Oklahoma, and Tennessee.

Preserve America money spent. The Interior Department September 30 announced the final distribution of \$7.2 million in fiscal year 2008 Preserve America grants to 44 projects in 24 states. The money is to be used to help communities learn about their history. The department also said it was now accepting applications for fiscal year 2009 grants. In that an interim spending law (PL 110-329 of September 30) keeps spending in fiscal 2009 at fiscal 2008 levels, the program is presumably eligible for the same \$7.2 million this fiscal year. Although Congress has not officially authorized the Preserve America program, the Senate is scheduled to take up November 17 in a lame-duck session an omnibus bill (HR 5151) that would authorize the program.

BLM OHV trails faulted. The Interior Board of Land Appeals (IBLA) last month said the Bureau of Land Management (BLM) erred by identifying 38 miles of trails as open to off-highway vehicle use (OHV) in a travel management plan in Idaho. IBLA then stayed the BLM decision and said the appellant, The Wilderness Society, would likely succeed in its appeal. BLM argued that the 38 miles of trails were in existence on Oct. 21, 1976, when BLM's wilderness review law was enacted, and thus should be opened to OHV use. But The Wilderness Society said, and IBLA agreed, that the law required the trails to be identified in a resource management plan (RMP) inventory, and the 38 miles were not so identified. Concluded IBLA, "(T)he fact remains that the RMP limits OHV use to those routes 'identified' in that Inventory, not to routes in existence on October 21, 1976."

GAO evaluates FWS over five years. The Government Accountability Office in a new report describes some improvement in habitat on national wildlife refuges over the last five years but also some deterioration. "Habitat conditions for key types of species improved about two times more often than they worsened, but between 7 percent and 20 percent of

habitats were of poor quality in 2007," GAO told Congress. Between fiscal years 2002 and 2007 GAO said manpower in the agency increased by 5.5 percent. House subcommittee on Fisheries Chairwoman Madeleine Z. Bordall (D-Guam) saw the glass as half-empty. "It appears that insufficient funding has had a ripple effect across the Refuge System, forcing the Fish and Wildlife Service (FWS) to further scale back operations at many refuges, or even close refuges to public use altogether," she said.

Conference Calendar

OCTOBER

14-15. **National Recreation and Park Association** congress and exposition in Baltimore, Md. Contact: National Recreation and Park Association, 22377 Belmont Ridge Road, Ashburn, VA 20148. (703) 858-2158. <http://www.nrpa.org>.

21-25. **The National Trust for Historic Preservation** annual conference in Tulsa, Okla. Contact: National Trust for Historic Preservation, 1785 Massachusetts Ave., N.W., Washington, DC 20036. (202) 588-6100. <http://www.nationaltrust.org>.

29-31. **Sportfishing Summit** in Galveston, Texas. Contact: American Sportfishing Association, 225 Reinekers Lane, Suite 420, Alexandria, VA 22314. (703) 519-9691. <http://www.asafishing.org>.

NOVEMBER

8-12. **The Wildlife Society** annual meeting in Miami, Fla. Contact: The Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814-2197. (301) 897-9770. <http://www.wildlife.org>.

11-15. **National League of Cities** annual Congress of Cities in Orlando, Fla. Contact: National League of Cities, Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004. (202) 626-3105. <http://www.nlc.org>.

DECEMBER

3-5. **America Outdoors** marketing and management conference in Knoxville, Tenn. Contact: <http://www.americaoutdoors.org/confluence.htm>