

Federal Parks & Recreation

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President designates Fort Monroe a national monument

President Obama used his national monument authority November 1 for the first time, not to set aside vast western tracts as Republicans feared, but to designate a Fort Monroe National Monument in Virginia. And the governor of Virginia, Robert McDonnell, a Republican, supported the designation.

The Park Service will partner with a Fort Monroe Authority and with the Virginia Department of Historic Resources to manage the area. Some 340 acres of the site - the fort itself and open space - become the 396th unit of the National Park System.

Other portions of the fort, including dozens of buildings, will be managed by the Authority, created by the Virginia legislature. The authority is overseen by a 12-member appointed board to protect the public interest in the site.

Who will pay how much of the hundreds of millions of dollars needed to rehabilitate the monument has not been decided. "Although the U.S. Army technically gave up the site September 15 (under the 2005 Base Realignment and Closure Act), it will continue to have a presence there until next year," said Pam Goddard, Chesapeake and Virginia program manager for the National Parks Conservation Association. "That gives us until next year to work on the money."

For now Fort Monroe, which occupies a 565-acre peninsula across the bay from Norfolk, Va., enjoys federal protection. "The President's action sets a bright boundary now," said Goddard, who has been participating in the negotiations with the Interior Department and the State of Virginia.

The monument didn't come out of nowhere. Advocates have been working on a Fort Monroe monument for five years. They have fashioned an 80-page programmatic agreement that lays out responsibilities for the different parties. For instance the Virginia Authority wants to produce revenues from the facilities it will manage.

Secretary of Interior Ken Salazar emphasized the bipartisan backing for the monument. "With the strong support of the people of Virginia, from the congressional delegation to Gov. McDonnell to Mayor Ward and the citizens of Hampton, President Obama has ensured that this historic fort, a symbol of the long struggle for freedom for African Americans, will be preserved as a national park for generations to come," he said. Molly Ward is mayor of Hampton and is a political Independent.

Gov. McDonnell "applauded" the President. He added, "I congratulate everyone who has been involved in this worthy endeavor from bold start to successful finish. This was a grassroots campaign that started with the great citizens of Hampton Roads, whose passion and determination never wavered. They sought to see Fort Monroe, with its critical role in the history of America, take its rightful place for all time as a monument to our nation's history."

To western Republicans the Antiquities Act of 1906 that authorizes the designation of national monuments from federal property is evil incarnate. They have introduced a half-dozen bills that would either repeal the act or exempt individual states from its purview.

Rep. Denny Rehberg (R-Mont.) was reportedly considering an amendment on the House floor this fall to a fiscal year 2012 Interior spending bill (HR 2584) that would prevent the administration from designating any national monuments.

Nevertheless, one of the severest critics of the use of the Antiquities Act of 1906 to designate national monuments, House Natural Resources Committee Chairman Doc Hastings (R-Wash.), sort of praised Obama.

"In contrast to prior uses of the Antiquities Act that were done unilaterally and in the dark of night, this national monument designation was done with the backing and support of the Virginia Governor, the Congressional delegation and the local communities," he said. "Additionally, this designation affects only a small, historically significant military site and was not done to rob people of potential jobs and economic growth."

Salazar has played a leading role in the Fort Monroe Monument campaign. He has traveled to the area repeatedly and met with McDonnell and other state officials.

On the Hill Virginia Sens. Jim Webb (D) and Mark Warner (D) agree with the monument idea. They wrote President Obama June 29 and asked him to designate the site as a national monument. To emphasize the point Webb and Warner introduced legislation (S 1303) June 29 that would establish a Fort Monroe National Historical Park.

Fort Monroe lies on a neck of land across from Norfolk, Va., where the Atlantic Ocean meets the James River. The post oversees a complex set of water bodies that frame the cities of Hampton Roads, Norfolk, Portsmouth and Virginia Beach. It is the largest stone fortification in the country.

The fort was built between 1819 and 1834. It played both a tactical role in the Civil War and a racial role. Tactically, it was one of few Northern military bases that the South didn't occupy.

Racially, General Benjamin Butler made his famous declaration in 1861 that slaves were "contrabands of war" and would not be returned to their southern masters after capture.

In addition to the dozens of historic structures on the Fort Monroe site, there are sweeping open spaces, including a golf course, that hold great potential for recreation. Some of the developed sites are expected to remain with the state and some may be used for commercial purposes.

Senate acts on combination money bill, a second ready?

The Senate this week finally got busy on fiscal year 2012 appropriations bills.

On November 1 it approved a combination bill (HR 2112) that would provide money for Transportation and Agriculture programs. Separately, Senate leaders began to assemble a second combination bill that would provide money for an Interior bill as well as an Energy and Water bill.

Senate Majority Leader Harry Reid (D-Nev.) and Senate Minority Leader Mitch McConnell (R-Ky.) are reportedly cooperating to assemble the remaining 12 appropriations bills into combination bills. That Democrats and Republicans are working together suggests the measures enjoy some faint hope of passage.

For its part the House, which had been way ahead of the Senate in addressing money bills, has stalled. With a November 18 deadline looming to pass spending bills, the House has done virtually nothing in two months on 12 pending bills.

However, House Appropriations Committee Chairman Hal Rogers (R-Ky.) told the *Washington Post* this week his tentative plan is to (1) reach an agreement before November 18 with the Senate on the Transportation/Agriculture bill. In the same package (2) he would extend the rest of the government through December with a continuing resolution at fiscal 2011 levels. Finally, early next year he would (3) wrap all remaining bills into one omnibus bill.

As always, spending levels separate the House and Senate and Democrats and Republicans. For the most part the Senate bills - Agriculture, Transportation, Energy and Water, and Interior - would provide significantly more money than their counterpart measures in the House.

In addition each House has its own

riders, as described below.

During consideration of the Transportation/Agriculture bill (HR 2112) the last few weeks the Senate rebuffed repeated Republican attempts to cut off funding for the transportation enhancements program (*see following article.*)

As for the Senate version of an Interior and Related Agencies appropriations bill, Senate Appropriations Committee leaders October 14 produced a draft that would provide \$1.8 billion more than the House. The Senate mark contains \$29.3 billion. The House bill contains \$27.5 billion.

The Senate committee had more money to distribute than its counterpart House Appropriations Committee because the House bill was put together earlier this year under a particularly strict House budget. That was before Congress reached agreement with the White House on a grand budget agreement (PL 112-25 of August 2) that freed up the extra money.

In another development some 1,000 recreation, conservation and preservation groups November 1 said they were working together this year, instead of fighting for individual pet projects.

Said Whit Hosburg, president of the Theodore Roosevelt Conservation Partnership, "One thing that became clear to our community after the passage of (a fiscal 2011 appropriations bill by the House), we had to get past fighting for our individual programs and work together on broad conservation, recreation and preservation funding."

The alliance includes, alphabetically, the AFL-CIO, the American Recreation Association, the National Association of State Park Directors, the National Trust for Historic Preservation, the Outdoor Industry Association, the Theodore Roosevelt Conservation Partnership, The Wilderness Society, and representatives of local governments and outfitters. (*See separate article page 8 on the coalition's recommendations.*)

INTERIOR BILL NUMBERS: The House spent a week in July working on the Interior bill but did not complete it. At press time House leaders had not established a schedule for taking up HR 2584, either by itself or in an omnibus bill. A brief comparison of some programs:

* LWCF FEDERAL: Senate, \$187.3 million (BLM \$23.4 million, Fish and Wildlife Service \$59.9 million, NPS \$66.5 million and FS \$37.5 million). House, \$46.7 million. Fiscal 2011, \$164.9 million.

* LWCF STATE: Senate, \$45 million. House, nothing. Fiscal 2011, \$40 million.

* FWS CONSERVATION GRANTS: Senate, \$61.4 million. House, \$22 million. Fiscal 2011, \$61.8 million.

* HISTORIC PRESERVATION GRANTS: Senate, \$47 million. House, \$42.5 million. Fiscal 2011, \$46.4 million.

* HERITAGE AREAS: Senate, \$17.4 million. House, \$9 million. Fiscal 2011, \$17.4 million.

* SAVE AMERICA'S TREASURES: Senate, \$8 million. House, nothing. Fiscal 2011, nothing.

* NPS OPERATIONS: Senate, \$2.230 billion. House, \$2.243 billion. Fiscal 2011, \$2.250 billion.

* NPS REC AND PRES: Senate, \$60 million. House, \$49.4 million. Fiscal 2011, \$57.9 million.

* NPS CONSTRUCTION: Senate, \$153 million. House, \$152.1 million. Fiscal 2011, \$184.6 million.

* FS RECREATION: Senate, \$290.5 million. House, \$281.6 million. Fiscal 2011, \$281.6 million.

* FS TRAILS: Senate, \$82.2 million. House, not clear. Fiscal 2011, \$88.4 million.

* FOREST LEGACY: Senate, \$58 million. House, not clear. Fiscal 2011, \$52.8 million.

* BLM RECREATION: Senate, \$68.7 million. House, \$67.6 million. Fiscal 2011, \$68.8 million.

* FWS REFUGE MANAEMENT: Senate, \$483 million. House, \$455 million. Fiscal 2011, \$492 million.

RIDERS: Although they didn't single out any of the following riders for criticism, 183 Democrats November 1 asked Speaker of the House John Boehner (R-Ohio) to remove controversial amendments from fiscal 2012 appropriations bills.

"As appropriators continue working to meet funding thresholds in the Budget Control Act, it is important that Republicans not risk a government shutdown by playing politics with appropriations bills," said the Democrats, led by House Democratic Whip Steny Hoyer (D-Md.) "Democrats oppose the inclusion of controversial policy riders, which are unlikely to pass the Senate, and we urge you to see that they are removed."

Here are policy amendments that are either in HR 2584 or may be offered to HR 2584 this fall.

GRAND CANYON MINING: House bill. House Democrats may offer a floor amendment that would allow the Interior Department to withdraw 1 million acres of federal land from uranium mining near Grand Canyon National Park. As now written the bill would bar such a withdrawal.

Secretary of Interior Ken Salazar June 20 ordered a six-month withdrawal of the one million acres to block temporarily additional uranium development. Then he chose a preferred alternative of a 20-year withdrawal in an EIS that will be completed over the next six months. Salazar said he would make a final decision this fall on a 20-year withdrawal.

MONUMENTS DESIGNATIONS: House bill. Rehberg may propose an amendment that would ban the designation of national monuments by the Obama administration without Congressional approval. A ban on monument designation

could be more consequential than a ban on wild lands because the Antiquities Act of 1906 has been used more than 100 times over the last decade to protect large tracts of American land.

If the House takes up a Rehberg amendment, it might simply forbid President Obama from designating national monuments. Or the amendment might allow Presidential designation of monuments under the condition that Congress confirm a designation within two years.

WILD LANDS: House bill. In one policy vote July 27 the House approved a provision that would bar the Interior Department from designating any new 'wild lands.' The bar on wild land designations may not be necessary because Secretary of Interior Ken Salazar has said BLM will not on its own designate wild lands but will ask Congress to do so.

CALIFORNIA OHV ROUTES: House bill. The provision would direct the Forest Service in California to allow OHV use on "Maintenance Level" roads in national forests. Four Republican House members led by Rep. Wally Herger (R-Calif.) have introduced stand-alone legislation (HR 242).

MONTANA WILD LANDS: Senate bill. Based on legislation from Sen. Jon Tester (D-Mont.), this provision would designate 669,100 acres of wilderness and protect another 336,000 acres of special management areas in the Kootenai, Beaver Head-Deerlodge and Lolo National Forests and adjacent Bureau of Land Management properties. Tester faces a tough reelection battle with Rep. Denis Rehberg (R-Mont.)

BLACKSTONE RIVER VALLEY NATIONAL HISTORICAL PARK: Senate bill. This rider would establish a new national park in Massachusetts and Rhode Island - a Blackstone River Valley National Historical Park. On October 13 the four senators from the two states along with four House members introduced a stand-alone bill (S 1708, HR 3191).

THE OTHER APPROPRIATIONS BILLS:
Here is the status of the four outdoor-

related appropriations bills, followed by a comparison of House and Senate numbers in the Interior bill:

* **AGRICULTURE BILL:** The House approved a fiscal 2012 Department of Agriculture appropriations bill (HR 2112) June 16 with reductions of \$1 billion in conservation spending. And the \$1 billion comes on top of a \$500 million reduction in fiscal 2011. The Senate approved its own version of HR 2112 November 1.

* **ENERGY AND WATER BILL:** The House July 15 approved a fiscal 2012 Energy and Water appropriations bill (HR 2354) that would, among other things, block a proposed new Obama administration wetlands permit policy. The Senate Appropriations Committee approved its bill September 7 by a 28-to-2 margin. The Senate committee did not include the wetlands rider.

* **TRANSPORTATION BILL:** The House subcommittee on Transportation approved a bill September 8, but it has not moved since. The full committee has set a spending cap for the surface transportation in the bill of \$47.7 billion that is \$7.7 billion less than the fiscal 2011 appropriation of \$55.4 billion. House Republican leaders had reportedly deferred action on the Transportation bill until fall to allow time to resolve budget deficit disagreements. The Senate approved its version of a Transportation bill November 1 as part of the Agriculture bill (above).

Transportation enhancements escape the guillotine again

For the second time in a fortnight the Senate November 1 defeated an attempt to shut off transportation enhancements (TEs) money. This time the Senate defeated an amendment from Sen. Sen. Rand Paul (R-Ky.) that would have diverted all TE money to bridge repairs. The vote was 38-to-60.

Although the Senate continues to reject attempts to cut off TE money, supporters of the program fear that at some point the critics will succeed not

only in taking down TEs but also other transportation-related rec programs.

"This has spill-over potential," said Derrick Crandall, president of the American Recreation Coalition. "Sen. (Tom) Coburn (R-Okla.) and some of his actions would go beyond transportation enhancement and affect recreational trails, scenic byways. Even the Wallop-Breaux sport fishing program may be in play." Coburn is another leading critic of TEs.

The Rails-to-Trails Conservancy said its members had peppered the Senate with 10,000 messages protesting the Paul amendment and a previous amendment from Sen. John McCain (R-Ariz.)

Although Senate Environment and Public Works Committee Chair Barbara Boxer (D-Calif.) defended TEs in Senate debate she has committed to revising the program when her panel drafts a multi-year bill next week.

The key revision is expected to be a recommendation that TEs - now a mandatory program at something north of \$600 million per year - become optional to states. That is, states could choose to spend money on trails, etc. as they wished.

Said Paul on the Senate floor, "As legislators, we need to prioritize and spend money on what is most important to us. Some on the other side may like the beautification projects. We like them also. But we are running a \$1.5 trillion deficit, and we must prioritize."

But Boxer said TE money was not just spent on beautification, it also was used for safety purposes. "The fact is, 13 percent of traffic fatalities nationwide occur because we don't have these safety improvements," she said. "There were 47,000 pedestrians killed between 2000 and 2009. That is the equivalent of a jumbo jet crashing every month. So this isn't about taking money for beautification."

In a previous attack on TEs McCain on October 19 asked the Senate to forbid the spending of TE money on seven

conservation-related uses. The vote was 59-to-39 against. Both the McCain and Paul amendments were offered to a Senate Transportation Appropriations bill (HR 2112). McCain would have barred expenditures on such things as scenic highways, landscaping or historic preservation.

Separately, Paul and other Mid-Western Republicans introduced a bill (HR 3085, S 1648) last month that would eliminate TEs. The sponsors of the bill from Kentucky and Indiana are looking for money because of the closure of the Sherman Minton Bridge that carries Interstate 64 between Louisville, Ky., and southern Indiana. The bridge developed cracks last month and needs some \$20 million in repairs.

In a third recent attack Sen. Coburn in September prepared an amendment to an interim surface transportation bill (PL 112-30 of September 16) that would also have forbid the distribution of any highway money for transportation enhancements. He later withdrew the amendment.

Everglades spending is now an issue for House Republicans

Republicans on a key House subcommittee November 3 questioned the advisability of spending tens of millions of dollars on an Everglades restoration project designed to protect Everglades National Park.

Rep. John Fleming (R-La.), at a hearing held by the House subcommittee on Fisheries and Wildlife that he chairs, displayed deep skepticism about a proposed Everglades Headwaters National Wildlife Refuge south of Orlando. "The fundamental purpose of this hearing is to examine whether this refuge area will assist in the restoration of the everglades or is simply an unnecessary sideshow and diversion of badly needed federal funds," he said.

Fleming may have a competitive interest in Everglades spending because the State of Louisiana vies with the Everglades for scarce federal water

resource money for its wetlands.

His panel was considering an Obama administration proposal of September 8 to establish a refuge that would be made up of 100,000 acres of easements and 50,000 acres of acquired land.

The ranking Democrat on the subcommittee, Rep. Colleen Hanabusa (D-Hawaii), defended the Headwaters refuge proposal. "A key piece of the puzzle for the (Everglades) restoration is the proposed Everglades Headwaters National Wildlife Refuge," she said. "This refuge will improve water quality and quantity in the upper Everglades watershed and this will benefit central and southern Floridians."

Separately, the Department of Agriculture is spending \$189 million to restore land north of the park by acquiring easements from farmers. Secretary of Agriculture Tom Vilsack himself said the department plans to acquire 24,000 acres in easements from ranchers and farmers over the next year.

The \$100 million Vilsack would spend in 2012 would come from a Wetlands Reserve Program. In 2011 the department paid \$89 million to acquire development rights in the same area for 26,000 acres.

Both Salazar's wildlife refuge and Vilsack's easements are separate from - but complement - a larger effort to restore the greater south Florida Everglades. That is the projected \$8 billion (now \$13.5 billion, according to the House committee) Comprehensive Everglades Restoration Project (CERP). Congress authorized it in 2000.

On October 27 the Corps of Engineers, the South Florida Water Management District and their partners said they were launching a new planning process - not a construction project - to analyze possible rehabilitation initiatives in the Central Everglades.

The Central Everglades planning will follow up on six ongoing construction projects, including a bridging of the cross-Florida Tamiami Trail.

There is a possible fourth initiative in the works, in addition to CERP, Salazar's wildlife refuge and the Department of Agriculture easements - the acquisition of 187,000 acres of sugar cane farms by the State of Florida. But the \$1.7 billion 2008 proposal from former Gov. Charlie Crist (R-Fla.) has largely dried up during difficult economic times. Current Gov. Rick Scott (R-Fla.) is not as big a fan of the proposal as was Crist.

The House subcommittee focused on just the designation of the Everglades Headwaters National Wildlife Refuge, consisting of grasslands and longleaf pine savanna. The Interior Department first proposed the idea in January and has held several field hearings since. Congress would have to approve the \$700 million needed to acquire land for the refuge.

On October 27 the Fish and Wildlife Service (FWS) extended a comment period on the proposal to November 25. Comment to: U.S. Fish and Wildlife Service, P.O. Box 2683, Titusville, FL 32781-2683, or to EvergladesHeadwatersProposal@fws.gov,

In still another development the Obama administration vigorously opposed October 25 legislation (HR 3009) from Fleming that would revoke the authority of the Interior Department to designate wildlife refuges administratively. Fleming would reserve that power to Congress, similar to national park designation authority.

Said Jim Kurth, assistant director of FWS, "The bill would impede the Service's ability to be strategic, flexible, nimble and responsive in capitalizing on situations that present the best opportunities to strategically grow the Refuge System, as we have been directed by Congress. When priority conservation needs and values, public support, and the presence of willing sellers align to allow for the establishment of a new refuge, the Service must maintain the ability to act quickly and efficiently in taking advantage of such opportune situations."

But Fleming said that

administrative designation of refuges creates new expenses. "This legislation will effectively end the practice of the Administration designating national wildlife refuges, which creates significant taxpayer liabilities," he said. "There is no reason why the process for creating wildlife refuges should be any different from the established process used for designating national parks and forests, wilderness areas, wild and scenic rivers, and other federally protected areas."

Huge coalition presses Hill for outdoor spending help

The mother of all conservation alliances came together October 31 to ask Congress to go easy on their favored programs, both in immediate appropriations bills and in a 10-year budget.

The coalition, ranging from environmentalists to sportsmen to historic preservationists, said with one voice: Conservation programs make money. To cut them would, in the long term, reduce jobs and revenues for communities and for the federal government, they argued.

"The Federal budget cannot and should not be balanced disproportionately on the backs of conservation, outdoor recreation and preservation," the 1,000 groups allied as America's Voice for Conservation, Recreation and Preservation (AVCRP), wrote Congressional leaders. "Doing so will impose on the future generations whose well-being depends on the conservation and preservation of our common natural and historic resources."

Among others the 1,000 groups include, alphabetically, the AFL-CIO, the American Recreation Association, the National Association of State Park Directors, the National Trust for Historic Preservation, the Outdoor Industry Association, the Theodore Roosevelt Conservation Partnership, The Wilderness Society, and representatives of local governments and outfitters.

At a press conference Whit

Hosburg, president of the Theodore Roosevelt Conservation Partnership, said the coalition was formed in response to an omnibus fiscal year 2011 appropriations bill (HR 1) proposed by House Republicans. That measure would have reduced spending across-the-board for conservation, recreation and historic preservation programs. It was later modified in negotiations with the Senate.

"When the House passed HR 1, I think it was a wake-up call for all of our communities," said Hosburg. "It would have reduced spending for many of the federal programs that formed the foundations for conservation in America. Programs such as the Land and Water Conservation Fund and programs authorized by the Farm Bill were either gutted or eliminated."

"One thing that became clear to our community after the passage of HR 1, we had to get past fighting for our individual programs and work together on broad conservation, recreation and preservation funding," he said.

Speaking of Theodore Roosevelt, the coalition presented Theodore Roosevelt IV himself at a press conference to advocate conservation spending. Roosevelt said, "Cutting conservation spending is a false economy. Cutting conservation spending will make our economy even worse."

The AVCRP has two targets. Number one is fiscal year 2012 appropriations legislation, specifically a dozen bills the House and Senate are now preparing. Broadly speaking, the House would reduce spending substantially for most conservation programs, while protecting land management agencies. The Senate would maintain spending for conservation at fiscal 2011 levels.

The number two target is an ongoing multi-year budget exercise that is now focused on a super committee of six House members and six senators. The super committee's recommendations are due November 23. If the super committee members can't agree, on January 15 a \$1.2 trillion trigger would reduce spending across-the-board.

The Joint Select Committee on Deficit Reduction, as it is formally called, is cochaired by Sen. Patty Murray (D-Wash.) and Rep. Jeb Hensarling (R-Texas).

The panel has been taking recommendations from Congress as well as the public all fall. The deadline for Congressional committees recommendations was October 14.

Few committee recommendations addressed conservation specifically. The House Natural Resources Committee did infer that the administration should sell off some federal lands, perhaps even national parks. Said the committee, led by chairman Doc Hastings (R-Wash.), said, "Our great National Parks and other lands prized by the American people can better be cared for if surplus, excess lands identified by the Department of the Interior and Forest Service, such as is done through the regular land use planning processes, are sold or transferred out of federal ownership."

Committee Democrats immediately jumped on the proposal. "Instead of asking oil, coal, mining and other corporate interests to help close our budget deficit and pay down the national debt, Republicans want to hold a fire sale on America's forests, parks and public lands," said Rep. Ed Markey (D-Mass.), ranking committee Democrat.

Western legislators have for decades sought to force the transfer and/or sale of Bureau of Land Management land and national forest land to state governments and private interests. But those attempts skirted the controversy that would be stirred up by attempting to unload national parks. The House GOP did recommend that agencies study possible disposal in land use plans before pulling the trigger.

Meanwhile, in the short-term the Obama administration is recommending a revenue-neutral job stimulus program that may or may not set a template for the super committee. The Senate rejected the Obama proposal October 11 in a test floor vote (S 1660), but pieces of the proposal may be considered.

The bill includes a one-time infusion of \$500 million to the transportation enhancements program and \$550 million for federal and Indian roads (with \$170 million to the Park Service.) That money would be separate from regular transportation spending.

The AVCRP recreation-conservation-preservation coalition spotlighted a new report that says recreation and historic preservation create \$1 trillion in economic activity in the country every year.

The study, endorsed by former Secretary of Interior Dirk Kempthorne, says that recreation and historic preservation support 9.4 million jobs in the country.

The study was commissioned by the National Fish and Wildlife Foundation and conducted by Southwick Associates. It is available at: http://www.nfwf.org/AM/Template.cfm?Section=Who_We_Are&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=21773.

New surface transportation bill dogged by rec attacks

When at long last the Senate EPW Committee begins drafting a new surface transportation bill November 9, it will almost certainly be asked to place strict new curbs on recreation spending. At a minimum.

That's because Senate and House Republicans are making a major political issue out of spending gasoline tax money on transportation enhancements such as recreational trails. (See related article page 5.) The Republican demand may affect other transportation-related recreation programs.

Senate EPW (Environment and Public Works) Committee Chair Barbara Boxer (D-Calif.) will in all likelihood lead Democratic attempts to defend those programs. The EPW committee has not released a draft bill yet but has published a slender outline of a bill, endorsed by Boxer and ranking committee Republican James Inhofe (R-Okla.)

The EPW draft calls for an extension of funding for all transportation programs for two years at current levels, or about \$40 billion per year.

The outline also says the committee will consolidate the 70 programs in the existing law, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), down to 30. The senators did not say which programs should go, or whether those programs would still be kept alive within broader programs.

The Senate and the House have until March 31 to write a new law to replace SAFETEA-LU, which technically expired on Sept 30, 2009. It has been extended repeatedly since, most recently on September 16. Because of the national budget squeeze Boxer and Inhofe said they would only seek a two-year extension.

On the other side of the Hill the House Transportation Committee under chairman John Mica (R-Fla.) earlier this year also outlined its plans for a new surface transportation bill, but at around \$26 billion per year for six years. The \$26 billion represents the estimated amount available for surface transportation from gasoline tax payments into the Highway Trust Fund.

But House Republicans, under pressure from business and unions, have in the last month committed to increasing the allocation to \$40 billion. Mica in October began to paint his legislation as a "jobs bill." Speaker of the House John Boehner (R-Ohio) has suggested drawing the extra \$14 billion from new energy development fees and royalties.

With that backdrop Boxer and Inhofe announced they would begin fleshing out a bill November 9 in the EPW committee a bill they call "Moving Ahead for Progress in the 21st Century, or (MAP-21).

In a related development the Senate at press time was considering an Obama administration proposal to

establish a \$50 billion infrastructure loan bank. The bank would fund construction projects in anticipation of a new surface transportation bill.

Appeals court validates Clinton FS roadless rule

In a landmark ruling the Tenth U.S. Circuit Court of Appeals October 21 endorsed a 2001 Clinton administration Forest Service roadless area rule, perhaps ending a decade of debate about the rule's validity.

The ruling effectively orders the Forest Service to protect 49 million acres of roadless forest from road construction and timber harvest. An Idaho-specific rule exempts an additional 9.5 million acres from the Clinton rule.

Loose ends remain. The plaintiff in the case, the State of Wyoming, still has a couple of legal weapons, such as a possible appeal to the full Tenth Circuit and/or an appeal to the U.S. Supreme Court.

In addition there are unresolved roadless policy issues in three states. In Idaho environmentalists have sued to undo the Idaho exemption. In Colorado the Forest Service has proposed a Colorado-only rule. And in Alaska a federal court order included the Tongass National Forest in the national rule against the wishes of the state.

For now the Obama administration is signaling that it will stick with the Clinton rule. "We applaud this decision upholding the 2001 rule and are proud to have vigorously supported the rule in this case," said the Forest Service in a statement.

Powered recreation interests, such as the American Council of Snowmobile Associations and the Blue Ribbon Coalition, said they were disappointed in the decision. They fear the Forest Service will now impose restrictions on existing off-road routes through roadless areas.

Said Greg Mumm, executive director of the BlueRibbon Coalition, which

participated in the various lawsuits, "Contrary to the parade of horrors that supporters invoke in hopes of currying favor for the Rule, the recreation community has never sought more than recognition of continuing access along existing routes in 'roadless' areas."

Hunters and fishermen generally endorsed the court ruling. Joel Webster, director of the Theodore Roosevelt Center for Western Lands, called the Tenth Circuit decision "a real victory for hunters and anglers." When pressed for uses that hunters and fishermen most feared in roadless areas, he cited oil and gas development.

"A lot of oil and gas development is done with directional drilling from outside (the protected area)," he said. "That's the responsible way. It preserves surface values but still allows reasonable extraction. It costs more but that's the price of preserving the back-country."

In the October 21 decision a three-judge panel of the Tenth Circuit agreed with the Ninth U.S. Circuit Court of Appeals on the legality of the Clinton rule, in so doing reversing a Wyoming District Court decision. The disagreement between the Ninth Circuit and U.S. District Court Judge Clarence Brimmer in Wyoming had confused the legal responsibility of the Forest Service in managing roadless areas.

Into that gap stepped Secretary of Agriculture Tom Vilsack in May of 2009. He issued a directive that gives him authority to review all proposed projects in 49 million acres of roadless areas.

Vilsack had also said that if federal courts couldn't resolve their differences about roadless areas, the Forest Service would write a new rule. Now that the Tenth Circuit has ruled the Vilsack memo may be mooted.

Rep. Edward Markey (D-Mass.), ranking minority member of the House Natural Resources Committee, said the Tenth Circuit decision should validate the Clinton rule. "This decision by the

courts should be the end of the road for those trying to pave some of the last remaining roadless forests in America," he said.

House Natural Resources Committee Chairman Doc Hastings (R-Wash.) disagreed. He said western Republicans would continue to try to block the rule legislatively. "For over a decade, the Clinton Roadless Rule has locked up millions of acres of land from the American people and today the Obama Administration continues to employ this job destroying policy," said Hastings. "Our public lands are intended to be multiple use and the Committee will continue to work to keep them open and accessible to all Americans for both recreation and job creation."

Western Republicans have introduced legislation (HR 1581 and S 1087) to revoke the Clinton rule. The lead sponsors are House Majority Whip Kevin McCarthy (R-Calif.) and Sen. John Barrasso (R-Wyo.)

Sen. Lisa Murkowski (R-Alaska), ranking minority member on the Senate Energy Committee, agreed on a need to revoke the Clinton rule. "This decision will further strangle the economic opportunities in Southeast Alaska and throughout the West," she said. "Congress may need to intercede to put America back on track to a more balanced and rational approach for managing our federal lands."

Although environmentalists celebrated, they were still not satisfied with the Idaho rule. "The Tenth Circuit's decision greatly helps to clarify and solidify the nationwide protections provided by the Roadless Rule," said Mike Anderson, a senior resource analyst in The Wilderness Society's Seattle office. "We still have a ways to go to restore protection for roadless areas in Idaho, which the Bush administration exempted from the rule. We will continue our efforts to ensure full protection of all roadless areas."

THREE LOOSE ENDS:

* THE IDAHO SITUATION: The State of Idaho successfully petitioned the Forest Service for an Idaho-only

rule. The Forest Service approved it Oct. 16, 2008. The Idaho rule governs management of 9.3 million acres of roadless national forest in the state, while allowing development on another 400,000 roadless acres. On January 29 Idaho District Court Chief Judge William Winmill rejected a lawsuit from environmentalists against the Idaho rule.

* **THE COLORADO SITUATION:** The State of Colorado and the Forest Service formally proposed April 15 a Colorado-only roadless area rule. The state has unsuccessfully proposed Colorado-only rules for five years.

The new Colorado plan would protect 4.18 million acres of the 14.5 million acres of national forest within the state. Exceptions from bans on development include 20,000 acres to complement existing coal mining operations, unspecified acreage for thinning operations near the urban interface and unspecified acreage for water projects.

* **THE ALASKA SITUATION:** In a March 4 decision U.S. District Court Judge John W. Sedwick in Alaska ordered the Tongass National Forest included in the national rule protecting roadless areas. The Bush administration in 2003 issued an Alaska-specific rule that exempted the 16.8 million-acre Tongass from the 2001 Clinton rule.

WHAT THE TENTH CIRCUIT SAID: The massive, 121-page Tenth Circuit decision of October 21 rejected the July 14, 2003, decision of Judge Brimmer that the Clinton rule violated The Wilderness Act, the National Environmental Policy Act (NEPA), the National Forest Management Act and the Multiple Use Sustained Yield Act.

The court devoted much of its decision (67 pages) to explaining why the 2001 rule complied with NEPA. For one thing the court said the outcome of the rule-making was not preordained before an EIS was prepared.

As for specific requirements of NEPA the court said the Forest Service did an adequate job of evaluating the

cumulative impacts of three regulations - the roadless rule, a transportation policy and a road management rule. The court said the Forest Service was only required to analyze "reasonably foreseeable" impacts.

The court also attacked one of Judge Brimmer's more controversial assertions, if not the most controversial assertion - that the Clinton roadless rule constituted administrative designation of wilderness. Brimmer held that was in contravention of The Wilderness Act, which gives designation power exclusively to Congress.

The circuit court said the Forest Service did not actually designate wilderness because inventoried roadless areas (IRAs) included in the rule are different than wilderness areas.

"However, a comparison of the provisions of the Wilderness Act and the Roadless Rule demonstrates that IRAs and wilderness areas are not functionally equivalent or 'essentially the same,'" said the Tenth Circuit. "To the contrary, the two types of areas are distinct. In fact, such a comparison demonstrates that the scope of the Wilderness Act is broader than the scope of the Roadless Rule; that is, the Wilderness Act is more restrictive and prohibitive than the Roadless Rule."

The decision is available at the Tenth Circuit website <http://www.ca10.uscourts.gov/clerk/opinions.php> and is titled there as 09-8075. The decision is cited as *State of Wyoming v. USDA Nos. 08-8061 & Biodiversity Conservation Alliance, 09-8075 of October 21, 2011.*

BLM completes EIS that favors Grand Canyon withdrawal

The Bureau of Land Management (BLM) October 16 published a final EIS that supports a long-term withdrawal from uranium mining of 1 million acres of federal land near Grand Canyon National Park. Based on the EIS BLM is expected to issue a decision executing the withdrawal by the end of the year.

That is, if Congress does not block the withdrawal. Five western Republican senators and nine House members introduced legislation a fortnight ago that would do just that.

The legislation (HR 3155, S 1690) would back up a provision that would block a withdrawal that is already in a fiscal year 2012 Interior and Related Agencies appropriations bill (HR 2584) that is pending on the House floor.

The westerners laid out this case in an October 12 letter to Secretary of Interior Ken Salazar: "In our view, the draft EIS on the proposed withdrawal actually demonstrates that uranium mineral development would pose little, if any, threat to the park or water quality in the region. Thus, we are concerned that this proposed withdrawal is more about social agendas and political pressure than about the best available science."

In a spirited dissent Rep. Raúl M. Grijalva said, "Secretary Salazar's decision to protect the Grand Canyon is supported by Coconino County, local tribes, the City of Flagstaff, numerous other local communities, the tourism industry that relies on unspoiled natural views, and just about everyone else in Arizona you can think of."

The National Parks Conservation Association (NPCA) agreed with Grijalva. Said David Nimkin, NPCA's southwest regional office senior director, "The decision by Secretary of the Interior Ken Salazar to extend the ban on uranium claims on the land surrounding the Grand Canyon is the right move for preserving the integrity and incredible views of this site as well as protecting the health and quality of the Colorado River, . . ."

On publishing the EIS BLM said the preferred alternative anticipates that, despite the withdrawal, "as many as 11 uranium mines could be operational over the next 20 years," including four ongoing mines.

The million acres in question, managed by BLM and the Forest Service, were first closed to new mining claims

by a July 21, 2009, segregation notice. The notice had been scheduled to expire on July 20 but Salazar imposed an interim, six-month withdrawal until late December.

The interim withdrawal is designed to provide time for the Interior Department to complete the EIS mentioned by the western Republicans and to issue a 20-year withdrawal. Salazar is expected to make a decision on a 20-year withdrawal by the end of November.

The 14 Senate and House Republicans, led by Sen. John McCain (R-Ariz.) and Rep. Trent Franks (R-Ariz.), would forbid the Interior Department from withdrawing the land unless Congress first gave its approval. The legislators contend the mining would not harm the environment and that uranium mining would provide jobs, which Rep. Grijalva disputes.

By itself the legislation would face monumental hurdles, particularly in the Senate, where no Democrats cosponsored the bill. And they hold a majority of Senate seats. The legislation may stand its best chance as an amendment to an omnibus fiscal year 2012 appropriations bill in some sort of trade-off.

Indeed the House Appropriations Committee July 12 added a provision to its fiscal 2012 Interior money bill (HR 2584) that would block a withdrawal. HR 2584 is expected to be wrapped into an omnibus spending bill next month.

Pamela Hill, executive director of the American Clean Energy Resources Trust, advocates of uranium mining, told us that the outlook in the Senate for the McCain-Franks bill is not as good as it is in the House, which is already on record against the withdrawal. "I'd say on the Senate side prospects are not as bright," she said. "But we are hoping." Perhaps the best shot for industry would be a provision in the fiscal 2012 appropriations bill in conference between the two Houses.

If that doesn't work, there are the courts. "The third leg (in addition to Interior and Congress) would be legal

action," Hill said. "No matter how this turns out we are going to court."

Locally, existing claims that hold valid existing rights theoretically could be developed after a withdrawal. But the mining industry fears that a 20-year withdrawal would effectively prevent development of all but a few claims.

Sutley defends ocean plans; rec industry, GOP object

The Obama administration last week struck back at charges that its new ocean policy would lead to widespread zoning that could restrict uses such as sport fishing.

Nancy Sutley, chair of the Council on Environmental Quality, said that "Marine Spatial Planning" in the administration's National Ocean Policy has few if any teeth. Some House Natural Resources Committee Republicans charge that spatial planning consists of "ocean zoning."

Sutley told the committee October 26, "The National Ocean Policy does not impose any restrictions on ocean, coastal, or Great Lakes activities. The National Ocean Policy does not direct that any area be designated for a specific use or be off limits to specific activities."

She went on, "The National Ocean Policy's goals and guiding principles for coastal and marine spatial planning expressly recognize public access and the need to ensure the sustainability of ocean and coastal economies, and provide support for a growing number of important activities, including recreation, science, commerce, transportation, energy development, and national security."

But committee chairman Doc Hastings (R-Wash.) repeated his charge that the policy creates ocean zoning. "(T)he initiative creates a new policy of marine spatial planning, otherwise known as 'ocean zoning,'" he said at the hearing. "This is likely to place huge portions of the ocean off-limits

to certain economic and recreational activities, including commercial and recreational fishing and energy production."

The sport fishing industry backed Hastings, as least as represented by the Recreational Fishing Alliance (RFA). Its executive director Jim Donofrio said, "Coastal and Marine Spatial Planning aims to reduce conflicts among overlapping uses and different views about what activities should occur and where. RFA is not convinced that current conflicts are at a magnitude requiring a new, overarching coastal and marine spatial plan."

The drive for a national ocean policy really began during the Bush administration with the December 2004 publication of a report of the U.S. Commission on Ocean Policy. Among other things the report recommended the establishment by Congress of a \$3.2 billion fund to pay for ocean protection programs. The fund would be financed by oil and gas royalties from offshore oil and gas development, perhaps in competition with the Land and Water Conservation Fund.

The report also recommended the establishment of a number of councils, commissions and advisory boards to provide a framework for ocean policy.

In 2009 the Obama administration put together its own task force headed by Sutley and made up of 24 other representatives of various other federal departments and offices. That task force submitted a report to the President on July 19, 2010, the same day President Obama signed Executive Order 13547 to implement the task force's recommendation.

The executive order tells government agencies to put together a National Ocean Council made up of 28 federal officials under the direction of Sutley. The executive order also tells the council and all federal agencies to participate in the writing of "marine spatial" plans. Hastings calls those spatial plans "zoning."

The task force report of January

2010 mentions recreation as a central element of spatial planning which "identifies areas most suitable for various types or classes of activities in order to reduce conflicts among uses, reduce environmental impacts, facilitate compatible uses, and preserve critical ecosystem services to meet economic, environmental, security, and social objectives."

At the October 26 hearing Hastings also charged that Congress gave the administration no authority to authorize regional zoning. "I have asked the Administration for the specific statutory authority that allows the President, by Executive Order, to create Regional Planning Bodies and require them to create regional zoning plans," he said. "So far, I have been given only a hodge-podge list of all the statutes that apply to ocean and/or coastal activities. I have not been given a concise, direct answer to the question."

The list, he said, included such laws as the Magnuson Act of 1950, Marine Plastic Pollution Research and Control Act and the Coastal and Geodetic Survey Act of 1947.

Notes

NPS passes available by mail.

There is a catch, but the Park Service said last month it is now making lifetime passes for senior citizens and for persons with a permanent disability available by mail. The catch is that passes by mail require a \$10 processing fee. The senior pass already costs \$10, so the total price is \$20. But that provides lifetime access to 2,000 recreation sites managed by the Park Service, the Forest Service, the Fish and Wildlife Service, the Bureau of Land Management, and the Bureau of Reclamation. The passes continue to be available at federal facilities. Under the America the Beautiful program federal land management agencies provide the following four varieties of entrance fees: (1) Annual pass at \$80 per year, (2) Senior pass with lifetime access for those 62 or older at a one-time price of \$10, (3) Permanently disabled pass with lifetime access for free, and (4) Volunteer pass that is free

for volunteers with 500 service hours. Applications for all the passes may be downloaded from <http://store.usgs.gov/pass/index.html>.

Partners protect N.Y. bay. The Interior Department and New York City October 27 took several joint steps to protect a large bay near New York City and to coordinate management of the land and waters in the bay. The 10,000 acres in Jamaica Bay off Brooklyn include portions of the Gateway National Recreation Area and the NPS-managed Floyd Bennett Field, a subdivision of the recreation area. The firepower at a ceremony in New York included Secretary of Interior Ken Salazar, New York City Mayor Michael Bloomberg, and representatives of the Rockefeller Foundation. The latter group matters because the foundation said it would finance the writing of a master plan for Jamaica Bay Parks. At the ceremony EPA and the New York State Department of Environmental Conservation also announced that the bay has been designated a "no discharge zone" where recreation boats may not dump sewage. Said Judith Rodin, president of the Rockefeller Foundation, "Jamaica Bay is a beautiful, but often overlooked pocket of our City's landscape, and The Rockefeller Foundation is thrilled to help give back to the community parkland that will serve as both a recreational and educational space." Eight tributaries empty into the bay.

Michigan rec pass pays off. The Michigan Department of Natural Resources said last month that its new Recreation Passport - a voluntary \$10 fee - yielded a higher percentage of participation than anticipated. The department projected a 24.3 participation rate at vehicle registration time, but 24.78 percent of citizens paid the fee. The fee yielded \$18,816,500 in its first year. The department is shooting for a 30 percent participation rate next year, said DNR Director Rodney Stokes. At a time of strangled state recreation budgets the almost \$20 million allocation could be a godsend. Of the 2011 money \$10.7 million went for operation of the state parks program and \$1.03 million for the Michigan Water Ways budget. The rest of the

money is being allocated to a number of activities, including \$608,650 for local park grants. "The participation rate for the first year is a significant step forward and we hope that more Michigan residents will support the passport program and take advantage of the more than 700 Michigan businesses that offer discounts through the Recreation Passport Perks Program," said Ron Olson, chief of the department's Parks and Recreation Division.

Tenney to head BLM rec. Andy Tenney, a 20-year veteran of the Bureau of Land Management (BLM), has been named the new division chief for the bureau's recreation division. He has served most recently as the deputy chief of the recreation division. BLM manages more land than any other federal agency, 245 million acres. Of that 25 million acres are protected as part of the National Landscape Conservation System.

NPCA for Valles Caldera park. The National Parks Conservation Association (NPCA) published a report last month that concluded that the Valles Caldera in New Mexico would be better off as a unit of the National Park System. While the 88,900-acre area is now part of the Santa Fe National Forest, under a special arrangement required by Congress it is managed by an appointed board. But critics say the board hasn't maximized the potential of the area. The trust generated more than \$700,000 in fiscal year 2011, but the Forest Service appropriation was \$3.5 million. David Nimkin, Southwest regional office senior director of NPCA said, "In addition to preventing incompatible uses from marring Valles Caldera's incredible landscapes, the report shows that NPS management will make it more accessible to visitors and give a major boost to the local and New Mexico economy, including increasing economic benefits by more than \$110 million in the first 15 years."

Conference Calendar

NOVEMBER

8-12. **National League of Cities** annual Congress of Cities in Phoenix. Contact: National League of Cities,

Conference and Seminar Management, 1301 Pennsylvania Avenue, N.W., Washington, DC 20004. (202) 626-3105. <http://www.nlc.org>.

19-23. **Council of State Governments** state trends forum in Bellevue, Wash. Contact: Council of State Governments, P.O. Box 11910, Lexington, KY 40578. (859) 244-8103. www.csg.org.

DECEMBER

5-8. **America Outdoors** marketing and management conference in Reno, Nev. Contact: <http://www.americaoutdoors.org/>.

7-8. **Western Governors' Association** winter meeting in Palm Springs, Calif. Contact: Western Governors' Association, 1515 Cleveland Place, Suite 200, Denver, CO 80202-5114. (303) 623-9378. <http://www.westgov.org>.

JANUARY

5-8. **Archaeological Institute of America** annual meeting in Philadelphia, Pa. Contact: Archaeological Institute of America, 656 Beacon St., Boston, MA 02215-2006. (617) 353-9361. <http://www.archaeological.org>.

17-19. **National Ski Areas Association** western conference in Squaw Valley, Calif. Contact: National Ski Areas Association, 131 South Van Gordon St., Suite 300, Lakewood, CO 80228. (303) 987-1111. <http://www.nsaa.org>.

18-20. **U.S. Conference of Mayors** winter meeting in Washington, D.C. Contact: U.S. Conference of Mayors, 1620 I St., N.W., Fourth Floor, Washington, D.C. 20006. (202) 293-7330. <http://www.usmayors.org>.

19-22. **Outdoor Retailer Winter Market** in Salt Lake City. Contact: Outdoor Retailer, 310 Broadway, Laguna Beach, CA 92651. (949) 376-8155. <http://www.outdoorretailer.com>.

29-Feb. 2. **National Association of Conservation Districts** annual meeting in Las Vegas, Nev. Contact: National Association of Conservation Districts, 509 Capitol Court, N.E., Washington, D.C. 20002. (202) 547-6233. <http://www.nacdnet.org>.