

# Federal Parks & Recreation

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## **GOP roadless bill would end Dems' protective policies**

As expected, leading House Republicans introduced legislation (HR 1581) April 15 that would release 42.8 million acres of BLM and national forest wilderness study areas to "possible" multiple uses.

The legislation would also (1) revoke the Clinton administration's 2001 national forest roadless area rule that largely prevents road construction on 58 million acres and (2) block the Obama administration's proposed "wild lands" policy that would have BLM study roadless areas and designate wild lands on them.

The dramatic, sweeping bill was prepared by House Majority Whip Kevin McCarthy (R-Calif.); National Parks, Forests, and Public Lands Subcommittee Chairman Rob Bishop (R-Utah); and Western Caucus Chairman Steve Pearce (R-N.M.) Twenty-three Republicans cosponsored it.

In a Dear Colleague letter of March 29 seeking cosponsors Bishop, McCarthy and Pearce said, "As strong supporters of multiple-use principles for our public lands, we should release public lands from restrictive management practices that are unnecessary. This bill would preserve and strengthen the robust local land management planning process by returning emphasis to local stakeholders and local communities who know best how to manage their public lands rather than bureaucrats here in Washington."

Environmentalists were furious. "This is the biggest attack on wilderness we have seen in the history of The Wilderness Society," said society policy analyst Paul Spitler. "This proposal flies in the face of values Americans

hold dear with respect to the stewardship of our public lands."

He added, "If passed, this legislation would open wilderness-caliber lands to destructive threats, including oil and gas development, uncontrolled off-road vehicle use and other unchecked development."

Off-highway vehicle advocates are prime supporters of the legislation, said Larry E. Smith, executive director of Americans for Responsible Recreational Access.

Because McCarthy is a key member of the House leadership, the measure should reach the House floor and be passed. But the Senate is another story.

Indeed majority Senate Democrats in general support BLM wilderness study areas, Forest Service roadless areas, the Clinton roadless rule and the Obama administration wild lands policy. But once the House passes a bill the measure could serve as trade bait between House Republicans and Senate Democrats in end-of-year negotiations.

Here's what the bill would do:

\* BLM WILDERNESS STUDY AREAS (WSAs): release 6.74 million acres of WSAs for multiple use. The land is part of the 12.27 million acres that BLM has studied in 546 WSAs and recommended as not suitable for wilderness. The released 6.74 million acres would be managed under a Section 202 Land Use Planning provision of the Federal Land Policy and Management Act of 1976, which would protect some lands.

\* FS INVENTORIED ROADLESS AREAS (IRAs): release 36.1 million acres studied by the Forest Service for possible wilderness designation in IRAs and recommended as not suitable for wilderness. The land was studied under a 1979 Roadless Area Review Evaluation. The released land would be managed under the Multiple-Use Sustained-Yield Act of 1960, which would protect some lands.

\* CLINTON FS ROADLESS AREA RULE: revoke the 2001 Clinton administration

roadless area rule that limits road construction and timber sales on 58 million acres of national forest (many of them Forest Service IRAs.) It would also revoke a Bush administration roadless rule that allows states to petition for a state-specific rule to manage roadless areas in national forests.

\* OBAMA WILD LANDS ORDER: terminate Secretary of Interior Ken Salazar's Secretarial Order 3310 of Dec. 23, 2010, that directed BLM to study BLM roadless lands and designate qualified lands as wild lands. (Congress this week approved a final fiscal year 2011 appropriations bill that would shut off money for the program through September.) (See separate article page 6.)

## **Board says no to Gettysburg casino by a 6-to-1 margin**

The State of Pennsylvania rejected April 14 an application for a gambling casino near Gettysburg National Military Park, a proposal that had divided preservation groups.

The Pennsylvania Gaming Control Board voted six-to-one against the proposed Mason-Dixon Resort & Casino that would have included 600 slot machines and 50 gaming tables.

Most preservation and conservation groups, backed by famous Americans and thousands of petitions, said the battlefield already provides an economic engine for the area, and the stimulus from a casino could be counterproductive.

Said National Park Conservation Association Pennsylvania Senior Program Manager Cinda Waldbuesser, "As the nation's premier classroom for the American Civil War, Gettysburg National Military Park is already a strong economic engine for the area. In 2009, National Park Service data showed that park visitors spent more than \$61 million at local businesses and supported almost 1,000 local jobs."

But the Gettysburg Battlefield Preservation Association, the oldest historic preservation group in the country, backed the project. Brendan Syn-

namon, association president, said the proposal would not affect visitors' experience in the battlefield.

"Our primary mission and focus are on preservation," said Synnamon. "We find, after very thorough review, that the proposed Mason-Dixon Resort project does not represent a preservation issue. The property site under discussion played no significant role in the three-day engagement."

Importantly, he said, the project would have helped the local economy. "We need jobs. We need more private investment. We could use additional visitation. The Mason-Dixon Resort offers all these things and would do so without one square inch of battlefield or nearby undeveloped open space being developed," Synnamon said.

The proposed \$75-million Mason-Dixon Resort & Casino would have included a 300-room hotel with 20,000 square feet of meeting and exposition space on the site of the existing Eisenhower Conference Center.

This was the second go-round for casinos near Gettysburg for project applicant Dave LeVan, a local Harley-Davidson merchant. In 2005 he proposed a much larger casino (3,000 slots compared to 500 in the new facility), but it too was defeated by the Pennsylvania Gaming Control Board.

This time four applicants in the State of Pennsylvania were competing for one casino license from the gaming board. The winner was the Lady Luck Casino at the Nemaquin Woodlands Resort in southwestern Pennsylvania. The state already has approved 12 casinos, of which 10 are now operating.

The Gettysburg proposal pitted the undermanned Gettysburg Battlefield Preservation Association against the National Trust for Historic Preservation, the Civil War Trust and the National Parks Conservation Association. On the side of the national groups were Susan Eisenhower, filmmaker Ken Burns, author David McCullough, Medal of Honor recipient Paul W. Bucha, composer John Williams

and entertainers Matthew Broderick, Stephen Lang and Sam Waterston.

Said Civil War Trust President Jim Lighthizer, "Since it was announced last year, the proposal to open Mason-Dixon Gaming Resort a scant half-mile from Gettysburg National Military Park has drawn immense opposition – an early April survey by a nationally renowned polling and research firm found that only 17 percent of Pennsylvanians supported the idea, with 66 percent actively opposed and 57 percent indicating that such a facility would be 'an embarrassment' to the Commonwealth."

## **National parks, refuges in Gulf are open for business**

One year after the Deepwater Horizon oil spill all national parks and wildlife refuges in the Gulf states are open to the public, albeit with some restrictions.

And all services are available. "Yes, the only thing going on is some clean-up in wildlife refuges and Gulf Islands National Seashore," said Betsy Coffee, who is coordinating response for Interior Department agencies.

The main restriction, and a restriction that antedated the spill, is the periodic closure of bird and turtle nesting areas. "Several areas have to be closed off while they nest," said Coffee. "It's a very small percentage though. Everyone can still come in and enjoy the parks and refuges. Those bird corridors are closed every year no matter what."

Coffee said visitation to the national parks and refuges is healthy once again, after a devastating drop last year in the wake of the spill.

State parks in Louisiana are also welcoming visitors. "All of our parks are open," said Sharon Broussard, a spokeswoman for Louisiana State Parks. "Grand Isle State Park was the only unit directly impacted by the oil spill. The beach itself has been closed since last May, but we just opened up the western (three-quarter mile) portion."

Because of recent hurricanes, it is difficult to determine a visitation base for Grand Isle, but Broussard says recent data indicate "It's coming back."

BP America's Deepwater Horizon oil platform exploded on April 20, 2010, and spilled almost 5 million barrels of oil into the Gulf of Mexico over the next three months. Eleven workers were killed and 17 injured.

The Department of Interior identified eight national parks and 36 wildlife refuges as at risk from the spill and deployed hundreds of Fish and Wildlife Service and Park Service personnel to the clean-up task force. Altogether federal, state, local and private sources provided more than 25,000 people to fight the spill.

The threatened park units include Gulf Islands National Seashore off Mississippi and Florida; Jean Lafitte National Historical Park & Preserve in Louisiana; the De Soto National Monument, Everglades National Park, Dry Tortugas National Park, Big Cypress National Preserve and Biscayne National Park in Florida; and Padre Island National Seashore in Texas.

BP has established a multi-billion fund to compensate Gulf communities. On April 20 on the first anniversary of the spill BP announced that it would allocate \$1 billion to environmental clean-up. Said an alliance of conservation groups, "This is a good day for the Gulf and a welcome first step on the long road to recovery and restoration for the region's environment and economy."

The groups included the Environmental Defense Fund, National Audubon Society, National Wildlife Federation, Ocean Conservancy, Oxfam America and The Nature Conservancy.

BP America Inc. President Lamar McKay said, "BP believes early restoration will result in identified improvements to wildlife, habitat and related recreational uses in the Gulf, and our voluntary commitment to that process is the best way to get restoration projects moving as soon as possible."

Like many other conservation groups Ducks Unlimited (DU) formed a response team and inspected the damage in the Gulf. Last week DU hosted a teleconference and asked its members to support legislation that would require BP to put revenues from penalties back into the Gulf.

DU's main concern is the dwindling wetlands in Gulf states, particularly Louisiana. "There is no doubt that last year's oil spill has resulted in major consequences for habitat, waterfowl and other wildlife on the Gulf Coast. In order to protect this vital ecosystem from vanishing, we must focus on policy initiatives and projects that will prevent the long-term loss of Louisiana coastal wetlands," said DU CEO Dale Hall.

"The Gulf Coast parishes and counties provide wintering and stopping grounds for more than 10 million ducks and geese, not including other countless wildlife that depend on these habitats," he added. "If we do not conserve these crucial areas now, the Gulf's rich waterfowling tradition could be lost forever."

Interior's Coffee said national wildlife refuges in Louisiana suffered more damage than the national parks around the Gulf. "Bon Secour (National Wildlife Refuge) is still cleaning up," she said of the refuge in Louisiana. "They also have nesting birds and have to close off areas. And they are closing turtle areas."

Although the national parks did not suffer as much damage as Louisiana's refuges and state parks, adverse publicity about the spill kept visitation down. That has rebounded. "It's been back up," said Coffee. "Last week was really good. It has come way back. I think the tourists realize the beaches are clean."

Coffee said the damage from the Deepwater Horizon spill could have been worse, and the threat isn't over yet. "If we have hurricanes this year, it could spread the oil around. But we're ready with a quick response if it does," she said.

## **Fiscal 2012 budget battle has already begun in House**

With a final fiscal year 2011 spending law now on the books (HR 112-10 of April 15), Congressional attention has shifted to fiscal 2012 spending. The House on April 15 approved on party lines (235 to 193) a budget (H Con Res 34). It will set spending limits for appropriators in fiscal 2012.

Surprisingly, H Con Res 34 would continue natural resources spending at the fiscal 2011 level of \$32 billion. That is surprising because the budget would cut almost all other domestic spending sharply.

The budget doesn't direct line and appropriations committees where to spend money, but it does single out the Land and Water Conservation Fund for less spending. Repeating a frequent demand from House Natural Resources Committee leaders for less spending on LWCF a House Budget Committee report says:

"While the President's budget more than doubles funding for the Land and Water Conservation Fund - from \$346.1 million in fiscal year 2008 to \$900 million in his fiscal year 2012 budget - Federal lands suffer from a current maintenance backlog that measures in the billions of dollars. The government has a responsibility to maintain and care for existing resources before acquiring more land."

The report also suggests, but leaves to authorizing committees, a revision to a federal land sale law called the Federal Land Transaction Facilitation Act (FLTFA). Under the current FLTFA most revenues are returned to agencies for acquisition of conservation lands. The Republicans would instead allocate most sale revenues to the U.S. Treasury.

"Instead of requiring that all proceeds from land sales be used to acquire other parcels of land and to cover sales expenses, this option would direct that 70 percent of the proceeds, net of expenses, go to the Treasury," says the report accompanying the budget resolu-

tion. "It would limit the Department of the Interior's share of the receipts to \$60 million per year (plus an additional amount to cover BLM's administrative costs) for land acquisition and restoration projects on BLM lands."

In the House budget debate April 15 Congressional Democrats offered a competing plan that would increase natural resources spending substantially by \$5.2 billion to \$37.4 billion, but the majority Republicans rejected it in a 166-to-259 vote. The House Democrats roughly matched the Obama administration's recommendation of \$37.4 billion for natural resources in fiscal 2012.

The Senate Budget Committee under chairman Kent Conrad (D-N.D.) has not addressed a Senate budget yet. Conrad himself has praised a comprehensive budget plan recommended by a recent Presidential Commission, without mentioning specifics.

Referring to the December report of the National Commission on Fiscal Responsibility and Reform, Conrad said this month, "It takes a balanced approach, with savings coming roughly equally from nondefense discretionary spending, defense discretionary spending, mandatory spending, and revenue." The commission was cochaired by former Clinton White House aide Erskine Bowles and former Sen. Alan Simpson (R-Wyo.)

Although the House budget would roughly maintain natural resources spending, except for LWCF, it could cut almost all other domestic spending sharply. For example, it would devastate transportation-related programs such as transportation enhancements by slashing transportation spending by \$21 billion, from \$85 billion to \$64 billion.

## **Final FY '11 money law trims most park and rec programs**

President Obama signed into law April 15 (PL 112-10) a continuing resolution (CR) that will keep the federal government in money for the next six months, ending a long national dispute over fiscal year 2011 spending. But

almost all park and rec programs took hits, some substantial.

For instance the federal side of the Land and Water Conservation Fund (LWCF) was reduced by \$123 million. The Save America's Treasures program was reduced from \$25 million to nothing. Preserve America was reduced from \$4.6 million to nothing. And state wildlife conservation grants were chopped by \$28 million.

Congress and the Obama administration struck their final fiscal 2011 spending deal on April 8. It will reduce spending for fiscal year 2011 by \$37.8 billion compared to fiscal 2010 and by \$78.5 billion compared to an administration request.

The agreement ends for now six months of rough political negotiations, although the parties didn't agree on precisely which programs will be cut. All parties say they are confident they can complete an omnibus continuing resolution this week before a two-week Easter holiday April 15.

The agreement headed off a much-publicized shutdown of the federal government that could have closed federal park and rec areas throughout the country, threatening the annual Cherry Blossom Parade in Washington, D.C.

Said National Parks Conservation Association President Tom Kiernan just before Congress acted Friday, "Not only will a government shutdown jeopardize family vacations and school field trips to places like the Statue of Liberty and Yosemite, but it would also have a significant impact on local communities who depend on the economic return of national parks tourism."

With fiscal 2011 appropriations substantially wrapped up, the Congressional focus now switches to fiscal 2012 spending. The House this week is expected to begin work on a fiscal 2012 budget fashioned by House Budget Committee Chairman Paul Ryan (R-Wis.) (See *previous article*.)

Senate appropriators cautioned that because the law is contained in a

CR and not an appropriations bill the Office of Management and Budget (OMB) will have considerable discretion in setting spending priorities.

One Senate Appropriations Committee staff member told us, "As this is a CR rather than a regular appropriations bill, OMB will have more latitude in determining spending levels outside of items specified in the bill language."

Anyhow, here is some of what the CR specified:

\* Federal side of LWCF: a decrease of \$123 million, or an appropriation of \$165 million compared to the \$277.9 million appropriation in fiscal 2010.

Further federal LWCF breakdown: BLM: \$22 million, fiscal 2010 \$29.7 million; FWS: \$55 million, fiscal 2010 \$86.3 million; NPS: \$55 million, fiscal 2010 \$86.3; and FS: \$33 million, fiscal 2010 \$63.5 million.

\* State side of LWCF: no change, an appropriation of \$40 million, which matches fiscal 2010.

\* State wildlife conservation grants: a decrease of \$28 million, or an appropriation of \$62 million compared to \$90 million in fiscal 2010.

\* Park Service operations: a decrease of \$7 million, or an appropriation of \$2.255 billion compared to \$2.262 billion in fiscal 2010.

\* Park Service construction: a decrease of \$30 million, or an appropriation of \$210 million compared to \$240 million in fiscal 2010.

\* Park Service recreation and preservation: a decrease of \$10 million, or an appropriation of \$58 million to \$68 million. (The decrease includes elimination of \$4.6 million in Preserve American grants.)

\* Historic Preservation: a decrease of \$25 million, or \$54.5 million compared to a fiscal 2010 appropriation of \$79.5 million. (The decrease includes elimination of \$25 million in Preserve America grants.)

\* Save America's Treasures: a decrease of \$25 million, or no appropriation compared to \$25 million in fiscal 2010.

\* Preserve America: a decrease of \$4.6 million, or no appropriation compared to \$4.6 million in fiscal 2010.

\* Forest Service recreation: a decrease of \$5.7 million, or an appropriation of \$279.4 million compared to \$285.1 million in fiscal 2010.

\* FS CAPITAL MAINTENANCE: a decrease of \$82 million to \$556 million from \$474 million in fiscal 2010.

\* Forest Legacy (from LWCF): a decrease of \$23.5 million, or \$53 million compared to a fiscal 2010 appropriation of \$76.5 million.

\* FIRE: This is deceptive. The CR does rescind \$529 million in prior year FLAME money. But then it roughly matches with new appropriations the fiscal 2010 levels.

The appropriators said the CR appropriates \$3.4 billion for fire programs, with \$981 million for the Interior Department and \$2.46 billion for the Forest Service.

Of that, \$1.7 billion is for suppression (\$384 million for BLM and \$998 million for the Forest Service.) Further of the suppression money FLAME allocations make up \$352 million (\$61 million to the Interior Department and \$291 million to the Forest Service).

\* Wild lands: blocks Secretary of Interior Ken Salazar's "wild lands" policy by shutting off money for it.

A provision inserted in the CR by Rep. Mike Simpson (R-Idaho) attacks the directive that told BLM to study roadless lands and designate qualified areas as wild lands.

Although the provision applies just to fiscal 2011, it's the nature of appropriations that once appropriators approve such a provision for one year, the provision remains in future appropriations bills.

## Colorado and FS try again with state roadless rule

The State of Colorado and the Forest Service formally proposed April 15 yet another version of a roadless area rule that would govern national forests within the state. The state has unsuccessfully proposed several versions of a Colorado-only rule over the last five years.

Forest Service Rocky Mountain Regional Forester Rick Cables said that in this latest proposal the state and the Forest Service had reduced exceptions from protection that were in previous iterations of a state plan, including less land set aside for ski resorts. That, they hope, will reduce criticism, while still allowing for important uses.

The proposed rule would protect 4.18 million acres of the 14.5 million acres of national forest within the state. Cables said exceptions from bans on development include 20,000 acres that would be available to complement existing coal mining operations, unspecified acreage for thinning operations near the urban interface, unspecified acreage for water projects and less acreage for skiing.

Cables said the proposal would protect 8,300 acres of ski areas that were exempted in previous draft rules. "We've removed those from the roadless inventory, .02 percent of the acreage," he said. "We believe, and I know the state strongly believes, that the partnership with the ski industry delivering outdoor recreation which has over 12 million skier visits per year is really important economically and allows people to get out and enjoy the forest in the winter."

"We think we have made some stronger improvements in this rule than in any previous version," Cables said at a press conference April 14.

Some sportsmen's groups that had criticized earlier versions of a rule were more supportive this time, although they still had some objections. Environmental groups were less supportive.

First, the sportsmen, as represented by the Theodore Roosevelt Conservation Partnership (TRCP). "While strengthened, the Colorado roadless rule requires fine-tuning to adequately conserve the backcountry values of these public lands," said Joel Webster, director of the TRCP Center for Western Lands. Among other things TRCP called for additional upper-tier roadless acreage to protect big-game populations and fisheries.

Environmentalists were less accommodating. Ted Zukoski, staff attorney for public interest environmental law firm Earthjustice, sharply criticized the draft. "The proposed Colorado roadless rule has damaging loopholes," he said. "It will allow 20,000 acres of our state's remaining wild forests to be scarred with bulldozers for coal mining, a dirty energy source."

This battle has been ongoing since 2006. Former Gov. Bill Owens (R) used a national Bush administration roadless rule to propose a first Colorado-only rule. The Bush rule allows state-specific exceptions to a Clinton administration roadless rule of 2001 that effectively withdrew tens of millions of acres of roadless areas from development.

The State of Idaho successfully petitioned the Forest Service for an Idaho-only rule that was approved 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 acres of roadless land. On January 29 Idaho District Court Chief Judge William Winmill rejected a lawsuit from environmentalists against the Idaho rule.

As for the new Colorado proposal, regional forester Cables said it assesses a quite different inventory of roadless land than previous iterations. "We have eliminated 467,000 acres from 1979 of inventory that now are roaded," he said. "And we have added 409,000 acres of new areas without roads."

In addition, he said, "We've added areas of upper tier for protection from what the state proposed in their peti-

tion in collaboration with the state from 257,000 acres to 562,000 acres. So if you added 562,000 acres of upper tier land plus 409,000 acres of updated inventory without roads we believe we have nearly one million acres with stronger protections (than the 2001 Clinton rule.)"

The draft EIS published with the proposed rule looks at four alternatives: (1) the Clinton rule that would protect 4.433 million acres, (2) the new draft that would protect 4.186 million acres, (3) existing forest plan prescriptions and (4) additional upper tier protections.

The two Democratic governors who succeeded Owens, Bill Ritter and the current governor John Hickenlooper, have both cooperated with the Forest Service in developing a Colorado-specific rule.

In a related development western House Republicans introduced legislation (HR 1581) April 15 that would revoke both the Bush rule and the Clinton rule, presumably rendering the Colorado application moot. (See related article page one.)

Comment on the Colorado proposal by July 14 by E-mail to: [COCComments@fsroadless.org](mailto:COCComments@fsroadless.org) or by mail to: Colorado Roadless Rule/EIS, P.O. Box 1919, Sacramento, CA 95812.

## **FS releases scientist review of plan rule; users unaware**

With little or no publicity, the Forest Service over the last few months has commissioned a scientific review of its draft planning regulations.

After a broad coalition of user groups complained of rumors that an unidentified group of scientists was reviewing the rule, the Forest Service this week released a report from the scientists.

The scientists essentially said they agreed with the Forest Service work thus far. Said the report, "Reviewers addressed three key questions on the DEIS, regarding scientific caliber,



treatment of uncertainty, and comprehensiveness of the document. Reviewers were generally in agreement that the overall standard of scientific work in the DEIS was high."

The Forest Service announced the availability of the 112-page Science Review April 27. It is available at: [www.fs.usda.gov/goto/planningrule/sciencereview](http://www.fs.usda.gov/goto/planningrule/sciencereview).

The seven reviewers were: Dr. John P. Hayes, University of Florida; Dr. Alan T. Herlihy, Oregon State University; Dr. Robert B. Jackson, Duke University; Dr. Glenn P. Juday, University of Alaska; Dr. William S. Keeton, University of Vermont; Dr. Jessica E. Leahy, University of Maine; and Dr. Barry R. Noon, Colorado State University.

Because of the mystery involved with the science review the user groups asked for more time to comment on draft Forest Service planning rules of February 14. The coalition, composed of both the powered-recreation industry and commodity groups, was clearly worried that the scientists would tilt too much toward protection of resources.

Said the coalition in an April 22 letter to Under Secretary of Agriculture Harris Sherman, "The identity of members of this group of scientists remains unknown to us; thus we are unaware of any participation by scientists affiliated with our associations or scientists from fields related to our industries. It is disconcerting that we are unable to identify the scientists in our search to date or the particular opinions authored by those scientists so that we may evaluate them from our perspective."

Unlike the rec industry environmentalists in December demanded that the Obama administration establish a committee of scientists to guide the preparation of the next planning rule. More than 100 groups asked for such a committee, as permitted by the National Forest Management Act of 1976 (NFMA).

But a coalition of Forest Service retirees disagreed. "We do not believe that NFMA requires that a Committee of Scientists be formed for every revi-

sion of the planning regulations," the National Association of Forest Service Retirees told the agency. "In fact, we believe that the long experience of the Forest Service in planning, the history learned from litigation, and existing resources should be used to develop the current revision of the planning regulations."

When the Forest Service proposed the regs in February it set a deadline for public comments of May 16. The interest groups asked Under Secretary Sherman to extend the comment period 90 days to mid-August.

In their letter to the Forest Service the groups advanced a number of reasons for an extension, including the possibility that members of a committee of scientists may be named shortly. "We will need additional time to evaluate the qualifications and perspectives of the scientists, and the substance of their comments and recommendations," said the letter.

Among the recreation groups signing the letter were the American Motorcyclist Association, Americans for Responsible Recreational Access, the United Four Wheel Drive Association and the BlueRibbon Coalition. Among the nonrecreation groups signing the letter were the American Forest & Paper Association, the American Forest Resources Council, the National Mining Association, the National Cattlemen's Beef Association and the Public Lands Council.

The letter is available at: [http://www.sharetrails.org/uploads/Forest\\_Planning\\_Rule\\_Comment\\_Extension\\_Request.pdf](http://www.sharetrails.org/uploads/Forest_Planning_Rule_Comment_Extension_Request.pdf).

As required by the NFMA the Forest Service has since 1976 prepared 127 forest plans to guide land uses in 155 national forests and 20 grasslands (some plans cover more than one forest and/or grassland.)

Under NFMA forest plans are to be revised every 15 years. However, the agency said dozens of the existing plans are overdue for revision because they should have been rewritten between 1998 and now.

While the Forest Service prepares the new rule it will use a 2000 Clinton administration rule to guide planning by individual forests. However, that 2000 rule also allows forests in turn to use a 1982 rule. The 1982 rule may be the choice of most forests because the 2000 rule was so complex, the agency said.

The proposed rule and information about public comments are available at [www.fs.usda.gov/planningrule](http://www.fs.usda.gov/planningrule).

## **EPA and Corps try out new wetlands permit policy**

The Obama administration proposed guidance April 27 that would provide a broad new definition of waterways in the country subject to Section 404 Clean Water Act permits.

The guidance, developed by EPA and the Corps of Engineers, interprets a confusing U.S. Supreme Court decision that appeared to limit federal 404 permitting authority to navigable waters. That is the famous *Rapanos* decision.

In their draft guidance EPA and the Corps would include under the navigable waters rubric:

- \* navigable waters (of course);
- \* interstate waters;
- \* wetlands adjacent to navigable waters or interstate waters; and
- \* semi-permanent nonnavigable tributaries to navigable waters.

The definitions in the 38-page draft guidance appear to stretch to the maximum the meaning of navigable waters as described in the *Rapanos* decision.

Said a coalition of oil and gas companies in a memo that was sent to the White House, "The draft guidance is a major expansion of the Clean Water Act's jurisdictional reach over purely intrastate waters, and it fails to meet Supreme Court requirements." The companies include ExxonMobil Corp. and Marathon Oil Corp.

The companies hinted strongly at a lawsuit, charging in their memo that "unilateral agency guidance is not the

correct approach to expanding the agencies' authority and will lead to even further litigation and confusion."

The draft guidance has also aroused the ire of 170 House members from both parties. Besides the substance of the draft, the critics argue that EPA and the Corps don't have authority to interpret the Supreme Court decision in guidance. They say the agencies must use formal rule-making procedures.

(The administration did say it would take public comments for 60 days on the draft guidance.)

Said the House members, led by Reps. Bob Gibbs (R-Ohio) and Tim Holden (D-Pa.), "The Agencies cannot, through guidance, change the scope and meaning of the Clean Water Act or the statute's implementation regulations. If the Administration seeks statutorily changes to the Clean Water Act, a proposal must be submitted to Congress for legislative action. If the Administration seek to make regulatory changes, a notice and comment rulemaking is required."

But the administration said it was simply trying to bring predictability to individual projects. Said Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy, "The proposed joint EPA and Army guidance will clarify Clean Water Act jurisdiction and help the Corps and its partner agencies protect important aquatic resources and watersheds that communities rely on for their quality of life and essential services."

The Supreme Court was evenly divided in its June 19, 2006, decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, which muddied the regulatory waters. On the one hand the court did uphold the authority of the Corps and EPA to regulate water bodies. But crucially it also limited the definition of a water body to navigable waters.

Conservationists were pleased. Said Whit Fosburgh, president of the Theodore Roosevelt Conservation Partnership, "This action has been taken with no expansion of federal reach but simply restoring protections Congress origi-

nally put in place. This not only will conserve healthy habitat and water quality; it also will safeguard and support the sporting traditions that tens of millions of Americans enjoy."

### **Park Service trying to figure out FY 2011 LWCF direction**

Park Service administrators of both the federal and state sides of the Land and Water Conservation Fund (LWCF) are waiting for their higher ups to decide how to divide up fiscal year 2011 appropriations money.

The federal side sent up to management April 22 a proposed list of acquisitions for the federal system. State side administrators are waiting for management to tell them how much of the \$40 million Congress appropriated they can actually allocate for grants.

Senate appropriators told *FPR* that because the fiscal 2011 money law (PL 112-10 of April 15) is contained in a CR and not an appropriations bill the Office of Management and Budget has considerable discretion in setting spending priorities.

But if OMB and Park Service higher ups follow the recommendations of PL 112-10, they will allocate \$55 million for national park land acquisition and \$40 million for state grants, more or less.

For the federal side of LWCF that represents a big decrease of \$123 million from fiscal 2010. But the \$40 million for state grants matches a fiscal 2010 appropriation. However, those numbers are far less than the \$384 million the administration requested for the federal side in fiscal 2011 and the \$40 million the administration requested for state grants.

Still, the final numbers far exceed the amounts the House initially approved February 14 in a fiscal 2011 spending bill - \$41.1 million for federal land acquisition and no money for state grants.

Republicans attacked the federal

side of LWCF. In both the House and Senate they said time and again this spring that in these austere times the federal government should concentrate more on eliminating a huge land management agency maintenance backlog and less on acquiring more land.

As we have reported before, ranking Senate Energy Committee Republican Lisa Murkowski (R-Alaska) told Secretary of Interior Ken Salazar at a Senate Energy Committee hearing on the Interior Department budget, "Given the pressing need to balance our budget, I have to question this spending. Each land management agency within the Department of the Interior already has a sizeable maintenance backlog. The National Park Service alone is at \$9 billion. If we cannot afford to manage the land that we already have entrusted to the federal government, then it is irresponsible to acquire more."

Despite the Republican complaints the Park Service does have \$55 million to spend on land acquisition and is already working on priorities. "We just sent up a list to management and it's just starting to move up the line," said a Park Service spokesman April 22. "We have 30 days to respond to (appropriations) committees on our recommendations."

Even though NPS has a \$9 billion maintenance backlog, as Murkowski maintains, it also has a \$2.2 billion backlog in land acquisitions. The Park Service provided us with a list that showed a prospective list of 12,391 tracts covering 1.8 million acres.

The list includes such big-ticket items as \$199 million for Grand Teton National Park (presumably including the purchase of \$107 million in State of Wyoming inholdings), \$120 million in Big Cypress National Preserve mineral rights, and \$176 million for the Wrangell-St-Elias National Park and National Preserve.

While the Park Service's land acquisition recommendations are moving up the food chain, state grants are waiting for direction from the top to move down the food chain. "When we get a

final tally from our budget people we will process the allocations down to the states," said Wayne Strum, acting chief of state and local assistance programs.

How much the powers that be shave off the \$40 million state-side appropriation remains to be seen. "Administrative costs have to come out of that and two-tenths of a percent has to come off of that," said Strum. What is left will be allocated by formula in the overarching law, with priority set in part by population and in part by states.

Here are fiscal 2011 appropriations for some conservation programs:

\* Federal side of LWCF: a decrease of \$123 million, or an appropriation of \$165 million compared to the \$277.9 million appropriation in fiscal 2010.

Further federal LWCF breakdown:  
BLM: \$22 million, fiscal 2010 \$29.7 million; FWS: \$55 million, fiscal 2010 \$86.3 million; NPS: \$55 million, fiscal 2010 \$86.3; and FS: \$33 million, fiscal 2010 \$63.5 million.

\* State side of LWCF: no change, an appropriation of \$40 million, which matches fiscal 2010.

\* State wildlife conservation grants: a decrease of \$28 million, or an appropriation of \$62 million compared to \$90 million in fiscal 2010.

\* Forest Legacy (from LWCF): a decrease of \$23.5 million, or \$53 million compared to a fiscal 2010 appropriation of \$76.5 million.

### **Land managers say they help secure borders; GAO unsure**

The Obama administration said April 15 that its agencies cooperate with Border Patrol agents who operate on public lands on the nation's borders with Mexico and Canada. Western House Republicans counter that the agencies use environmental laws to deny access.

Kim Thorsen, deputy assistant secretary of Interior for Law Enforcement, said BLM and other agencies follow the directives of a March 2006 Memorandum of

Understating between the Interior Department and the Department of Homeland Security (DHS) on access to public lands on the borders.

Thorsen concluded at a hearing on border security of the House Natural Resources Committee, "We invite you to come to the border so that we may show you firsthand how successful we have been in cooperating with DHS in achieving our respective missions. We will continue to work with DHS to better our collaborative relationship."

But House Natural Resources Committee Republicans charged April 13, "Unfortunately, federal land managers are using environmental regulations to prevent Border Patrol from accessing portions of the 20.7 million acres along the U.S. southern border and over 1,000 miles of the U.S.-Canada border."

Committee chairman Doc Hastings (R-Wash.) said the 20.7 million acres of Department of Interior and Forest Service land "includes 4.3 million acres of 'wilderness areas' where use of motorized vehicles, construction of roads and permanent security structures are prohibited. We need to give the Border Patrol both the authority and the tools needed to monitor our federal lands on the border."

The Government Accountability Office (GAO) backed the Republican claims. "Patrol agents-in-charge at 14 of the 26 Border Patrol stations along the southwestern border reported experiencing delays in getting a permit or permission from land managers to gain access to portions of federal land because of the time it took land managers to complete the requirements of the National Environmental Policy Act and the National Historic Preservation Act," said Anu K. Mittal, director of Natural Resources and Environment for GAO in testimony submitted to the House committee.

The Republicans, led by Hastings and Rep. Rob Bishop (R-Utah), introduced a bill (HR 1505) April 13 to guarantee DHS access to public lands along the border. Bishop chairs the House subcommittee on National Parks, Forests and Public Lands.

HR 1505 would waive some 30 laws, if DHS sought access to the border for security purposes. The laws include the Wilderness Act, the Endangered Species Act, the National Historic Preservation Act, the Safe Drinking Water Act, the Wild and Scenic Rivers Act, and more.

The Department of Agriculture also testified that the Forest Service was working closely with the border patrol, particularly in the Coronado National Forest in Arizona. Said Jay Jensen, deputy under secretary of Agriculture for Natural Resources, "To improve the security of our borders and protect important cultural and natural resource values and recreation opportunities, the Forest Service and Border Patrol missions mesh well with one another."

The U.S. Border Patrol also said federal land managers were cooperating with border security while protecting sensitive public lands. "Although the Border Patrol's enforcement efforts on federal lands can pose unique challenges, the relationships and partnerships that we have fostered with DOI, as well as other federal, state, local and tribal agencies have enabled us to better execute our border security mission in these areas while minimizing the impact to the environment," said Ronald Vitiello, deputy chief of the United States Border Patrol.

Numerous national parks, wildlife refuges, national forests and other public lands stretch along the United States border with Mexico, including Organ Pipe National Monument, Coronado National Forest, Buenos Aires National Wildlife Refuge, Carlsbad Caverns National Park, Big Bend National Park, and Imperial Dunes Recreation Area (Bureau of Land Management).

## Notes

**Congress returns next week.** Quiet reigned on Capitol Hill the last two weeks as the House and Senate took an Easter break. But that peace will end Monday (May 2) when the Senate returns to work and Tuesday (May 3) when the House returns. Of immediate concern is the federal debt limit. If Republicans refuse to increase it, the federal

government could shut down. More pro-actively, the Senate Budget Committee should begin work on a fiscal year 2012 budget. The House has approved its budget so, as soon as spending caps are set for individual appropriations bill, appropriators may begin to move the bills.

### **Obama posts road spending mark.**

President Obama said last week that he is determined to invest in surface transportation, despite the nation's budget woes. In a speech at Northern Virginia Community College in Annandale, Va., the President seemed to stand behind his fiscal year 2012 budget request for a \$556 billion, six-year surface transportation program. It would provide robust funding for such outdoor programs as transportation enhancements, recreational trails, scenic byways and federal lands roads. Addressing Republican recommendations for half that much spending Obama said April 20, "So, yes, we're going to have to save wherever we can; and my proposal makes some tough cuts to some worthy programs and services that if we were in better times I'd continue to fund. But I'll tell you what I'm not going to do. We're not going to reduce the deficit by sacrificing investments in our infrastructure. We're not going to allow our roads and our bridges to grow more and more congested while places like China are building new roads. . ." As we reported last month, Obama signed a bill into law March 4 that extended the existing surface transportation law for seven months, or until the end of September (PL 112-5). That gives Congress a little time to write a new, multi-year surface transportation law to replace the existing law that technically expired at the end of September 2009. The House Transportation Committee is expected to take the lead next month in writing its version of a bill, followed by the Senate Environment and Public Works Committee. Something less than a five-year bill is a possibility (*see next item*).

### **Baucus predicts short road bill.**

Senate Finance Committee Chairman Max Baucus (D-Mont.) said recently that Congress may end up extending an existing surface transportation law for two years instead of passing a big new bill. Baucus controls the purse in the Senate.

He said with Congressional Republicans and President Obama both opposed to an increase in the gasoline tax, Congress isn't about to approve a big new law. The Obama administration has proposed a five-year, \$556 billion program (*see previous item*). Senate Environment and Public Works (EPW) Committee Chairman Barbara Boxer (D-Calif.) has said she is committed to writing such a bill. Baucus made his remarks at an EPW committee hearing on surface transportation.

#### **Safe Routes to School bill in.**

Senate supporters of the Safe Routes to School program introduced legislation (S 800) recently that would extend the program for five fiscal years, from fiscal year 2012 through fiscal 2016. S 800 would continue the existing allocation

from the Highway Trust Fund of \$183 million per year. Said lead sponsor Tom Harkin (D-Iowa), "Making these small investments and changes can have a big impact on a kid's well-being. And, as an added bonus, by providing safe routes to walk and bike to school, we encourage kids to be more active and help them to lead happier, healthier lives." He said the spending is justified because local governments are financially strapped. The money would be allocated based on a state's overall share of the student population. From 70 to 90 percent of the money would have to be used on infrastructure, such as bike lanes. Presumably, the bill would not move on its own but rather would be included in an omnibus, multi-year surface transportation bill, if one is written this year.

## **Boxscore of Legislation**

### LEGISLATION

### STATUS

### COMMENT

#### **Appropriations 2011 CR Omnibus**

HR 1473 (Rogers)

President signed into law April 15 as PL 112-10.

Reduces spending across the board compared to fiscal 2010, sometimes substantially. Includes Interior, Energy and Water, Agriculture and Transportation bills.

#### **Appropriations fiscal 2012**

No bill yet

Administration proposed its recommendations February 14.

Would reduce spending overall but give LWCF full funding of \$900M.

#### **Budget fiscal 2012**

H Con Res 43 (Ryan)  
(No Senate bill yet)

House approved April 15.

Would reduce spending overall but keep natural resources level.

#### **Urban parks**

HR 709 (Sires)

Sires introduced February 15.

Would provide \$450 million per year to rehabilitate urban parks.

#### **Roadless areas**

HR 1581 (McCarthy)

McCarthy introduced April 15.

Would reverse Clinton roadless rule, block Salazar 'wild lands' policy, release FS and BLM roadless areas.

#### **National monuments**

HR 302 (Foxx)  
HR 758 (Herger)  
S 407 (Crapo)

Foxx introduced January 18.  
Herger and Crapo introduced February 17.

Would require state approval of any national monument under Antiquities Act. Herger, Crapo would require Hill approval within two years.

#### **California Desert monument**

S 138 (Feinstein)

Feinstein introduced January 25.

Would designate a Mojave National Monument and protect 1.6 million acres.

#### **National park overflights**

HR 658 (Mica)  
S 223 (Rockefeller)

House approved April 1.  
Senate approved February 17,

House tilts towards tour operators and Senate tilts more toward protection.

#### **Ski areas**

HR 765 (Bishop)  
S 382 (Udall)

Bishop introduced February 17.  
Udall introduced February 17.

Would have FS allow year-round rec activities in ski resorts.