

# Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Gerrie Castaldo

Volume 30 Number 10, May 25, 2012

In this issue. . .

**LaHood endorses Senate road bill.**

Also singles out LWCF for praise. As House-Senate conference digs into details in negotiations. Bill still a long shot..... Page 1

**Udall looking at NPS endowment.**

In a National Park Centennial bill. May be limited. Staff warns of political climate.. Page 4

**Calif. state parks under the gun.**

Again. Revised May budget would eliminate lifeguards in vaunted beaches. Some outside aid.. Page 5

**Congress passes horse-packer bill.**

Like lightning. Measure would let use continue in Sequoia wild. NPS to determine use level.. Page 6

**Senators hit Biscayne plan.**

Object to no fishing, no boating zones in GMP. Heat on NPS.. Page 7

**Hill begins new budget dispute.**

Senate rejects budgets. House votes for even bigger cuts.. Page 8

**Report highlights benefits of rec.**

Sportsmen say western counties do better with conservation.... Page 9

**Brewer vetoes fed lands bill.**

Says Arizona measure to transfer fed land may not be legal... Page 10

**FS roadless reg goes to top court.**

Wyoming appeals circuit decisions backing Clinton 2001 rule... Page 11

**Notes..... Page 13**

**Boxscore of Legislation..... Page 15**

**LaHood backs LWCF in Senate roads bill endorsement**

Secretary of Transportation Ray LaHood May 16 backed the Senate version of a surface transportation bill (S 1813) that is now in a conference committee with the House. S 1813 is more generous to recreation programs than lead House bills.

LaHood had little good to say about the counterpart House bills (HR 4348, HR 7).

In a 16-page letter to conference chair Sen. Barbara Boxer (D-Calif.) LaHood praised a Senate provision that would guarantee \$700 million per year for two years for the Land and Water Conservation Fund (LWCF) without requiring an appropriation. The money would come from offshore oil and gas revenues.

LaHood says the administration "supports" the provision. He played the economic benefits card. "Outdoor recreation and conservation are engines for our nation's economy, creating jobs and infusing hundreds of millions of dollars into local communities and businesses through activities like hunting and fishing and tourism, LWCF state grants leverage public-private partnerships to support locally driven conservation efforts, which is at the heart of President Obama's America's Great Outdoors initiative," he said.

House and Senate conferees met once en masse May 8 to begin debate on a comprehensive surface transportation law. The Senate measure would pay for two years worth of programs. The lead House bill (HR 4348) would only extend existing law for three months through October, but it is a proxy for a House Transportation Committee bill (HR 7)

that would pay for five years worth of programs.

In shorthand the Senate bill would roughly maintain funding for traditional recreation-related transportation programs - transportation enhancements, Recreational Trails Program, Safe Routes to School and federal land roads. The House committee bill would either eliminate outdoor programs altogether or force them to compete with other programs for scarce allocations.

Despite the fact that the House and Senate are actually negotiating in a conference committee, the overall outlook for the legislation is not good. Above all, Tea Party Republicans have repeatedly made known to House leaders they will not accept Senate provisions for financing S 1813.

Those provisions, unrelated to park and rec policy, would provide \$12 billion per year from such things as removing a tax credit on certain biofuels in addition to gasoline taxes, the usual source of money for a highway bill. Senate Finance Committee Chairman Max Baucus (D-Mont.) developed the offsets.

Still, the negotiations are proceeding, said Boxer, chair of the Senate Environment and Public Works Committee. At a press briefing last week before the House left on vacation she said, "While I am not going to address specific negotiations or discussions between the conferees today, I can tell you that we have moved past the organizational stage, and we are now working on the substance of the bill. Staff has been meeting every day on all the issues, and they are working together to address each outstanding item."

In his letter to Boxer LaHood appeared to assume the conferees would not even consider the substance of HR 7, the House Transportation Committee bill. "S. 1813 and H.R. 4348 are the only bills passed by their respective chambers and therefore determine the scope of the conference," he said. House Republican leaders have assumed HR 7 would be included in the talks.

Then LaHood endorsed the Senate approach. "The Administration supports reforms in the Senate bill to consolidate programs, focus on national goals, performance and accountability, and continue the ban on earmarks," he said.

In his letter LaHood did not single out recreation programs other than LWCF for either praise or condemnation. The other programs include transportation enhancements, recreational trails, scenic byways, and Safe Routes to School.

He did, however, praise a Senate provision that would clarify the roles of the Federal Aviation Administration (FAA) in developing air tour management plans over national parks. By some accounts the responsibilities of the two agencies are not clear, leading to bureaucratic gridlock over completion of air tour plans.

"By replacing broadly shared FAA and NPS responsibilities across all aspects of the commercial air tour program with more focused and complementary agency responsibilities, the (Senate) amendments will facilitate the establishment of air tour management plans in national parks in less time and using fewer resources," LaHood said. "The amendments clarify that NPS will primarily administer this program, while fully preserving FAA authority and jurisdiction for aviation safety, management of the national airspace system, and other aviation oversight."

After the conferees met May 8 they broke into private subgroups by major issue category, such as safety, financing, surface transportation, etc. Those subgroups have not reported back yet. But Boxer said she was "optimistic that the conferees will reach agreement on the surface transportation bill."

Although LaHood praised LWCF, House Natural Resources Committee Chairman Doc Hastings (R-Wash.), a conference leader, did not. He said May 8 he found "particularly egregious" the Senate provision.

"The mandatory buying of more

land under LWCF is a fiscal dereliction of duty - especially since the government can't afford to maintain the lands it already owns," he said. "The maintenance backlog on America's federal lands registers in the multiple billions of dollars. Congress should be addressing this backlog, not adding to it."

However, the ranking Democrat on Hastings's committee, Rep. Edward Markey (D-Mass.), included LWCF in a list of provisions he recommended for inclusion in a conference bill. "The conference report should include funding for the Land and Water Conservation Fund, Secure Rural Schools and Payments in-Lieu of Taxes . . .," he said.

LaHood also addressed a high-profile dispute over the Keystone Pipeline. The House bill would approve the pipeline but LaHood promised a veto if the approval were included in a surface transportation bill. However, conference support for the Keystone provision may be waning, at least according to Rep. Nick Joe Rahall (D-W. Va.), one of the Democrats who support the mostly-Republicans proposal, as quoted in national publications.

Here's where the Senate stands compared to the House Transportation Committee bill on specific programs:

**ENHANCEMENTS:** The House committee bill would remove the existing \$900 million per year set-aside for transportation enhancements, but would allow the program to compete with other program for money from state highway transportation offices. The Senate bill would maintain guaranteed spending for the program at or about \$900 million for fiscal 2013 and 2014.

Said the Rails-to-Trails Conservancy in a bulletin to its members, "The bill will ensure greater local access to funds and a fair shot at approval for the most beneficial projects, and it preserves decision-making structures that enable public participation and well-balanced trail systems."

**RECREATIONAL TRAILS:** The House committee and the Senate committee are

in rough agreement on setting aside \$85 million per year for the Recreational Trails Program.

The office of Sen. Amy Klobuchar (D-Minn.), the lead advocate for the program in the Senate, said the senator "has secured the continuation of the Recreational Trails Program as part of a larger Surface Transportation bill."

**SCENIC BYWAYS:** The House committee bill would eliminate the program. The House committee would also eliminate funding for the America's Byways Resource Center. That may not matter because the Obama administration is already closing the center down. The Senate bill would allow the scenic byways program to compete for money from either a Transportation Mobility Program or from transportation enhancements.

**FEDERAL LANDS ROADS:** The House committee bill would set aside \$535 million per year for federal land roads, 38 percent of which would go to National Park Service roads (or \$203 million), 32 percent to Forest Service roads (\$171 million) and 4.5 percent to the Fish and Wildlife Service.

The Senate bill would also keep federal and Indian land roads alive with an annual allocation of \$1 billion. Of that \$260 million would be allocated to national park and national wildlife refuge roads.

**NATIONAL PARKS OVERFLIGHTS:** No comparable House provision. The Senate bill would limit environmental restrictions in an upcoming Grand Canyon National Park air tour management plan. The park tells us the final plan should be completed this spring or summer.

The bill says, "None of the environmental thresholds, analyses, impact determinations, or conditions prepared or used by the Secretary to develop recommendations regarding the substantial restoration of natural quiet and experience for the Grand Canyon National Park required under section 3(b)(1) of Public Law 100-91 shall have broader application or be given deference with respect to the Administrator's compliance with the National Environmental Policy Act

for proposed aviation actions and decisions."

Public Law 100-91 is the National Parks Overflight Act of 1987, which required the air tour plan. Sen. John McCain (R-Ariz.) and Senate Majority Leader Harry Reid (D-Nev.) prepared the Senate provision.

## **Udall NPS Centennial bill may focus just on endowments**

Sen. Mark Udall (D-Colo.) is discussing with his colleagues possible legislation to mark the centennial of the National Park System in 2016, his office said this week.

But the senator at the moment holds limited ambitious, with an endowment the main focus. And he is not optimistic even limited legislation can move this year in Congress.

But Udall and his staff are continuing to discuss a possible bill that would help the Park Service carry out its blueprint for the Centennial, *A Call to Action*.

"The senator is interested in potential centennial legislation," said Alex McCarthy, a spokeswoman for the senator. "He has discussed with colleagues including Sen. Bingaman how an endowment mentioned in the Park Service study can be used to bolster the resource." Bingaman chairs the Senate Energy Committee.

However, the spokeswoman added, "Crafting legislation in this divisive Congress this year is going to be a challenge. But (Udall) and his staffers are working on it."

Udall chairs the Senate subcommittee on National Parks. The subcommittee held a hearing last September on the Park Service plan for the Centennial, dubbed *A Call to Action*, that recommends an endowment. *A Call to Action* was published on Aug. 25, 2011.

The Park Service report played down the need for increased appropriations from Congress to upgrade the parks for the Centennial, but it

did call for the establishment of the endowment, with an emphasis on philanthropic contributions. "To do so we will develop a \$1 billion National Park Service second-century endowment campaign working in partnership with the National Park Foundation and national park friends groups," said *A Call to Action*.

We asked Udall's aide about possible provisions of a centennial bill in addition to an endowment, but she would only confirm a possible endowment plank.

It is understood that Udall is not eager to try to commit Congress to providing a billion dollars, or anything like it, for an endowment.

Udall's legislation is one part of a much broader campaign to ready the parks for the 2016 Centennial.

Working parallel with the Park Service and Congress is a summit of interest groups cochaired by the National Parks Foundation, the National Parks Hospitality Association and the National Parks Conservation Association. Here are some of the things the three groups are working on:

\* NATIONAL SURVEY: The National Parks Conservation Association and the National Park Hospitality Association intend to commission a survey of the national parks. The survey will be conducted as a joint effort by polling firms representing both political parties.

The results of the poll will be shared with Democrats and Republicans, including platform committees for the upcoming August-September conventions.

\* PR CAMPAIGN: NPS Director Jon Jarvis and the summit organizers are searching for a major communications firm, perhaps from Manhattan, to help spread the Park Service brand. Once the firm has done its work the Park Service partners would help publicize it.

\* SUMMIT ACTION ITEMS: The three host groups of the summit of Park Service partners are beginning to

implement the steps they agreed to at a January meeting.

The *America's Summit on National Parks* was convened with some 300 attendees from around the country in Washington, D.C., in January. It prepared the groundwork for a Statement of Principles and Action Items to follow up on the NPS *Call to Action*.

\* SUMMIT SIGNATURES: The three host summit groups are attempting to build on a master list of partner groups from around the country. Signatures now exceed 300 and the groups hope to obtain 1,000.

The 36 recommendations in *A Call to Action* include everything from more healthful eating to greater diversity in the workforce. Many track the recommendations of an America's Great Outdoors initiative, President Obama's main outdoor recreation program.

The billion-dollar foundation recommendation is reminiscent of a Bush administration proposal to spend \$2 billion on non-core improvements to the National Park System. In 2007 then Secretary of Interior Dirk Kempthorne launched a \$3 billion National Park System Centennial Initiative that included the \$2 billion Centennial Challenge.

*A Call to Action* may constitute a doable agenda because it was prepared by NPS employees for NPS employees, in consultation with outside allies. Numerous landmark policy reports on the future of NPS have been prepared over the last decade both by NPS and by blue ribbon commissions, to little effect. Most have sat on shelves.

## **California state parks may take it in the neck again**

California Gov. Jerry Brown (D) proposed a revision to his fiscal year 2012-2013 budget May 12 that would reduce operations spending in the state's once-vaunted parks system by more than 60 percent.

In a May 12 announcement of

mammoth budget cuts the state said it would, among other things, eliminate lifeguards on its formerly incomparable system of state beaches.

The state said it would be forced to reduce spending for park operations from \$117,840,100 in fiscal 2011-12 to \$43,662,600 in the fiscal year beginning July 1.

When Brown initially proposed the new budget in January he anticipated a budget deficit government-wide for the year of \$9.2 billion, before cuts. But this month he said the deficit would be \$16 billion. Brown said the situation next year could become even direr if the voters in November didn't approve a tax increase.

California's problems contrast with gradually improving economic pictures for state and local governments around the country. As we reported in the April 13 issue of *FPR* the Government Accountability Office, the National Governors Association, the National League of Cities, and the National Association of Counties all said that states, cities and counties were gradually crawling out of the recession.

But not California. There the fiscal 2011-12 California state budget already mandates the closure of 70 of the state's 278 parks by July 1. That will save \$11 million. In addition, the original fiscal 2012-13 budget of January would eliminate 20 percent of ranger positions in the state park system and all lifeguard positions. That would save another \$22 million.

Now Brown has raised the ante with a proposal to eliminate lifeguards on beaches, to eliminate grants to local law enforcement agencies for water safety patrols and to reduce fire-fighting capabilities, among other things.

Private interests and nonprofit groups are trying to help. The California State Parks Foundation said May 17 it will provide 13 grants for a total of \$328,586 to keep state parks open.

Said Foundation President

Elizabeth Goldstein, "It is our hope to assist in providing reprieves for as many parks as possible by working closely with the parks community. We've been working hard on a number of different fronts, such as launching a major fundraising campaign and offering new technical assistance to nonprofits working to keep parks open."

The efforts of the foundation and other groups and individuals may be able to keep open many of the 70 units Brown wanted to close beginning July 1, said Goldstein.

In Brown's latest fiscal 2012-2013 California State Parks budget request the biggest losers would be a 2006 fund approved by the voters called the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Fund of 2006. It would drop from \$43,260,500 to \$19,691,000.

## **Congress passes bill giving Sequoia packhorse access**

Moving at lightning speed - for Congress - the House and Senate late last week gave final approval to legislation to allow horse packing to continue in Sequoia and Kings Canyon National Park wilderness areas.

The measure (HR 4849) would allow horse packing to continue until either (1) wilderness studies are completed (an estimated three years) or (4) four years.

That is somewhat different from an original version of the bill the House approved April 27 that would have extended the use just for 2012 and 2013.

Said Sens. Dianne Feinstein (D-Calif.) and Barbara Boxer (D-Calif.) of the new version of HR 4849 in a joint statement, "There are up to 20 businesses that depend directly upon pack stock use in these parks. Many jobs will be lost, and some pack stock operators could even go out of business, if there are no pack stock permits this year."

Rep. Devin Nunes (R-Calif.),

original sponsor of HR 4849, said, "While I have strong reservations about the Senate changes, I have been given firm assurances that the altered bill solves the problems faced by the backcountry horsemen." His reservations reportedly are over a provision of the bill that gives the Park Service flexibility in setting permit levels.

That is, the bill says NPS will allow pack horsing, but "at use levels determined by the Secretary to be appropriate and subject to any terms and conditions that the Secretary determines to be appropriate."

Again, the Congressional trail began with House passage of HR 4849 April 27. Sens. Feinstein and Boxer then revised the bill and the Senate approved it May 17. The House gave final approval to the Senate revisions May 18.

President Obama is expected to sign HR 4849, in that Democrats and Republicans agreed on the issue.

The bill is designed to overcome a federal court order blocking the use of horses to pack tourists into Sequoia and Kings Canyon National Park wilderness areas. The court said simply that the Park Service failed to prove the use was a "necessity" under a general management plan.

The court order touched off a flurry of activity to preserve the packers' tourist season, with both the plaintiffs and the Park Service proposing plans to allow the use to continue. However, the plaintiffs - the High Sierra Hikers Association - would place new curbs on the use in their proposal.

For a decade hikers and environmentalists have fought over the use of packhorses to carry tourists into the backcountry, not only in Park Service wilderness but in national forests and in national wildlife refuges. The critics argue that the horses damage sensitive areas, including meadows.

In an earlier lawsuit, *High Sierra Hikers v. Blackwell*, No. 02-

15504, the Ninth U.S. Circuit Court of Appeals on Aug. 25, 2004, held that the Forest Service erred in granting permits for commercial packhorse use without preparing environmental documentation first.

In 2009 the same plaintiff, High Sierra Hikers, filed a lawsuit in federal court that argued NPS in authorizing packhorses in Sequoia and Kings Canyon didn't comply with a general management plan (GMP).

On January 24 U.S. District Court Judge Richard Seeborg in the Northern District of California agreed, holding, "Here, the NPS admits to promulgating the GMP without this requisite balancing. It does not argue that its analysis was adequate or that its evaluation concluded that preexisting commercial activity was necessary. Rather, it simply states that the agency is currently conducting a finding of necessity and a determination is forthcoming in a (Wilderness Stewardship Plan)."

That decision is cited as *High Sierra Hikers Association v. Department of the Interior*, No. C 09-04621 RS, January 24.

Facing the prospect of an economic disaster in the local economy and criticism from both the left and right because of the lawsuits, the High Sierra Hikers Association April 27 asked Judge Seeborg to allow some horse packing this year.

"The lawsuit we filed in 2009 makes crystal clear that we seek only reasonable limits and controls to protect these magnificent national parks from harm," said Peter Browning, president of the hikers' group. "And we repeatedly have told both the Park Service and the court that we don't want the packers to be shut down."

The hikers said in a release they asked for minimal protections but NPS refused. "For example, the hikers' group requests that commercial packstock not be allowed to graze in the parks' most fragile high-elevation meadows. Such rules are already in place at other

national parks," said the association.

The Park Service itself May 2 asked the court to allow it to issue commercial use authorizations effective immediately. In the meantime NPS is encouraging outfitters to apply for 2012 permits.

## **No-boating zones in Biscayne Park draw senators' wrath**

Florida's senators - one from each political party - have entered the fray over a Biscayne National Park management plan, on the side of fishermen and boaters.

The senators object to the proposed establishment of a 10,522-acre marine reserve that would essentially bar fishing. And they object to other proposed "no combustion engine zones," in the ocean park

In a recent letter to Secretary of Interior Ken Salazar, Florida Sens. Bill Nelson (D) and Marco Rubio (R) recommended that the Park Service begin again on the general management plan (GMP) that was proposed last year.

"Secretary Salazar, because the duration of the GMP will be at least a decade, it is important we get it right," the senators wrote. "We urge you to work with the NPS to reconsider the proposed GMP and working (sic) cooperatively with the Florida FWC (Fish and Wildlife Commission). Together they can revise the management plan to ensure it will conserve the Park's valuable natural resources but will also maintain public access for anglers and boaters and reinstitute the appropriate Federal-state agency relationship so important to successful fisheries management."

A spokesman in the Southeast Region of the Park Service said May 23 that input on the draft from Congress, the state and the public is still under review. "To the best of my knowledge not date has been set for a final," he said.

The senators' complaints match those of House Republicans April 27 at

a twin hearing on the proposed Biscayne plan and on a January 23 rule governing off-road vehicle use in Cape Hatteras National Seashore in North Carolina.

Subcommittee on National Parks Chairman Rob Bishop (R-Utah) said the plan and the rule are part and parcel of an "overly restrictive Park Service policies (that) show signs of developing into a nationwide problem."

The Park Service proposed the new, 360-page Biscayne management plan on Aug. 19, 2011. Said Biscayne Superintendent Mark Lewis when the draft plan was published, "If you visit a national park out West, you expect to see tall trees and healthy populations of large mammals. If you visit Biscayne National Park, you expect to see healthy reefs with a lot of coral cover and lots of large fish of different species."

Sens. Nelson and Rubio said the proposal didn't balance protection with use. "Recognizing the substantial economic contribution of the recreational fishing and boating industry in Florida, in 2007, the NPS signed a Memorandum of Understanding with the FWC, specifically stating that the FWC and the NPS will provide for recreational and commercial fishing and opportunities for the angling public by seeking the least restrictive management actions necessary," they said.

"But the measures proposed in the NPS plan represent the most extreme tools available for making fishery management modifications in BNP, ignoring alternative ways to achieve the desired resource improvements without sacrificing the public's ability to access and enjoy the park," they concluded.

The thrust of the criticism is, as always, that the Park Service is favoring protection of the resource at the expense of public access and local economies.

But defenders of the plans, such as the National Association of Black Scuba Divers, argue that the restrictions in Biscayne actually do economic good.

## **Congressional spats setting scene for new budget crisis**

A series of votes in the House and Senate in the last fortnight suggest very strongly that Congress is heading for a budget cataclysm at the end of the year.

That is when an existing budget law is due to trigger across-the-board reductions in spending for both domestic and military spending, unless Congress revises that budget law.

In a series of votes a fortnight ago Senate Democrats and Republicans demonstrated they were at loggerheads over a fiscal year 2013 Congressional budget that would go into effect October 1. The week before the Senate votes the House approved revisions to its fiscal 2013 Congressional budget that would sharply reduce spending more than previously agreed to.

In the budget maneuvering the Senate May 16 rejected President Obama's budget by a zero-to-99 vote. It also rejected three Republican alternative budgets by votes of 42-to-57, 16-to-83 and 17-to-82. The votes were symbolic because Senate Democratic leaders are already using an August 2011 budget agreement to set appropriations spending caps.

For its part the House May 10 approved spending reductions in several specific programs (HR 5652) beyond those laid out in a March 29 House budget (H Con Res 112). H Con Res 112 posted a domestic-spending ceiling below the August 2011 level. HR 5652 did not address natural resources programs.

Even if the House and Senate are able to move appropriations bills, given their various budget limits, hanging over them is the potentially draconian, across-the-board January 2013 trigger. The trigger was included in the broad budget agreement among the House, the Senate and the administration (PL 112-25 of Aug. 2, 2011).

That agreement first set up total spending caps for fiscal years 2012 and



2013. Secondly, it established a Joint Select Committee on Deficit Reduction that was supposed to chop \$1.5 trillion from the budget over the next 10 years by Nov. 23, 2011. The 12-member Congressional panel failed to reach agreement, triggering across-the-board reductions in January 2013.

The squabbling between Democrats and Republicans and the House and the Senate now augurs for a most difficult set of negotiations when the January 2013 trigger approaches.

As for natural resources spending, if and when the trigger is pulled, most programs would be susceptible to as much as a five percent spending reduction each year, across-the-board, according to interest groups.

For now House and Senate Appropriations Committees are moving fiscal year 2013 appropriations bills based loosely on the August 2012 budget agreement. However, the committees are using different overall spending levels because they interpret the budget deal differently. It capped all federal spending at \$1.047 trillion for fiscal 2013.

The Senate is sticking with the agreement but House Republicans want greater savings. Their fiscal 2013 budget resolution (H Con Res 112), approved on the floor March 29, would provide \$19 billion less, or \$1.028 trillion. In addition the House would not reduce defense spending proportionately, taking a bigger bite out of domestic spending.

**Transportation:** The Senate Appropriations Committee approved its bill (S 2322) April 19 with an appropriation of \$53.4 billion, or almost \$4 billion less than the fiscal 2012 appropriation of \$57.3 billion. The House subcommittee on Transportation has not scheduled a mark-up yet. The House 302(b) allocation is \$51.6 billion.

**Energy and Water:** The House committee approved \$32.1 billion for its bill (HR 5325) April 25, or just about the same as the fiscal 2012

appropriation. The \$32.1 billion is \$1.3 billion less than the Senate 302(b) allocation of \$33.4 billion. The Senate committee approved its version of a bill (S 2465) April 26.

**Agriculture:** The Senate committee approved its bill (S 2375) April 26 with a spending cap of \$20.8 billion, or \$1.4 billion more than a House cap of \$19.4 billion.

## **Sportsmen's report highlights economic benefits of rec**

Western counties dominated by conservation/recreation lands enjoy better economies than western counties that host intensive development, according to a new report from a sportsmen's alliance.

Researchers hired by Sportsmen for Responsible Energy Development said May 22 that counties with significant conservation/recreation lands provided better jobs, had faster job growth and were more stable.

"The clear message from this report is that it makes good economic sense to balance hunting and fishing and recreation opportunities with development of resources on public lands," Brad Powell, energy director for Trout Unlimited, said at a press conference.

The findings of the report, *Conserving Lands and Prosperity: Seeking a Proper Balance Between Conservation and Development in the Rocky Mountain West*, echo a recent emphasis by the Obama administration on outdoor recreation and the economy.

On March 2 the White House hosted a national conference to emphasize the financial benefits of the outdoors. And to make the case that government spending on the outdoors pays off.

At the conference the President and his top aides highlighted a number of major conservation initiatives the administration has taken to spur the economy. They include: a recent NPS report that says the national parks

are big economic engines, a campaign to entice foreign tourists to visit the United States, the establishment last week of a new national waterways system, expanded conservation reserves, and, last but not least, an ambitious fiscal year 2013 budget request for conservation programs.

The by-invitation-only conference, *Growing America's Outdoor Heritage and Economy*, was attended by hundreds of outdoor leaders from around the country.

With that backdrop the sportsmen May 22 released a report that details the economic benefits of conservation/recreation to counties in the Rocky Mountains. The study by Southwick Associates looked at counties in Arizona, Colorado, Idaho, Montana, New Mexico, Utah and Wyoming. The sponsor, Sportsmen for Responsible Energy Development, includes in addition to Trout Unlimited, the Theodore Roosevelt Conservation Partnership and the National Wildlife Federation.

The study looked at areas with three different categories of land use emphasis: counties with large tracts of conservation/recreation lands, counties with mixed-use lands and counties with intensive development, usually energy and mining.

"The major takeaway," said Rob Southwick, president of Southwick Associates, "was the counties with the higher proportion of conservation lands the greater the economic growth has been since 1969." That is, between 1969 and 2009. "Conversely, the counties dominated by intensive land management had experienced lower levels of economic growth."

That translates into individual prosperity, Southwick said. "The average per capita income in counties with lands managed for conservation/recreation was \$38,000. For counties intensely managed it was \$30,000," he said.

As for the number of jobs, Southwick said, "When you look at the top five counties in terms of economies related to conservation/recreation and

compare them to the top five counties with intensive land management, the conservation/recreation counties got 5.3 times faster job growth."

And, of course, profitable businesses and the wealthy often choose to live in physically attractive environments, i.e. near conservation lands.

At the press conference Jim Lyon, vice president of conservation policy for the National Wildlife Foundation, said the groups will now spread the message to politicians and land managers. "We intend to take this study to Capitol Hill and to sit down with agency folks across-the-board and share this information," he said.

## **Arizona governor vetoes federal land transfer bill**

Arizona Gov. Janice K. Brewer (R) last week delivered a setback to a western campaign to force the federal government to turn over to states all federal lands within their borders.

Choosing to go in a different direction than Utah Gov. Gary Herbert (R), Brewer May 14 vetoed Arizona Senate Bill 1332 that would have ordered the feds to turn over 23 million acres of federal land by the end of 2014.

Brewer offered several reasons for her decision, beginning with alleged unconstitutionality. "Moreover, as a staunch advocate for state sovereignty, we still must be mindful and respectful of our federal system," she said. "The legislation appears to be in conflict or not reconcilable with U.S. Constitution Article IV Section 3, Clause 2 and Article VI, Clause 2, as well as the Enabling Act."

Article IV Section 3, Clause 2 of the U.S. Constitution says Congress "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. . ."

Article VI, Clause 2 says the laws

of Congress "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, . . ."

When Herbert in Utah signed similar legislation March 23 to transfer 28 million acres of federal land to the state his own legislative counsel warned that it was probably unconstitutional. Said the Utah Office of Legislative Research and General Counsel, "Under the *Gibson* case, that requirement would interfere with Congress' power to dispose of public lands. Thus, that requirement, and any attempt by Utah in the future to enforce the requirement, have a high probability of being declared unconstitutional."

But Arizona State Sen. Al Melvin (R), lead sponsor of Senate Bill 1332, says there is another case to be made, that the federal government consented when Arizona became a state to transfer all public lands to the state. "At statehood, the federal government promised all states that it would transfer title for all public lands within the state," he says at his website. "The U.S. Supreme Court has called these promises 'solemn compacts,' 'bilateral (two-way) agreements,' and 'solemn trusts' that must be performed 'in a timely fashion.' The western states are still waiting for the federal government to keep its promise."

Both the Utah and Arizona bills would have the federal government turn over to the states national parks, national forests, wilderness areas, national monuments, wildlife refuges.

The Utah bill HB 148 is a piece of a many-pronged campaign by Herbert to gain control over federal lands in his state. On Dec. 14, 2011, the State of Utah launched an initiative to gain the right to manage thousands of ways across federal lands.

In "notices of intent" the state warned the Interior Department it will file formal lawsuits to claim 18,784 RS 2477 rights-of-way (ROWS) across department-managed lands. The notices follow closely on the heels of two lawsuits the state filed on Nov. 14, 2011, for 804 ROWs.

Arizona Gov. Brewer said besides the constitutionality questions, she had another problem with Senate Bill 1332 - its cost.

"Furthermore, despite the claim that this bill has no fiscal impact, I believe there is a significant and unaccounted for fiscal impact associated with this legislation," she said. One part of that cost is the estimated \$1 per acre it would cost the state to manage the land each year. That's \$23 million for 23 million acres.

The second part is encumbrances from federal law. "These lands also come with significant compliance associated with legislation such as the Clean Water Act and The Endangered Species Act," Brewer said.

## Wyoming asks Supreme Court to end forest roadless rule

The State of Wyoming May 15 officially petitioned the U.S. Supreme Court to revoke a Clinton administration rule that bars most road building in roadless national forests.

The state argued that the Clinton administration in 2001 (1) usurped Congress's authority to designate wilderness, (2) failed to follow land use planning dictates of Congress and (3) prepared an inadequate EIS.

Wyoming Gov. Matt Mead (R-Wyo.) said the Supreme Court should overturn two U.S. Circuit Court of Appeals decisions and follow instead a decision of U.S. District Court Judge Clarence Brimmer in Wyoming.

"I believe that Judge Brimmer provided a well-reasoned opinion, which stated that the Forest Service circumvented Congress with the roadless rule, and I hope that opinion will be reinstated by the Supreme Court," said Mead in a statement.

Environmentalists will contest the petition for a writ of certiorari, if the Supreme Court accepts it. Said Tim Preso, an attorney for the Earthjustice environmental law firm, "We'll work to

protect America's best roadless forests and defeat Wyoming's last-ditch attempt to bulldoze, drill, and clear-cut these irreplaceable natural areas."

The path chosen by Wyoming to get to the Supreme Court - a petition for a writ of certiorari - is a difficult one. A writ is granted to review only those cases where an appeal is not available under the Supreme Court's rules. Four court members must agree to hear a case. The court usually grants only about one percent of such writs.

Both the Tenth and the Ninth circuits have upheld the Clinton rule that limits road construction and timber sales on 49 million acres of national forest. The Obama administration has signaled it will implement the Clinton rule.

Here are the arguments offered to the Supreme Court by the state, followed by the Tenth Circuit's reasoning in rejecting those arguments:

**Wilderness:** The Wyoming petition says the Clinton administration infringed on Congress's authority to designate wilderness. "As to the Wilderness Act, the Forest Service sought to evade Congress's explicit statutory reservation of authority by denying that it was designating wilderness areas," says the petition. "To facilitate its denial, the Forest Service articulated technical but illusory distinctions between wilderness and roadless areas. Thus, the Forest Service achieved the functional equivalent of wilderness while maintaining the appearance that it was not exercising a power reserved by Congress."

But the Tenth Circuit in a massive, 121-page decision on Oct. 21, 2011, 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."

**Planning:** Wyoming argues that the Clinton administration violated the National Forest Management Act (NFMA) by not revising forest plans. "The Forest Service claimed that it did not have to comply with NFMA because the nationwide rule was promulgated under the agency's general rulemaking authority set forth in the National Forest Service Organic Act," the petition says. "The Forest Service's assertion that it can change existing forest plans promulgated under NFMA without following the process set forth in NFMA is wholly without merit and directly contrary to the purposes of NFMA."

But the Tenth Circuit bought the administration argument that the roadless rule was prepared under the Forest Service Organic Act and not NFMA, thus exempting it from the NFMA planning requirements.

**NEPA:** Wyoming says the EIS prepared for the rule was illegal under the National Environmental Policy Act (NEPA) because the result was predetermined before the EIS process began. Said the state, "Finally, the rulemaking was completed in a mere fourteen months and left little opportunity for meaningful public participation or informed agency decision making, and thus subverted both the letter and spirit of NEPA."

But the Tenth Circuit upheld the EIS. "Accordingly, because the record does not contain sufficient evidence to show that the Forest Service irreversibly and irretrievably committed itself to a certain outcome before the NEPA analysis was completed, and because the Forest Service otherwise complied with the mandates of NEPA, we conclude that the Forest Service indeed took a 'hard look' at the environmental consequences of the Roadless Rule and

therefore did not act arbitrarily and capriciously in conducting its NEPA analysis," said the court.

### 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: After a seven-year struggle Secretary of Agriculture Tom Vilsack and Colorado Gov. John Hickenlooper (D) May 2 announced the completion of a final EIS for managing roadless national forests in Colorado.

The preferred alternative in the EIS would protect 4.2 million acres of forest, pretty much in accord with the 2001 Clinton administration roadless area rule. Both the Clinton rule and the Colorado preferred alternative largely forbid road construction, timber sales and other commercial activities in such areas. A record of decision is anticipated in the next few weeks to implement the preferred alternative.

\* 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.

## Notes

**City park systems ranked.** The West Coast and the East Coast lead the country in the quality and quantity of city park systems, according to the Trust for Public Lands (TPL). In a new analysis at its website, [www.tpl.org](http://www.tpl.org),

the group says all top 10 park systems are either in West Coast and East Coast cities. San Francisco (where TPL is located) leads the pack followed by Sacramento, Boston, New York, Washington, Portland, Virginia Beach, San Diego, Seattle and Philadelphia. TPL used three measures - (1) acreage, (2) services and investment and (3) access to gauge the merits of the park systems. It assigned 40 points for each measure and then recalibrated to reach a final score based on 100 maximum. San Francisco, Boston, New York and Washington all maxed out on access with 40 points. Access was determined by a percentage of a city's population within a 10-minute walk of a park.

### Military to get fed land passes.

The Obama administration May 19 announced it has established an annual pass for all active duty military personnel to all federal recreation sites. The America the Beautiful National Parks and Federal Recreation Lands Annual Pass will provide free entrance to National Park Service, Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Forest Service and Army Corps sites that charge entrance or standard amenity fees. The pass was announced at a ceremony at Colonial National Historical Park in Yorktown, Va. "In appreciation for their service, we want to encourage these men and women and their families to visit and enjoy America's wondrous lands and waterways," said Secretary of Agriculture Tom Vilsack.

### Mount St. Helens park asked.

Environmentalists and local businesses in Oregon and Washington continue to beat the drums for legislation to transfer Mount St. Helens National Monument from the Forest Service to the National Park Service. To that end the advocates held a rally May 18 on the 32<sup>nd</sup> anniversary of the 1970 eruption that blew off the top of the mountain in the State of Washington. The advocates, including the National Parks Conservation Association and the Cowlitz County Tourism department, argue that the Gifford Pinchot National Forest budget is inadequate, with visitor facilities closed and no overnight facilities available. No legislation

has been introduced to change management of the 110,000-acre monument, although the advocates earlier this year wrote Rep. Jaime Herrera-Beutler (R-Wash.) and asked her to introduce a study bill. Property rights groups have long opposed the idea for fear the Park Service would more tightly control property in and around the monument than the Forest Service does. But supporters of the transfer say Congress would provide much more money for the operation of Mount St. Helens (perhaps quadrupling its budget) as a national park. One study two years ago estimated that just the designation of Mount St. Helens as a national park would produce at a minimum \$400,000 per year in tourist dollars.

#### **Abbey stepping down at BLM.**

Bureau of Land Management (BLM) Director Bob Abbey, who steered the bureau through controversies stirred by the Obama administration's conservation policies over the last three years, will retire at the end of the month. Abbey's deputy Mike Pool will serve as acting director and, in all likelihood, will handle the reins through the end of the year. This Obama administration ends in early January 2013. Abbey didn't give a reason for his retirement after 34 years of state and federal service, but he said he endorsed the work he and Secretary of Interior Ken Salazar have done. "I am proud of what we have accomplished together and I leave knowing that our efforts to date will lead to even greater achievements in the months ahead," he said. During Abbey's tenure an internal BLM memorandum was prepared that, when obtained by House Republicans, stalled an administration drive to protect "treasured landscapes" around the country. The memo said the Interior Department "is considering" the designation of 14 national monuments and the acquisition of billions of dollars of land, all for BLM. The memo stalled the administration's goal of protecting "treasured landscapes" around the country, particularly on BLM land in the West.

**Fort Ord dedicated.** Pressing all the political buttons, Obama administration officials and an area Congressman May 19 dedicated the Fort Ord National Monument. It is the

17<sup>th</sup> national monument to be managed by the Bureau of Land Management (BLM). President Obama designated the 14,560-acre site April 20. He used as authority the Antiquities Act of 1906, a law much reviled by western Republicans. More than 7,000 acres from Fort Ord have already been transferred to BLM from the 28,000-acre post that was closed in 1994, and another 7,450 acres will be transferred after the Army cleans it up. The rest of the Fort Ord property is to be used for schools, an airport and private development (3,500 acres). At the dedication Secretary of Interior Ken Salazar played political button number one, by saying the proposal was a "bottom-up, locally-driven conservation project," as opposed to a top-down decision from Washington. Pressing button number two - patriotism - Salazar said the dedication fell on Armed Services Day. And pressing button number three - the economy - local Rep. Sam Farr (D-Calif.) said, "Fort Ord's National Monument status also gives our local economy a new tourist attraction, with the potential to create jobs in our communities."

#### **Calif., West Va. landmarks named.**

Secretary of Interior Ken Salazar designated two new national natural landmarks May 18 - Lake Shasta Caverns in California and Ice Mountain in West Virginia. Lake Shasta Caverns is privately owned and the Ice Mountain site is owned by the Nature Conservancy. Both are open to the public. Lake Shasta Caverns contains unusual calcite cave formations. Ice Mountain produces a refrigeration effect among the boulders at the foot of the mountain. The National Natural Landmarks program now has 593 sites. Owners of the sites voluntarily work with the Park Service to protect the properties.

**20,000 youth jobs promoted.** The Obama administration said federal land management agencies will provide work for 20,000 youths from 15-to-25 this summer. The Youth Corps jobs will be in national forests, national parks, wildlife refuges and other public lands. Secretary of Interior Ken Salazar, Secretary of Agriculture Tom Vilsack and Council on environmental Quality Nancy Sutley announced the hirings May

18 at events in Santa Monica Mountains National Recreation Area and in Washington, D.C.

## Boxscore of Legislation

### Appropriations Fiscal 2013 (Interior).

No bill yet. Administration submitted its request February 13. Would sustain current spending for both conservation and land management.

### Appropriations FY 2013 (Energy, Water)

HR 5325 (Frelinghuysen), S 2465 (Feinstein). House committee approved April 25. Senate committee approved April 26.

### Appropriations FY 2013 (Transportation)

S 2322 (Murray). Senate committee approved April 19. No House action yet.

### Appropriations FY 2013 (Agriculture)

S 2375 (Kohl). Senate committee approved April 26. No House action yet.

### Congressional Budget Fiscal 2013.

House Budget Committee approved March 21. No Senate action. House would reduce natural resources spending significantly.

### Appropriations Fiscal 2012 (Interior, Etc.)

HR 2584 (Simpson). President signed into law Dec. 23, 2011, as PL 112-74. Would roughly maintain most outdoor programs and agency budgets at fiscal 2011 levels.

### Surface Transportation.

HR 7 (Boehner), S 1813 (Boxer). House committee approved February 13. Senate approved March 14. The House would reduce funding for park and rec programs, but the Senate not as much. The Senate included \$700 million per year for LWCF for two years.

### LWCF (Guaranteed Funding)

S 1265 (Bingaman). Bingaman introduced June 23, 2011. Would guarantee full funding of LWCF each year.

### LWCF (Fed Lands Access)

S 901 (Tester). Tester introduced May 5, 2011. Would allocate 1.5 percent of LWCF for access to fed lands for rec.

### Urban Parks

HR 709 (Sires). Sires introduced Feb. 15, 2011. Would provide \$450 million per year to rehabilitate urban parks.

### Roadless Areas: No

HR 1581 (McCarthy), S 1087 (Barrasso). McCarthy introduced April 15, 2011. Barrasso introduced May 26, 2011. Would reverse Clinton roadless rule, block Salazar 'wild lands' policy, release FS and BLM roadless areas.

### Roadless Areas: Yes

HR 3465 (Inslee), S 1891 (Cantwell). Inslee introduced Dec. 19, 2011. Cantwell introduced Nov. 17, 2011. Would codify Clinton roadless rule.

### Hunting and Fishing Access

HR 4089 (Jeff Miller), S 2066 (Murkowski). Murkowski introduced February 2. House approved HR 4089 April 17. House bill would not only keep public lands open to hunting, as well as require state approval of national monuments.

### National Monuments

HR 302 (Foxx), S 407 (Crapo), numerous other House bills. House hearing Sept. 13, 2011. Foxx 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 Jan. 25, 2011. Would designate a Mojave National Monument and protect 1.6 million acres of desert.

### NPS Air Tour Policy

HR 658 (Mica), S 223 (Rockefeller). President Obama signed into law February 14 as PL 112-95. Revises NPS air tour policy, authorizes agreements without overall plan.

### Glacier Park Protection

S 233 (Baucus). Senate hearing May 25, 2011. Would withdraw from mining 300,000 acres of national forest.

### Delaware National Park

HR 624 (Carney), S 323 (Carper). Senate Committee approved January 13. Would designate a first national park in the State of Delaware.