Federal Parks & Recreation

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In this issue. . .

House can't move roads bill; Senate likes the outdoors

House Republican leaders, unable to move a multi-year highway bill, were struggling this week to obtain enough votes even to extend the existing law three months until June 30.

At press time the House had before it an extension bill (HR 4239, HR 4281), but House Democrats were insisting that, instead, the House take up a surface transportation bill (S 1813) approved by the Senate March 14.

The Senate bill would provide substantial money for outdoor programs. The measure includes an unexpected allocation of $700 million each year for the next two years to the Land and Water Conservation Fund. *(See related article page 4.)*

In addition last minute revisions to the bill (S 1813) by Senate Democratic leaders would roughly maintain current spending levels for transportation enhancements, recreational trails, scenic byways and Safe Routes to Schools. Those programs had been in for major cuts in the version of S 1813 that came to the Senate floor from the Senate Environment and Public Works Committee.

Finally, the Senate bill would limit environmental restrictions the Federal Aviation Administration and the Park Service could place on air tours over Grand Canyon National Park.

As soon as the Senate acted supporters of the bill began to pressure the House to accept S 1813.

House Republicans leaders have put together a competing highway bill (HR 7) but have not been able to line up enough votes to pass it. The House bill would

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sharply reduce recreation spending, compared to the Senate bill.

And this week House Republican leaders had, at press time, been unable to even move the three-month extension bill.

President Obama said in a March 19 statement, "Last week, the Senate passed a bipartisan transportation bill that will keep construction workers on the job and keep our economy growing. Now the House of Representative needs to take bipartisan action so I can sign this into law."

Echoed House Democratic Whip Steny Hoyer (D-Md.), "The Senate bill passed with a strong bipartisan vote of 74-22, and I urge the House Republican leadership to bring it to the Floor so we can act on it without delay."

House leaders are playing for time because Congress is up against a March 31 deadline (tomorrow) to complete a new highway bill.

For one recreation program the House bill (HR 7), approved by the House Transportation Committee February 13, would match the Senate. That is, both would provide $85 million per year for the Recreational Trails Program.

But House Republicans can also be expected to resist the Senate provisions that provide roughly full funding for transportation enhancements and Safe Routes to School.

The House committee bill would eliminate Safe Routes to School and would remove a $900 million per year guarantee for transportation enhancements (TEs). That would force TEs to compete with other programs for limited money.

Kevin Mills, vice president of policy and trail development for the Rails-to-Trails Conservancy, warned that the Senate actions on the programs were confusing, but nevertheless he said the Senate modified the programs in several amendments.

Mills said the bottom line for the programs is that S 1813 would provide "a set amount pegged to 2009 spending levels for Transportation Enhancements, Safe Routes to Schools and Recreational Trails. There are formulas (in the bill) that could reduce that slightly." The 2009 allocation for transportation enhancements was about $925 million, for Safe Routes to schools $183 million and for recreational trails $85 million.

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.

Utah begins uphill battle to obtain all federal lands

Despite a warning from his own legislative counsel that the bill is probably unconstitutional, Utah Gov. Gary Herbert (R) signed legislation March 23 that requires the government to turn all federal lands over to the state.

That includes national parks, national forests, wilderness areas and the Grand Staircase Escalante National Monument.

The lead author of the bill (HB 148), State Rep. Kenneth Ivory (R), struck back despite the warning of unconstitutionality. He said a recent Supreme Court decision that held Congress can't modify the conditions of a state's admission to the Union implies that a state may claim federal property.

"After waiting 116 years, we simply can't wait any longer for Washington to honor to Utah the same promise it made and kept with all states east of Colorado to transfer title (to) the public lands in a timely fashion from being admitted into the Union," said Ivory.

The Utah Office of Legislative Research and General Counsel appeared to disagree with Ivory on the legal niceties by about 180 degrees. "The Transfer of Public Lands Act requires that the United States extinguish title to public lands and transfer title to those public lands to Utah by a date certain," said the office in an analysis to the bill. "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."

The *Gibson* Supreme Court decision is cited as *Gibson v. Chouteau, 80 U.S. 92 (1872).*

Despite that finding, Herbert, U.S. Sens. Orrin Hatch and Mike Lee and Rep. Rob Bishop, all Republicans, gathered at the bill signing in Salt Lake City to praise HB 148.

Herbert made this case: "This is only the first step in a long process, but it is a step we must take. Federal control of our public lands puts Utah at a distinct disadvantage, specifically with regard to education funding. State and local property taxes cannot be levied on federal lands, and royalties and severance taxes are curtailed

due to federal land use restrictions. Federal control hampers our ability to adequately fund our public education system."

He concluded, "The status quo cannot continue. This is a fight worth fighting."

HB 148 is one piece in a broader 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.

As for the attempt by Utah to gain jurisdiction over all federal lands other states are reportedly preparing similar legislation, including Colorado, Idaho, Montana and New Mexico.

Environmental groups such as the Southern Utah Wilderness Alliance (SUWA) may prosper from the Utah bill, at least temporarily. SUWA sent out a fund-raising request the day after the bill was signed, saying, "Herbert is using the state's ample supply of money and lawyers to end the long and great tradition of Americans proudly owning and enjoying our public lands."

The Utah legislation follows up on generations of opposition from western Republicans to federal ownership of land within state borders. The westerners have championed without success numerous bills in the U.S. Congress to either transfer federal land to the states or limit the amount of federal land.

But HB 148 represents one of the strongest steps taken by a state legislature and governor.

The legislation calls for the transfer of all federal lands enumerated in HB 148 to Utah by Dec. 31, 2014. The bill establishes a Constitutional Defense Council and directs it to write legislation to administer the transfer of federal lands.

The legislation might allow feds to retain national parks. It directs the council "to establish the conditions under which the state shall cede a national park to the United States."

The bill calls for the council to determine state interests in "easements; geothermal resources; grazing; mining; recreation; rights of entry; special uses; timber; or other natural resources or other resources."

Senate roads bill aids LWCF with $700M per year boost

In passing a two-year surface transportation bill (S 1813) March 14 the Senate included an allocation of $700 million each year for the next two years for the Land and Water Conservation Fund (LWCF).

The LWCF provision in S 1813 will face more serious opposition in the House. Private property rights advocates are already beating the war drums.

The American Land Rights Association (ALRA) last week repeatedly asked its members to oppose the provision. "We're working hard to keep that money out of the House bill," Chuck Cushman, president of ALRA, told *FPR*. "Our main goal is to get the (LWCF) level low enough that it doesn't take land from unwilling sellers."

Although the LWCF law supposedly protects unwilling sellers, Cushman said, "Everyone knows that when federal agencies get a big block of money there is no such things as an unwilling seller." That's because landowners can't resist efforts to buy their property, he said.

There is no comparable LWCF provision in a House surface transportation committee bill (HR 7) that is stalled on the House floor.

The Senate bill would guarantee $700 million each year in fiscal 2013 and

2014 to LWCF. The amendment, with Sen. Bill Nelson (R-Fla.) as lead sponsor, would also authorize the LWCF program from fiscal 2015 through fiscal 2022, but that money would be subject to annual appropriations.

The fiscal 2013 and 2014 money would come Gulf of Mexico oil spill payments from the BP oil company. The vote on the amendment (SA 1822) was 76-to-23. The main purpose of Nelson's amendment is the restoration of the Gulf Coast, not the revival of LWCF.

Cosponsors included Sens. Mary Landrieu (D-La.), Jeanne Shaheen (D-N.H.) and Richard Shelby (R-Ala.)

Spending on LWCF has been a bone of contention for more than 40 years for western Republicans, who say the nation can't afford additional lands. The Republicans usually recommend no new acquisitions. But Democrats and conservationists counter with recommendations for continued funding. Congress in most years ends up approving some money but not as much as Democrats and conservationists demanded.

Fiscal year 2012 provides a prime example. The Obama administration recommended $465 million for both federal and state sides of the program, the Republican-controlled House approved a tenth of that, or $46.7 million, and a draft Senate bill called for $187.3 million. Congress agreed on $186.7 million. *(See separate article page 12 on the fiscal 2013 approps battle over LWCF.)*

After the Senate approved the LWCF money, Senate Energy Committee Chairman Jeff Bingaman (D-N.M.), sponsor of a bill (S 1265) to guarantee full funding of LWCF at $900 million per year, said, "The amendment approved by the Senate today dedicates $1.4 billion for LWCF programs over the next two years, and is a significant improvement over the $269 million current funding level. While I will continue to push for full funding, today's vote is an important step towards fulfilling the promise of the Land and Water Conservation Fund."

The National Recreation and Park Association (NRPA) is concerned that the Senate provision would not set aside money for the state LWCF program. NRPA worries that it would allow Congress to approve the full $700 million for federal land acquisition each year and shut out state grants.

"However, it does NOT include specific language for States to receive 40 percent of LWCF funding," said NRPA in a bulletin to its members. "Without that language, Capitol Hill can do whatever it wants with that money! Leaving state and local parks without dedicated funding."

Forest Service planning rule praises rec, but is it legal?

The Forest Service gave recreation a prominent role in the management of the nation's forests March 23 in a final new planning rule. But a cloud hangs over the rule because the service says that recreation must be "sustainable."

In the minds of many recreationists the sustainable qualifier could mean, economically, that recreation must pay for itself or, environmentally, that recreation must do no damage to land and water.

Still, most recreationists are willing to give the Forest Service some benefit of the doubt. Said Larry Smith, executive director of Americans for Responsible Recreational Access (ARRA), "We are pleased that the final rule acknowledges motorized recreation." ARRA represents the powered recreation industry and powered recreation users.

But, Smith added, "The definition of 'sustainable recreation' will be a nightmare for the agency going forward, subject to challenges by various groups whenever they think the definition is not adhered to."

The Theodore Roosevelt Conservation Partnership generally praised the rule but said the proof will be in the pudding. "The next test will lie in implementation of the rule, and we will work with our sportsmen partners in development of the forthcoming

planning directives that will guide how the rule is used," said Joel Webster, director of the partnership's Center for Western Lands.

Given the importance of the rule, a lawsuit or two is likely. Said Smith of ARRA, "(T)he overall rule will be subject to numerous lawsuits. The clarity the agency was seeking for developing management plans will not be found. The final rule is too complex and introduces too many new concepts that will fuel the legal profession for years to come."

George Leonard, a board member of the National Association of Forest Service Retiree, called the new rule an improvement over the 1982 rule, but wondered if some of what he calls the "latest ecological buzz concepts" could trip the rule up in court.

"While the Department asserts there is a scientific basis for addressing species diversity, ecological sustainability, and related requirements, this is far from settled science," he said. "As written, the regulations are an open invitation to the courts to get involved in deciding what is the 'best science.'" Leonard said his comments represent his thinking and not necessarily the association's position.

The rule issued March 23 will govern the preparation of individual unit plans for the 155 national forests and 20 grasslands in the National Forest System. Those plans, required by the National Forest Management Act of 1976 (NFMA), govern virtually all uses in the national forests.

Under NFMA forest plans are to be revised every 15 years. However, Forest Service Chief Tom Tidwell said 68 out of 127 land management plans (some cover more than one forest or grassland) are overdue for revision.

The Forest Service said the new rule will be tested out in these eight units later this year: the Nez Perce-Clearwater National Forest in Idaho, the Chugach National Forest in Alaska, the Cibola National Forest in New Mexico, El Yunque National Forest in Puerto Rico and California's Inyo, Sequoia and Sierra National Forests.

Tidwell said the new rule will save money. "This rule will take less time, it's going to cost less money for each plan revision and the agency will be able to successfully implement these plans," he said. He estimated it would require half the five-to-seven years now needed to revise forest plans.

Under Secretary of Agriculture Harris Sherman repeatedly emphasized the role of recreation at a press conference rolling out the rule.

"The final rule also places a very high priority on recreation in our national forests and grassland," he said. "We have over 170 million visitors annually providing more than a $13 billion boost to America's (gross domestic product). In addition recreation opportunities are important to connect people to our lands and sustain activities like hunting and fishing."

The definition of sustainable recreation in the final rule and the Forest Service explanation of the rule are nearly inscrutable. Here's the short explanation offered by the agency, "The Department decided to keep the term but modify the definition for clarity. The definition in the rule is: 'the set of recreation settings and opportunities on the National Forest System that is ecologically, economically, and socially sustainable for present and future generations.'"

The service said the rule provides this guidance on recreation to national forests: "In the assessment phase (§ 219.6), the responsible official must identify and evaluate existing information relevant to recreation settings, opportunities, and access, in addition to recreational infrastructure, benefits people obtain from the plan area and the contribution of multiple uses to the local, regional, and national economies."

It added, "Section 219.8 requires the responsible official to

take sustainable recreation and scenic character into account when developing plan components to contribute to social and economic sustainability."

House budget plan threatens more spending gridlock

The House March 29 began a new spending war by approving a fiscal year 2013 Congressional budget (H Con Res 112) that would reduce federal domestic spending from a previously agreed-to level.

Using a mark prepared by chairman Paul Ryan (R-Wis.), the House approved a $3.5 billion reduction in natural resources spending, dropping it from $36.8 billion in fiscal 2012 to $33.3 billion.

The House action may trigger another threat to shut down the government. That's because Senate Democrats say they will not accept a reduction in domestic spending below levels that the House and Senate agreed to last summer.

The National Parks Conservation Association (NPCA) warned that the House budget could sharply reduce spending on the national parks. Said NPCA Senior Vice President of Government Affairs Craig Obey, "If the annual non-defense funding reductions in the Ryan budget were applied equally across those programs in FY 13, park budgets would be reduced by 5 percent effective October of this year."

Both Ryan and his Democratic critics issued political statements. Said Ryan, "Like last year, our budget delivers real spending discipline. It does this not through indiscriminate cuts that endanger our military, but by ending the epidemic of crony politics and government overreach that has weakened confidence in the nation's institutions and its economy. And it strengthens the safety net by returning power to the states, which are in the best position to tailor assistance to their specific populations."

Ranking committee Democrat Chris Van Hollen (Md.) responded with his own political statement, to wit, "Today the House Republicans released a budget that simply represents more of the same – abandoning the economic recovery and ending the Medicare guarantee while continuing tax breaks for special interests and the very wealthy."

Now that the House has approved the Ryan plan, appropriators are to use it to squeeze money out of each spending bill, compared to fiscal 2012. The appropriators will almost certainly remove money from individual programs, rather than imposing across-the-board cuts.

For federal lands programs, appropriators on both sides of the aisle have traditionally given first priority to maintaining operational funding. Cuts are usually applied to conservation programs, construction and maintenance.

The Congressional budget itself does not directly affect individual programs, although it sometimes does recommend substantive changes that line committees can accept or reject, as they will. The budget's main role is to establish the overall spending cap under which appropriators will operate.

Democrats are upset about H Con Res 112 because they believe fiscal 2013 spending rules were established in a grand budget agreement last summer (PL 112-25 of Aug. 2, 2011). It established a $361 billion domestic spending cap. But Congress each year can redo any law that it wishes.

Last summer's budget agreement also 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. Of course Congress could always change that requirement.

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

Said NPCA's Obey, "If deeper reductions like those that could occur under the budget resolution were made after FY 13, the results for our national parks and the millions of Americans who cherish and visit them, as well as the businesses that depend on them, could be severe."

Van Hollen proposed his own version of a budget March 26 that would maintain natural resources spending at the fiscal 2012 figure in fiscal 2013, 36.8 billion.

Tourism is up, administration keeps beating the drums

The Obama administration says a major jump in tourism in the country last year justifies its new initiative to attract international tourists to the country. The nation's parks and recreation areas are prime players in the initiative.

The Commerce Department reported March 21 that tourism increased by 8.1 percent in 2011. International visitors led the way with 2.5 million more of them coming to the U.S. than the year before.

Secretary of Commerce John Bryson said the administration would keep pushing international tourism. "This Administration will not let up on our efforts to support the tourism industry and make America more welcoming to visitors from all over the world," he said.

Secretary of Interior Ken Salazar highlighted the role of parks and recreation areas in the visitation campaign. "Our national parks, public lands and water play a critical role in President Obama's tourism strategy as we work to identify new ways to raise the profile of our country's most iconic destinations," he said.

The White House on January 19 launched a government-wide campaign to attract foreign tourists to the United States. An executive order from President Obama gives visitation to parks, refuges and related sites a prominent seat at the table. At the bottom line the administration intends to greatly expand tourism from China, Indian and Brazil, three nations with rapidly expanding economies.

The President directed the secretaries of Interior and Commerce to head up a task force to recommend methods of increasing tourism visits to the United States. The task force will work with the Corporation for Travel Promotion (better known as BrandUSA) to promote the United States.

BrandUSA is a nonprofit group established by Congress that has a $200 million budget. The money for the campaign is to come from nonfederal sources, mostly private industry. Brand USA's website is at www.thebrandusa.com.

About 10 percent of visitors to the national parks come from foreign countries. Backers of the White House strategy hope to increase that by 50 percent over the next two years.

Salazar is given credit by the recreation industry for championing tourism in parks and recreation areas. "The most interesting thing has been our experience with Ken Salazar," said Derrick Crandall, who wears two hats as president of the American Recreation Coalition and counsel to the National Park Hospitality Association.

"Since January every time I see him he is talking about tourism, not just in the national parks but in all of the great outdoors," he said.

When Salazar came on board with the Obama administration in 2009 he made no secret that his number one priority was the designation and protection of new conservation areas. That goal was translated into the signature recommendation of President Obama's America's Great Outdoors (AGO) initiative of February 2011.

But, said Crandall, Salazar has modified his priorities as the national unemployment rate has continued at high levels and the political demand for jobs has risen proportionately.

Said Crandall, "The focus of AGO was full funding of the Land and Water Conservation Fund. But the White House passed word to not talk up new spending. So it's all about jobs now and attracting visitors."

At one time the United States drew as much as 17 percent of international tourists. That has ebbed to 11.6 to 11.8 percent, perhaps in part due to the 9-11 attacks. But last year the United States' share of international tourism jumped a bit to around 12 percent.

Hatteras ORVers draw tough judge in suit against plan

Off-road vehicle (ORV) backers filed a lawsuit earlier this month against a new Park Service plan governing access to the beaches of Cape Hatteras National Seashore in North Carolina.

But the plaintiffs may have drawn a short straw because the judge assigned the case, Emmet G. Sullivan in Washington, D.C., has ruled against powered recreation uses in national parks in other cases. For instance, Sullivan twice blocked Bush administration rules authorizing significant snowmobile use in Yellowstone National Park.

Still, the Cape Hatteras Access Preservation Alliance (CHAPA) went ahead and filed its lawsuit, arguing principally that the Park Service ignored public input in a final rule of January 23. And the plaintiffs objected to a final EIS backing the plan of Nov. 15, 2010.

In the lawsuit CHAPA faults the EIS this way: "NPS failed to allow meaningful consideration of action alternatives by making a variety of key elements common to all of the action alternatives, violating NEPA's requirement that an alternatives analysis consider a range of different options for each of these elements in its alternatives."

The lawsuit singles out specific complaints. Said CHAPA, "Among other relevant considerations, NPS ignored the impacts of various buffer distances on visitor access, use, and enjoyment and whether certain areas are more adaptable for recreational use and should have smaller buffers or other distinctive treatment. Adopting buffer distances common to each of the action alternatives without consideration of other relevant factors other than species protection, such as recreational access and other impacts that NPS is required to consider, is arbitrary and capricious and in violation of the Organic Act, the Enabling Act, and NEPA."

On balance, said CHAPA, the rule is unbalanced. "Unfortunately, the Park Service overlooked reasonable recommendations and information that OBPA and CHAPA put forth during the planning process that would have resulted in an ORV management plan and rules that both protect wildlife resources and ensure reasonable ORV access to and over the area's beaches," said John Couch, president of the Outer Banks Preservation Association (OBPA), sponsor of CHAPA.

But environmental groups that brought an original lawsuit more than five years ago that led to the plan said NPS has struck a good balance. "The Park Service's rules represent a compromise between responsible beach driving and necessary protections for wildlife and pedestrians that was years in the making," said Jason Rylander, senior attorney for Defenders of Wildlife. "We're committed to defending that balance to ensure Cape Hatteras continues to be enjoyed by all."

Judge Sullivan granted intervenor status in the lawsuit March 13 to Defenders, the National Audubon Society, the National Parks Conservation Association, and the Southern Environmental Law Center. The suit is cited as Cape Hatteras Access Preservation Alliance v. Salazar Case: 1:12-cv-00219 of February 9.

After four years of controversy the Park Service bit the bullet January 23 and issued a final rule on ORV use in Cape Hatteras National Seashore. The

rule keeps 28 miles of the seashore open to ORV use and designates 26 miles of vehicle-free areas (VFAs).

The Park Service said in a 218-page record of decision that the rule will protect turtles and other species while allowing ORV use to continue.

Sums up the record of decision (ROD), "In addition to providing species protection both during the breeding and nonbreeding seasons, the selected action will also provide more flexibility and a range of experiences for visitor use and will enhance access to both VFAs and designated ORV routes by establishing new parking areas, pedestrian trails, interdunal routes, and ORV ramps."

The final rule replaces an April 2008 consent decree that settled an environmentalist lawsuit against a previous seashore plan. The decree had governed ORV use in the seashore until now. The new rule is scheduled to go into effect shortly on February 15.

The 67-mile seashore received more than 2.2 million visitors in 2009, which is eight times the visitation of 1955. Much of that visitation is driven by ORV use, sometimes to the detriment of wildlife.

Senate greets cabin fee bill warmly, but with concerns

The Forest Service said last week that it is "comfortable" with a new fee schedule for cabin owners on national forest lands.

But the service, cabin owners and the Senate Energy Committee are not yet in agreement that the formula, encapsulated in legislation (S 1906), would provide the U.S. Treasury with fair market value.

Still, the sides say they are getting there. At a committee hearing March 22 Forest Service Deputy Chief Leslie A.C. Weldon, said, "We feel very comfortable with the proposal."

And an aide to committee chairman Jeff Bingaman (D-N.M.) told us, "We have discussed this issue with the Senate sponsor and the cabin owners association and will continue to see if we can find a fee formula that gives cabin owners some predictability in their fees while ensuring the public receives fair value for the use of national forest lands."

Weldon inferred at the hearing that the service had qualms about the fair market value of the nine tiers of fees S 1906 would establish to replace the existing appraisal system.

"(T)here are a couple of areas where we would like to work with the committee," said Weldon. "One of these has to do with the tiers that were set up, several levels of fees." She raised the possibility of adding a tenth tier.

In her prepared testimony Weldon elucidated, "Our analyses indicate that many of the proposed fees, particularly for the higher valued lots, would be less than those which would be paid under current law and which results in fees being below market value."

The House Natural Resources Committee February 16 approved a counterpart bill (HR 3397), but as an attachment to a controversial bill (HR 4019). The underlying bill would authorize billions of dollars to compensate western counties for the federal lands within their boundaries.

When the House committee first approved the fee schedule as a stand-alone bill Nov. 17, 2011, it did so unanimously.

Under the existing law – the Cabin User Fee Fairness Act of 2000 - the Forest Service in 2007 began reappraising cabins, based on five percent of the market value. Because some cabins had not been appraised for as much as 30 years the appraisals went through the roof. Congress did set a 25 percent ceiling on the annual increase in calendar year 2009.

So western senators and House members went to work with gateway communities and the 14,000 cabin owners to devise a fee system that would avoid huge fee increases but still insure the

public receives a fair return on their property. It costs the Forest Service in the neighborhood of $10 million per year to manage the program.

The House and Senate bills would do the same thing – establish nine tiers of fees beginning at $500 per year and increasing by $500 increments to a top fee of $4,500.

The Senate bill, introduced by lead sponsor Jon Tester (R-Mont.), estimates that eight percent of cabin owners would have to pay just the $500 per year fee and seven percent, or 980, would have to pay $4,500.

At the Senate hearing Sen. Maria Cantwell (D-Wash.) inquired about the fair market value of the proposed tier system. Doug Gann, a cabin owner in the Wenatchee National Forest in Cantwell's State of Washington, said, "If you look at the proposal, it is based on the market as defined by other recreation programs in the public domain and what they charge. The proposal here suggests the proposed fees are a little higher than the market. The market is challenging to define and challenging to administer."

Gann noted that the fees are pegged to inflation so will increase proportionately over the years.

Peer review on Point Reyes oyster EIS faults NPS math

A peer reviewer of a Park Service EIS on the advisability of oyster fishing in Point Reyes National Seashore last week found significant fault with NPS's economic analysis.

Dr. James Wilen of the University of California – Davis said that the Park Service failed to consider both direct and indirect economic benefits from oyster fishing by the Drakes Bay Oyster Company (DBOC). The company is seeking a long-term permit to farm oysters in the seashore.

"There appears to be little recognition that the NPS report uses standard impact analyses to evaluate the importance of tourism, and that these same techniques of analysis should be adopted for analyzing the impact of policy options associated with DBOC," said Wilen, one of five peer reviewers.

The peer review, commissioned by NPS, evaluated a Sept. 26, 2011, draft EIS prepared by NPS. The reviewers in general praised the environmental analysis in the EIS. "Overall, the reviewers found the analyses to be appropriate, and that there is no fundamental flaw with the larger scientific underpinning of the DEIS," said the peer review report.

The peer review of the draft EIS was put together by Atkins North America, an independent consulting firm specializing in such reviews. Most of the five reviewers endorsed the environmental analysis.

But Wilen took NPS's economic analysis to task. For instance he said the EIS doesn't count spending by tourists who come to visit the oyster operation, some 50,000 per year. "If 50,000 visitors spend $100 per day, then there are additional dollars of annual economic impacts that have been ignored by this study together with associated multiplier effects," Wilen said, although he said the visitors may already have planned to visit the park.

He also allowed that visitation to the oyster company may be insignificant compared to the estimated $100 million per year in economic activity that park visitation creates.

The Interior Department said the peer review provides the guidance the Park Service needed to complete the EIS. "The peer-review accomplished exactly what we were seeking – that is, specific recommendations on how to improve the final environmental impact statement to make it a better science product," said Dr. Ralph Morgenweck, Interior's Scientific Integrity Officer.

That includes, said Interior in a release, "using the best available science and additional quantitative measurements and data to conduct the socioeconomic analysis."

Environmentalists who object to oyster farming in the seashore said the peer review backs the draft EISs criticism of the practice. "These objective findings, along with dozens of other peer reviewed studies, substantiate Park Service science that shows extending the lease for the Drakes Bay oyster operation within this national park wilderness area will damage fragile coastal habitat and wildlife," said Amy Trainer, executive director of Environmental Action Committee of West Marin. "This analysis proves once and for all that the Park Service is conducting a fair public process."

The great Point Reyes oyster controversy erupted most recently Sept. 26, 2011, when the Park Service completed the draft EIS on the permissibility of extending a 40 year-old special use permit the Drakes Bay Oyster Company to take oysters from the seashore.

Although the draft EIS did not pick a preferred alternative, Sen. Dianne Feinstein (D-Calif.), a supporter of the oyster farm, criticized the Park Service for excluding evidence that she says proves the operation is harmless. Feinstein and the permittee believe that the Park Service wants the area designated as wilderness.

The Drakes Bay Oyster Company has operated an oyster farm and cannery within Point Reyes for more than 60 years, providing 30 jobs to the local economy. The company's permit to operate within the park is scheduled to expire on Nov. 30, 2012.

In 2009 Feinstein, at the time chairman of the Senate subcommittee on Interior Appropriations, inserted in a fiscal year 2010 appropriations law (PL 111-88 of Oct. 30, 2009) a rider giving NPS *discretion* to renew the existing permit for 10 years. While the provision is discretionary, Feinstein has made it clear the permit should be issued for another 10 years. And NPS is undoubtedly hesitant to anger the influential appropriator.

Feinstein was reportedly so angry in the summer of 2009 that she held up the nomination of Jon Jarvis as NPS director because he had supported the termination of the oyster farm when he was Pacific West Region director.

Approps witnesses promote LWCF; chairman unenthusiastic

Almost in one voice western Republicans and commodity users of the public lands last week objected to more federal land acquisitions until maintenance backlogs were cleaned up.

And almost in one voice supporters of the Land and Water Conservation Fund (LWCF) argued that the time is ripe to protect treasured lands, and to create jobs while doing it.

Rep. Mike Simpson (R-Idaho), chairman of the crucial House subcommittee on Interior, complained that the administration's fiscal year 2013 budget request for LWCF would reduce spending for both Park Service operations and maintenance.

"At the same time, the budget request for Federal land acquisition is increased by four percent and the request for LWCF stateside grant funding is increased by 34 percent above fiscal year 2012," he said. "It seems to me that we ought to be addressing long-term maintenance and repair needs, as well as meeting the needs of the visiting public, before making additional land acquisitions that will only add to the historic funding backlog."

But backers of LWCF countered that (1) additional acquisitions are necessary now to preserve treasured landscapes, (2) state grants boost health and (3) LWCF pays for itself because it is funded by offshore oil and gas royalties.

The annual fight over LWCF follows the predictable outlines of a Kabuki dance: Western Republicans say the nation can't afford additional lands and recommend no new acquisitions. Democrats and conservationists counter with recommendations for continued funding. Congress ends up approving

some money but not as much as Democrats and conservationists demanded.

Fiscal year 2012 provides a prime example. The Obama administration recommended $465 million for both federal and state sides of the program, the Republican-controlled House approved a tenth of that, or $46.7 million, and a draft Senate bill called for $187.3 million. Congress agreed on $186.7 million.

This year there may be an X factor. In passing a surface transportation bill (S 1813) March 14 the Senate approved substantial spending for outdoor programs. The measure includes an allocation of $700 million each year for the next two years for LWCF. The money is guaranteed and would not be subject to an appropriation. However, the House still must agree with the Senate, and Republican leaders are unlikely to do that. *(See separate article page 4 on the Senate action.)*

Simpson also complained of a related issue – alleged studies by the Interior Department of National Forest System lands that may be transferred to NPS. "Secondly, it's come to my attention that multiple areas of the National Forest System have been reviewed (or designated for review) for transfer to the National Park Service or for potential designation as national monuments," he said at a hearing on the Park Service budget earlier this month. "(T)he creation of additional park units from existing Forest Service lands would likely create real concerns in Congress."

NPS has not made public any such studies. But as an example conservationists have long promoted the transfer of Mount St. Helens National Monument in the Gifford Pinchot National Forest from the Forest Service to the Park Service.

In his case against increased funding for LWCF Simpson drew support from the timber industry. At a March 22 hearing of the Interior subcommittee that took testimony from public witnesses, William Imbergamo, executive director of the Federal Forest Resource Coalition, said, "Considering the fiscal situation facing the Nation and the backlog of both forest management and roads and facilities maintenance needs on the National Forests, we recommend no funding for the National Forest System Land Acquisition line item."

But supporters of LWCF offered these three arguments for additional LWCF funding:

Now is the time: Said Kevin Boling, owner of The Boling Company, a forestland investment company, "We understand the severe financial constraints under which you and this Congress are operating. At the same time, we recognize that America simply cannot afford to lose the public opportunities that LWCF provides, or the activity it injects into the economy." Boling testified on behalf of the LWCF Coalition.

Health: Said Barbara Tulipane, president of the National Recreation and Park Association, "The LWCF State Assistance Program plays a critical role in advancing parks and recreation. That directly contributes to fighting our nation's obesity and 'Type 2' diabetes epidemics. Several medical studies have shown that there is a strong correlation between proximity to recreational facilities and parks and increased participation in physical activity."

LWCF is paid for: Tulipane again, "We recognize that you face difficult decisions relative to fiscal year 2013. However, the LWCF is budget neutral, having been authorized with a dedicated funding source of oil and gas leasing revenues. Over $6 billion a year is provided through these leases, and the funding provided to the LWCF is a minuscule fraction of this amount."

Notes

Oceans policy held illegal. A former Republican counsel on the staff of the House Natural Resources Committee said flatly March 22 that President Obama's ocean policy is illegal. George J. Mannina, Jr., the former counsel to the subcommittee on Fishers, Wildlife and Oceans, told the subcommittee that

the President's authority to establish ocean policy must be consistent with laws passed by Congress. He said the policy is not. He concluded, "This effectively constitutes the enactment of new legislation that violates the separation of powers set forth in the U.S. Constitution." Mannina is a partner with the firm Nossaman, LLC. Committee Republicans and elements of the sport fishing industry have complained that the administration's National Ocean Policy will lead to cumbersome new regulations that will restrict access to the ocean for fishing. The Obama administration formally proposed a national policy January 12 that is designed to coordinate management of the nation's oceans, coasts, and Great Lakes. But Republican critics contend it constitutes top-down zoning of the nation's oceans and coasts. The White House says the National Ocean Policy action plan, *www.whitehouse.gov/oceans,* will require agencies to cooperate and issue permits more quickly and more efficiently. But Capt. Robert F. Zales, II, president of the National Association Of Charterboat Operators, said, "The (policy) process has the potential and is likely to create new and expanded regulatory requirements in addition to those we have, creating more regulatory burdens and expanding costs to our businesses." Zales was countered by Terry Gibson, principle of North Swell Media, LLC, who testified, "Unfortunately what you will hear from many of the more vocal voices on the fringe of the fishing community is fear, confusion and an unwillingness to engage in a proactive process. . . The policy gives fishermen an equal, if not greater, voice alongside other ocean industries and users."

Grand Canyon withdrawal suit II. A second mining industry lawsuit was filed March 6 against an Interior Department withdrawal from uranium mining of one million acres of public lands near Grand Canyon National Park. More suits may be in the works. The plaintiff in the March 6 lawsuit, the Northwest Mining Association (NWMA), essentially repeated the complaints of the first lawsuit, filed by the National Mining Association. That is, an EIS backing the withdrawal is inadequate and the withdrawal provision of the Federal Land Policy and Management Act of 1976 is itself unconstitutional. NWMA represents the exploration arm of the hard rock mining industry. The National Mining Association represents big mining companies. Additional litigation is expected from the uranium industry group the American Clean Energy Resources Trust, or from its individual members. All the complainants argue that the withdrawal is unnecessary to protect Grand Canyon National Park and surrounding communities from the impacts of uranium mining. The Interior Department January 18 formally withdrew from uranium mining for 20 years the one million acres of public land near Grand Canyon managed by the Bureau of Land Management and the Forest Service. The withdrawal bars the filing of new mining claims, but it does not necessarily prevent the mining of existing claims. Secretary of Interior Ken Salazar, who announced the decision January 9, said the long-term withdrawal – which replaces a short-term withdrawal – was necessary to protect Grand Canyon.

Ike memorial counterattacked. Critics of a proposed Dwight D. Eisenhower Memorial on the Washington, D.C., mall had a field day March 20 in criticizing the proposed monument. Susan Eisenhower, Ike's granddaughter, objected to the theme of the memorial, which shows a young boy looking off in the distance. She told the House subcommittee on National Parks, "Eisenhower's professional assignments carried none of the romantic notion that is embodied in the current memorial concept and design. He was the person tapped to end the horrors of a Nazi-occupied Europe and later to lead the United States and her allies to halt communist aggression and avoid nuclear Armageddon." Gen. Carl W. Reddel, executive director of the Dwight D. Eisenhower Memorial Commission, said 80 percent of the $112.5 million in construction costs is projected to come from Congressional appropriations. The Park Service will manage the memorial, which will be sited on federal land. Stephen E. Whitesell, regional director of the National Capital Region of the Park Service, defended the design. "The process for establishing memorials in

Washington, as directed by the Congress, has worked very well to ensure that new memorials are thoughtfully considered, appropriately located, and beautifully designed," he said. "We expect that the Eisenhower Memorial, by virtue of the public process by which it is being established, will have all of these important characteristics and will be a source of pride for our entire nation."

St. Croix bridge bill inked. President Obama March 14 signed into law (PL 112-100) legislation that would authorize for the first time the construction of a highway bridge over a wild and scenic river. The law authorizes construction of a four-lane, $700 million span across the St. Croix National Scenic River. It would replace an existing Stillwater Lift Bridge that connects the towns of Oak Park Heights, Minn., and Houlton, Wis. The House vote was an overwhelming 339-to-80 and a Senate vote in January was unanimous. Despite the large, bipartisan margin in favor there was opposition. Rep. Betty McCollum (D-Minn.) and park advocates fought against the measure, noting that the Park Service had testified against the bill. The legislation teamed such usual antagonists as liberal Sens. Amy Klobuchar (D-Minn.) and Al Franken (D-Minn.) with conservative Rep. Michele Bachman (R-Minn.) Bachman introduced the House version of a bill (HR 850). The legislation authorizes the bridge but does not appropriate money to build it. The money would come from state and federal programs, including allocations from the surface transportation law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. Taxpayers for Common Sense, a critic of the legislation, said the bridge would eat up $160 million of federal highway money.

LWCF votes to be counted. The League of Private Property Voters said earlier this month it will include a Senate vote on the authorization of $1.4 billion for the Land and Water Conservation Fund (LWCF) in its annual voter poll. The league opposed the allocation, which was attached to a surface transportation bill (S 1813) and was approved by the Senate in 76-to-23 vote. The LWCF money was guaranteed. The league and its allies are fighting the proposal in the House. Like conservation groups, the league scores votes each year in the House and Senate. "There's no way buying land and taking it off the tax rolls helps local communities or enhances the current recovery effort from our most recent recession. The Private Property Congressional Vote Index will score these and other important votes on the environment and regulation affecting landowners and local communities," said Chuck Cushman, chairman of the League of Private Property Voters.

FWS plan backs Everglades refuge. The Fish and Wildlife Service (FWS) March 14 said it has completed a plan and environmental analysis that backs its previous designation of an Everglades Headwaters National Wildlife Refuge and Conservation Area. The area consists of 150,000 acres of protected land, including 50,000 acres to be purchased outright and 100,000 acres of easements. Said FWS, "The Everglades Headwaters NWR and Conservation Area will help to protect and restore one of the great grassland and savanna landscapes of eastern North America, conserving one of the nation's prime areas of biological diversity." The Interior Department announced the new refuge Sept. 7, 2011.

National parks get an app. The Park Service said March 13 that it has developed an app to help technically proficient people plan visits to the national parks. The app, developed by NPS's partner Eastern National, will provide links to all 397 national park websites. The app will also allow visitors to record their visits with passport stamp cancellations. Said NPS Director Jon Jarvis, "I applaud Eastern for embracing our 'Go Digital' challenge to use technology to help enhance park experiences for visitors. This is a natural extension of the high quality educational products they have created for our visitors for so many years."

Japanese Internment grants out. The Interior Department announced an additional $2.9 million in grants to help protect internment sites where Japanese-Americans were confined during

World War Two. The 17 grants brings to almost $9.7 million distributed under the Japanese American Confinement Sites Grant Program. Grants are distributed to preserve the 10 War Relocation Authority camps and 40 other sites. More than 120,000 Japanese Americans were placed in the camps.

Boxscore of Legislation

APPROPRIATIONS FISCAL 2013.
Administration submitted its request February 13. Would sustain current spending for both conservation and land management.

CONGRESSIOINAL 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.

APPROPRIATIONS FISCAL 2012 (AGRICULTURE)
HR 2112 (Kingston). President signed into law Nov. 18, 2011, as PL 112-55. Reduces Farm Bill conservation spending.

APPROPRIATIONS FISCAL 2012 (ENERGY AND WATER)
HR 2018 (Frelinghuysen). President signed into law Dec. 23, 2011. Does not include rider to block wetlands policy.

APPROPRIATIONS FISCAL 2012 (TRANSPORTATION)
No bill number. President signed into law Nov. 18, 2011, as PL 112-55. Maintains highway spending at about 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.

NATIONAL MONUMENTS
HR 302 (Foxx), HR 758 (Herger), S 407 (Crapo). 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 singed 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 first State of Delaware.