

Federal Parks & Recreation

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President-elect Trump offers slender park and rec agenda

President-elect Donald Trump will enter office in January with a modest to nonexistent record on outdoor issues.

While the Republican Party platform does contain one signature proposal - transfer of federal lands to state and private interests, Trump himself has opposed such a move.

The one thing Trump does advocate is energy development, particularly from the federal lands. He promises to unleash oil, gas, coal and oil shale producers on the public lands.

A Trump position paper says he would "declare American energy dominance a strategic economic and foreign policy goal of the United States" and "unleash America's \$50 trillion in untapped shale, oil, and natural gas reserves, plus hundreds of years in clean coal reserves."

When former President George W. Bush tried to ratchet up energy development on the public lands between 2000 and 2008, sportsmen hit him head on with litigation, charging development would harm hunting and fishing lands.

Most immediately, the Trump election - along with Republican retention of both the House and Senate - will surely tempt a lame-duck session of Congress next week to extend federal funding only into March. That would give Trump a shot at setting his policies for much of fiscal year 2017. (See following article.)

For his part President Obama will likely attempt to lock in as much of his legacy as he can before the Republican Party takes over in January. His big weapon is authority under the Antiquities Act of 1906 to designate

national monuments on federal lands. Conservationists have recommended a half-dozen major candidates to him, including a 1.9 million-acre Bears Ears National Monument in southern Utah.

To head off such a designation the House Natural Resources Committee September 22 approved an omnibus Utah lands bill (HR 5780) that would protect 1.4 million acres in the Bears Ears area in the form of two national conservation areas totaling 858,000 acres and in a wilderness area.

In addition the administration is reportedly nearing a decision on the designation of a Gold Butte monument in southern Nevada.

On the Republican front, the party's platform proposes to unload unspecified federal lands. That has sometimes been interpreted in the media to mean all federal lands, including national parks. However, the platform's plank on disposing of federal lands refers only to "certain" lands.

Besides, Republican candidate Trump has more than once said he personally opposes the disposal of not only national parks but all federal lands. As he told *Field & Stream* magazine in January, "I don't like the idea because I want to keep the lands great, and you don't know what the state is going to do."

For all those qualifications, Trump has repeatedly said that his first priority for the public lands is energy development, not conservation. "Producing more American energy is a central part of my plan to Making America Wealthy Again - especially for the poorest Americans," he said at a campaign appearance September 22 in Pittsburgh. "America is sitting on a treasure trove of untapped energy - some \$50 trillion dollars in shale energy, oil reserves and natural gas on federal lands, in addition to hundreds of years of coal energy reserves."

In addition, there is the Republican platform on disposal of federal lands that says, "Congress shall immediately pass universal

legislation providing for a timely and orderly mechanism requiring the federal government to convey certain federally controlled public lands to states. We call upon all national and state leaders and representatives to exert their utmost power and influence to urge the transfer of those lands, identified in the review process, to all willing states for the benefit of the states and the nation as a whole."

Trump had an opportunity to weigh in on national parks and conservation October 22 when he made a speech at Gettysburg National Military Park, but he focused instead on his economic and foreign policy initiatives. He did not mention parks or conservation in his prepared remarks.

For her part unsuccessful Presidential candidate Hillary Clinton laid out a soup-to-nuts agenda for new (and old) park and rec programs. Her headline proposal would have established a new recreation program that would have effectively doubled the size of the landmark Land and Water Conservation Fund (LWCF).

And she would a priori reject the notion of selling/transferring public lands out of the federal domain.

But even if she had won, Clinton would have been up against it in the Republican-controlled Congress, where Republicans retained a solid majority in the House (about 236-to-191)) and a slender majority in the Senate (52-to-48).

The Democratic firewall will be forged in the Senate where Democrats may invoke the filibuster to block most major legislation.

Conservationists asked the new administration to help protect the nation's outdoors. Said The Wilderness Society President Jamie Williams in a statement, "President-elect Trump's administration should continue the bipartisan tradition of protecting the lands, water and wildlife that all Americans share. . . We will advocate for public lands' role in growing our clean energy economy and defend

fundamental conservation laws like the Land and Water Conservation Fund, the Wilderness Act and the Antiquities Act."

Sportsmen held out hope that the Trump administration would retain federal lands in federal ownership. "A party that calls for the sale/transfer of public lands in its platform now has control of the House, Senate and presidency," said Land Tawney, president of Backcountry Hunters and Anglers. "We are encouraged that President-Elect Trump, along with some courageous House and Senate Republicans, have broken from their party on this issue. We look forward to their continued rejection of the privatization of public lands and instead tackling other pressing issues such as wildfire management and declining budgets that face our public lands."

While the nation's focus was on the Presidential contest in the November 8 elections, 17 Senate seats were on the ballot and early results indicated that Republicans had retained a majority of 52-to-48.

Among key Senate and House committee and subcommittee chairmen and ranking Democratic minority members, almost all are expected to be back. Sen. Lisa Murkowski (R-Alaska) was the most influential park and rec policy senator up for re-election and she won with ease.

Murkowski chairs both the Senate Energy Committee and the Senate subcommittee on Interior Appropriations.

If Democrats had taken over the Senate, on paper ranking Senate Energy Committee Democrat Maria Cantwell (D-Wash.) would have assumed the chairmanship. But senators and House members often play musical chairs and switch committee and subcommittee chairmanships to help their districts.

Here are some existing key posts that may or may not be in play:

Senate subcommittee on National Parks: Sen. Bill Cassidy (R-La.), chair; Sen. Martin Heinrich (D-N.M.), ranking member.

Senate Public Lands subcommittee: Sen. John Barrasso (R-Wyo.), chair; Sen. Ron Wyden (D-Ore.), ranking member.

Senate Financial Service Committee: Sen. Orrin Hatch (R-Utah), chair; Wyden, ranking member.

Senate subcommittee on Interior Appropriations: Murkowski, chair; Sen. Tom Udall (D-N.M.), ranking member.

House Natural Resources Committee: Rep. Rob Bishop (R-Utah), chair; Rep. Raúl M. Grijalva (D-Ariz.), ranking member.

House subcommittee on Federal Lands (includes national parks): Rep. Tom McClintock (R-Calif.), chair; Rep. Niki Tsongas (D-Mass.), ranking member.

House subcommittee on Oversight: Rep. Louie Gohmert (R-Texas), chair; Rep. Debbie Dingell (D-Mich.), ranking member.

House subcommittee on Interior Appropriations: Rep. Ken Calvert (R-Calif.), chair; Rep. Betty McCollum (D-Minn.), ranking member.

Senate Majority Leader: Sen., Mitch McConnell (R-Ky.); Senate Minority Leader, Sen. Harry Reid (D-Nev.) Reid is retiring and will likely be replaced as the leader of Senate Democrats by Sen. Charles Schumer (D-N.Y.)

In federal land management agencies expect a whole new cast of characters. National Park Service Director Jonathan B. Jarvis has already said he would not be back.

Other agency directors whose terms are due to run out are Forest Service Chief Tom Tidwell, Bureau of Land Management Director Neil Kornze and Fish and Wildlife Service Director Dan Ashe.

In addition to the Congressional elections and the changeover at the White House more than 90 conservation ballot initiatives were before the voters around the country. (See related article page 11.)

Election may have major impact on lame-duck bills

Now that the election is over it's time in the next month for Congress to address a ton of unfinished legislative business crucial to the outdoors.

Priorities 1 and 1A are to complete a monster fiscal year 2017 spending continuing resolution (CR) and to pass an omnibus energy bill (S 2012) with important Land and Water Conservation Fund (LWCF) and Park Service Centennial provisions.

The lame-duck session is tentatively scheduled to last for three weeks, beginning November 15 and, after a Thanksgiving interruption, ending on December 9. Those schedules as always are subject to great change.

The elections may have an enormous impact on the political jockeying over the lame-duck sessions. Most immediately, the Trump election - along with Republican retention of both the House and Senate - will surely tempt the existing Congress to extend federal funding only into March. That would give Trump a shot at setting his policies for much of fiscal year 2017.

Because of the filibuster in the Senate, where Republicans will hold a slim 52-to-48 majority, neither party will be able to clearly dominate the agenda.

Other than the appropriations CR and the energy bill, there is an outside, outside chance that a stand-alone Park Service Centennial bill (HR 4680) with some real meat on its bones will move. The Centennial provisions in the appropriations bill are skeletal at best.

Said Derrick Crandall, counselor to the National Park Hospitality Association and an advocate of Centennial legislation, "We'd like Congress to take some action on the Centennial even if it is modest in the lame-duck. That would signal that Congress is going to look at more substantive Centennial legislation in the 115th (Congress next year)."

The Wilderness Society said it would focus on the lame-duck session. "In the immediate weeks ahead, we will focus on ensuring that the Obama administration and Congress finalize critical conservation gains that in many cases have been years in the making and enjoy strong public support," society president Jamie Williams said.

Appropriations: There will likely be no change in spending for an Interior and Related Agencies bill until at least March in the CR because appropriators on both sides of the Hill set caps for Interior slightly less than a fiscal 2016 ceiling of \$30.416 billion.

The appropriators are also expected to strip the Interior bill (HR 5538, S 3068) of dozens of policy amendments approved by the House July 14 and the Senate Appropriations Committee June 16. But those riders could come back into play early next year.

To keep the government in money through December 9 President Obama on September 29 signed into law (PL 114-223) an interim appropriations law.

The interim spending law contains two significant park and rec provisions: It extends the Federal Lands Recreation Enhancement Act one year through Sept. 30, 2018, and it keeps the Eisenhower Memorial Commission going through December 9.

There are lots of macro-budget obstacles ahead in the lame-duck in both the Senate and the House. For park and recreation purposes the most important dispute is over a Democratic demand that Congress appropriate equal amounts of money for domestic and military spending.

The Republican majority would prefer to appropriate an extra \$18 billion for Defense spending, adding it to a National Defense Authorization Act. The Senate rejected that proposal in June, but it may reappear.

A spending agreement between the White House and Congress (PL 114-74 of Nov. 2, 2015) gave appropriators extra money to work with for all domestic and

military programs in fiscal years 2016 and 2017. For fiscal 2017 the total is \$1.070 billion.

In another obstacle some House Republicans from the House Freedom Caucus want to cut \$30 billion off the top of the \$1.070 billion.

If by some miracle Congress actually passed an Interior appropriations bill, here are some of the recommended House and Senate committee appropriations:

For the LAND AND WATER CONSERVATION FUND the House bill recommends an appropriation of \$145.8 million, or \$88.4 million short of a fiscal 2016 appropriation of \$234.2 million. The House also would reduce the state side of LWCF by \$30 million, cutting it from \$110 million to \$80 million.

The Senate committee bill recommends \$40 million more for federal land acquisition than the House, approving \$184.4 million. The senators would also allocate \$10 million for state grants, a total of \$110 million.

CENTENNIAL CHALLENGE GRANTS: The House approved \$30 million, or \$5 million less than the \$35 million the administration requested. The Senate committee approved \$20 million.

PARK SERVICE OPERATIONS: The House approved \$2.435 billion, or \$39 million more than a fiscal 2016 appropriation of \$2.396 billion. The Senate committee would appropriate \$2.406 billion.

STATE WILDLIFE CONSERVATION GRANTS: The House approved \$62.6 million, or \$2 million more than the fiscal 2016 appropriation of \$60.6 million. The Senate committee would appropriate \$62.6 million, the same as the House.

FOREST SERVICE RECREATION: The House approved \$263.9 million, just over the fiscal 2016 appropriation of \$261.7 million. The Senate committee would appropriate \$264.6 million.

BLM RECREATION MANAGEMENT: The

House would appropriate \$69.5 million, compared to a fiscal 2016 appropriation of the same, \$69.5 million. The Senate committee would appropriate \$68.7 million.

RIDERS: Environmentalists object to numerous amendments/riders in the House and Senate committee bills.

They have singled out for special condemnation a House amendment that would forbid the designation of any national monument in specific counties in eight states - Arizona, California, Colorado, Nevada, New Mexico, Oregon, Utah and Maine. Critics of the amendment say the ban would apply to 160 million acres.

Other House amendments would bar the designation of any new ocean national monuments; block limits on motorboat use in Havasu Wildlife Refuge; block an Obama administration ocean policy; prevent designation of a national heritage area in southeastern Colorado; and bar the designation of any new ocean national monuments.

Finally, both the House and the Senate committee would forbid EPA from implementing a May 27, 2015, rule that would expand the definition of a wetland subject to a Section 404 permit under the Clean Water Act. EPA and the Corps of Engineers said that the rule would go beyond the existing regulation that only requires a permit for navigable waters. The rule would also require permits for seasonal streams, wetlands near navigable waters and other waters.

Omnibus energy bill: House and Senate conferees at press time were reportedly close to completing the omnibus energy bill, but the future of a S 2012 conference report on the House and Senate floors is far from certain.

Although Senate Republicans and Democrats teamed up back in April to approve the initial Senate version of the bill by a huge 85-to-12 margin, no one can predict what objections will arise in the next month to derail the bill.

Still, an aide to Senate Energy

Committee Chairman Lisa Murkowski (R-Alaska) told us this week, "We are optimistic that the conferees will succeed in assembling a compromise that strikes a balance between the two chambers' positions, that attracts bipartisan support, and that the president will sign into law."

LWCF: The Senate version of the bill would make the Land and Water Conservation Fund (LWCF) permanent. And it would set aside \$150 million each year for Park Service maintenance from offshore royalties, but in a separate fund from LWCF. However, the House-passed version of S 2012 does not include either of those provisions.

In fact the House singled out the Senate LWCF provision for reapproval May 25, directing House conferees to reject the Senate provision in a close 205-to-212 vote.

LWCF is not in danger of expiring any day soon. Congress extended the fund for three years in a fiscal 2016 appropriations law (PL 113-114 of Dec. 18, 2015) through fiscal 2018.

But supporters want to lock in LWCF now. Although there are several other legislative initiatives to do that floating around in Congress, the energy bill provides a golden opportunity.

Centennial: The Senate in April included in its version of S 2012 a provision that would establish a National Park Centennial Challenge Fund with up to \$17.5 million per year in federal appropriations. That's not much of a gain over the \$15 million Congress appropriated in a fiscal year 2016 appropriations bill for a challenge fund.

The Senate energy bill's Centennial provision would also establish an endowment for NPS called the Second Century Endowment for the National Park System. It would be financed by "gifts, devises, or bequests."

Those two provisions fall far short of an ambitious Obama administration proposal that would

have Congress authorize more than \$500 million in new programs for the Centennial. (That's in addition to a huge increase in appropriations.)

More ambitious than the Senate Centennial provision but not nearly as ambitious as the administration proposal is a stand-alone Park Service Centennial bill (HR 4680) that the House Natural Resources Committee approved March 16. Park Service advocates had hoped the House would approve the measure but appropriations and authorizing committees disagree on how to score the spending under the budget rules.

HR 4680 would also establish a Centennial Challenge Fund and endowment, but unlike the Senate, would revise senior citizen America The Beautiful Pass rates. The House committee would do away with a one-time, senior-citizen \$10 fee and substitute either an annual \$20 fee or a permanent \$80 fee.

Rec industry upset by Jarvis order to protect parks

A white paper prepared by the recreation industry objects strenuously to a proposed new order from NPS Director Jonathan B. Jarvis that gives protection of the parks first priority.

The American Recreation Coalition argues that the paper effectively ignores the National Parks Organic Act that requires a balance between protection of the parks and uses. *FPR* obtained a copy of the paper this week.

The coalition said Jarvis's proposal goes overboard in linking protection of the parks to climate change. "The tenor of the directive is clear: new and expanded visitor activities and new facilities will only be allowed when there is no possibility of contribution to climate change," says the coalition. Its president, Derrick Crandall, also serves as counselor to the National Park Hospitality Association.

In addition to the substance of the proposal the recreation industry objected to what it says is a limited

public response - NPS is allowing just a 30-day comment period with no public meeting.

"We strongly recommend that DO 100 be considered through discussion sessions involving the parks community and the Congress long before final action," said the industry paper. "The current closing of comments on November 18, 2016, must be extended to at least January 18, 2017, to allow this discussion and consideration of the DO's impact on other agency priorities."

It is understood that the Senate Energy Committee staff is reviewing the director's proposal.

The election of Donald Trump as president could change all that. His administration could always put out its own director's order next year to replace Jarvis's

Jarvis's Director's Order 100 would establish protection as a priority even if a threat were not clear and imminent via a key "Precautionary Principle."

"The Precautionary Principle requires that, when an activity raises plausible or probable threats of harm to park resources and/or human health, management should take anticipatory action even when there is uncertainty," says the draft.

The proposed order adds, "When such uncertainty exists, NPS managers will take actions that err on the side of caution to protect natural and cultural resources in accordance with section 7 of this Order. Any decision made using the precautionary principle should take into account: (1) the threat of harm to park resources or public health; (2) the level of scientific uncertainty; and (3) the preventive, precautionary action."

Director Jarvis has already announced that he will leave office in January when the Trump administration takes over.

His last year has yielded mixed results. On the upside Jarvis

has presided over the National Park System on its 100th Centennial, with unprecedented attention focused on the parks and record visitation.

On the other hand the House Oversight Committee in particular has in a bipartisan way criticized the agency for a series of reports charging a hostile workplace in the Park Service and a limited response to charges of sexual abuse.

The committee earlier this month collected a batch of documents from NPS on alleged management improprieties at Yellowstone, Yosemite National Park and, in general, sexual misbehavior.

Despite that cloud Jarvis is moving ahead to leave a protect-the-resource legacy in the form of the Resources Stewardship Director's Order, <https://parkplanning.nps.gov/document>. Comment by November 18 at the site.

As we reported in the last issue of *FPR*, a senior official at the advocacy group National Parks Conservation Association (NPCA) endorsed Jarvis's overall message.

"What's interesting is the implementation in writing of the Precautionary Principle of proactively protecting the parks, even if we don't know the impacts of activities," said NPCA Vice President for Government Affairs Kristen Bregel.

"That is not the way the Park Service has always managed," she said. "In the case of snowmobiles Glacier (National Park) decided not to allow the practice, but Yellowstone (National Park) did. The Park Service would do well to do more Glacier than Yellowstone. That is the best approach to protecting parks and wildlife."

The director's order scarcely mentions uses except in terms of activities that managers should be aware of. Nor does it mention visitation often.

The order does mention visitation as a derivative of good management. "The overarching goal of NPS resource

management should be to steward NPS resources for continuous change that is not yet fully understood, in order to preserve ecological integrity and cultural and historical authenticity, provide visitors with transformative experiences, and form the core of a national conservation land- and seascape," it says.

Visitation to the parks this year has set repeated records. Through September NPS recorded a 4.81 percent increase in 2016 over 2015, which itself was a record year. Year-to-date through September 262,425,872 people have entered the national parks, compared to 250,388,115 through September of last year.

NPS and FWS finishing rules that govern mineral owners

The Park Service and the Fish and Wildlife Service (FWS) are rapidly closing in on firm new rules affecting oil and gas operations in national parks and wildlife refuges.

In many parks and refuges owners of energy rights have been allowed to retain those rights, and to develop oil and gas. However, FWS and NPS said that until now they have not had rigorous regulations in place to govern such development.

Now the Park Service does. NPS announced completion of a rule November 3 that would subject all oil and gas operations in the national parks to its regulations. The rule is scheduled to go into effect December 5.

Currently, 12 of the 408 National Park System units host oil and gas operations and 60 percent of those are exempt from NPS regulations. The rule would also require operators to pay the full cost of reclamation.

FWS is also nearing completion of a final oil and gas rule. On August 22 the service issued a proposed final rule and final EIS that would have FWS tighten its oversight of oil and gas operations within wildlife refuges.

Like the NPS FWS would require a minerals owner to obtain an operations permit and to obtain financial assurance. i.e. a bond to cover any possible damages and reclamation costs.

FWS said it would complete its rule after EPA completes a review of its proposal.

There is already resistance from House Republicans to the FWS proposal, but not to the Park Service rule, thus far.

Before approving a fiscal year 2017 appropriations bill (HR 5538) July 14 the House accepted an amendment from Rep. Kevin Cramer (R-N.D.) barring the spending of any money to implement the FWS proposal.

The Park Service said its existing rule has been in effect for 37 years and needed updating.

Said NPS Director Jonathan B. Jarvis, "We have a fundamental responsibility to conserve park resources and the values for which these parks are created for the enjoyment of future generations. The changes we made to this rule bring more than 300 previously exempt oil and gas operations in parks under NPS regulations. The rule clarifies the process for oil and gas development in the small group of parks where current operations exist, and for parks that may have to manage oil and gas operations in the future."

The National Parks Conservation Association (NPCA) welcomed the NPS rule, but said the ultimate federal goal should be to acquire all oil and gas rights in national parks to eliminate fossil fuel development there, period.

"This an important step forward in protecting national parks from oil and gas development, but the ultimate goal must be to ensure mineral rights are acquired by the Federal Government so there is no drilling in parks. America's favorite places won't truly be protected until that happens," said Nicholas Lund, association senior manager for landscape conservation for NPCA.

Meantime, said Lund, "While these new rules will not stop drilling in parks outright, thanks to them, not only will national parks will be better protected, but producers will also now be held liable for the impact these operations have on our parks."

The Park Service decision is available at <https://parkplanning.nps.gov/document.cfm?documentID=75342> and information about the FWS rule is available at <http://www.fws.gov/refuges/oil-and-gas/>.

South Florida nuclear reactors gain first go-ahead

The Nuclear Regulatory Commission staff said November 2 that two proposed nuclear reactors adjacent to two national parks in south Florida would have no precluding environmental impacts and should proceed.

But the National Parks Conservation Association disagreed and said the reactors would harm Biscayne National Park and Everglades National Park.

Said Caroline McLaughlin, Biscayne Program Manager for the association, "You couldn't pick a worse location to put a nuclear power plant than between two national parks and an area already vulnerable to storm surge and sea level rise."

The proposal from Florida Power & Light would add two new reactors (6 and 7) to the two existing reactors (3 and 4) at the Turkey Point Nuclear Plant 25 miles south of Miami. The plant and its two existing reactors are already adjacent to Biscayne National Park on a large tract owned by the company.

On November 2 the commission staff announced the completion of an [EIS](#) that says that there would not be enough impacts from the two new reactors "to preclude" approving a license.

That is not to say there would be no environmental impacts on water quality and on national parks. For instance, the EIS sums up, "While

elements of Units 6 and 7 could noticeably affect nearby land uses, especially land uses associated with the two National Parks and urban areas traversed by the new transmission lines, the project would not destabilize these or other land uses."

Of Everglades the EIS says transmission lines would approach the park. "Some of the transmission lines would also pass very close to the eastern perimeter of Everglades National Park where they could conflict with park objectives related to aesthetic quality and wildlife management," says the EIS.

More generally, the EIS concludes, "Recreation effects include visual, audible, and availability changes to the recreational experience. Because the Turkey Point site is adjacent to Biscayne National Park and near the Everglades National Park, the review team recognized the environmental sensitivity of the area but because the site is already developed with five other power plants on it, the review team determined the changes to the viewshed during construction and operations would be SMALL." Emphasis in the original.

Finally, the EIS projects minimal impacts on water resources. "Model simulations, which conservatively assumed continuous operation of the backup wells, showed only minor changes to the Biscayne Bay and the underlying aquifer, as a result of most of the water seeping gradually into the wells from the Biscayne Bay," it says.

The National Park Conservation Association's McLaughlin wasn't buying. "We have serious concerns about the expansion proposal for Turkey Point, especially considering the widespread contamination the plant's operations has already caused in nearby water resources. If the expansion moves forward, it would double the number of nuclear towers, all located on the shores of the nation's largest marine national park."

Staff completion of the EIS is but one small step in the issuance of a license. The Corps of Engineers must approve a Section 404 clean

water permit. The Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards must pass muster and, finally, the Nuclear Regulatory Commission itself must approve the expansion.

The utility says the expansion is needed for power for an expanding south Florida population. And the utility says the new reactors would serve as an economic stimulus for south Florida. "The proposed new nuclear facilities at FPL's existing Turkey Point site would create a substantial economic stimulus to Miami-Dade County and local communities during construction and operation, including payroll, property taxes, local service contracts, and purchases worth billions of dollars," says Florida Power & Light.

According to the *Miami Herald*, Florida Power & Light has been forced to delay the project for four years because of concerns about possible threats to area water quality from the existing plant. The paper says the company is seeking the delay in constructing the new reactors, originally to be completed as early as 2018 and 2020. Now completion may be a decade away.

The EIS is available at:
<http://www.nrc.gov/reactors/new-reactors/col/turkey-point/documents.html#eis>

Big Cypress backers ask NPS to work around court ruling

Its side having lost a crucial appeals court [decision](#) on the proper balance between off-road vehicle (ORV) use and protection Big Cypress National Preserve, Park Service retirees are asking preserve managers for help.

In a lengthy plea to new preserve superintendent Tamara Whittington, the Coalition to Protect America's National Parks recently asked for (1) a management policy that gives protection priority over ORV use and (2) a more generous definition of potential wilderness areas.

Although this battle focuses on

a management plan just for the 112,400 acres of Big Cypress added in 1988 (to the original 574,000 acres of preserve), it addresses the long national war between powered recreation and conservation in the entire NPS system.

In its letter to Whittington the coalition summed up, "Conservation must predominate as the Preserve's central mission, and recreation should be allowed only to the extent it does not create unacceptable adverse impacts on resources and values."

The devil is in the details here in two documents prepared by the preserve. The first was a wilderness assessment for the addition lands that the preserve completed in April 2010. The second was a general management plan the preserve adopted for the addition lands in October 2010.

Wilderness: In the lawsuit before the U.S. Court of Appeals for the Eleventh Circuit, the plaintiff National Parks Conservation Association (NPCA) objected to the standards NPS used for determining wilderness potential in 2010, saying they were more rigorous than standards it used in 2006.

In a 2006 wilderness workshop NPS used a "common visitor viewpoint" in identifying wilderness and in 2010 NPS used a "land manager viewpoint." In so doing NPS changed its "assumptions" of wilderness.

Once NPS identifies potential wilderness it must manage the land to protect its wilderness quality.

Following the 2006 workshop NPS identified 111,601 acres of potential wilderness. After the 2010 workshop it reduced the total by more than 40,000 acres to 71,260 acres.

The court upheld NPS in its August 31 decision, holding, "To be fair, the language is not parallel between the two workshops. Giving the NPS due deference, however, it does not appear that these are two wholly differing standards. In short, they are not so diametrically opposed to permit the Court to conclude that the

NPS drastically changed its criteria with the express purpose to omit the ORV trails from wilderness eligibility."

Now the Coalition to Protect America's National Parks is asking superintendent Whittington not to use the 2010 assumptions again in a backcountry plan.

"We were therefore dismayed when we later learned that, as part of the Preserve's development of a Backcountry Access Plan, the June 2015 wilderness eligibility assessment for the Original Preserve used essentially the same interpretations of the statutory criteria (i.e., the novel wilderness eligibility assumptions) that had been used in Addition wilderness eligibility determination," the coalition's chair, Maureen Finnerty, wrote Whittington October 26.

Conservation v. use: More basically, NPCA argued to the court in its lawsuit that the preserve tilted toward ORV users in the 2010 management plan, at odds with the National Parks Organic Act, which it says places protection above recreation uses.

But the appeals court said the plan is balanced. "The record more than supports (the Park Service's) claim that, relying on the NPS's expertise in the field, the limited recreational use promoted by the GMP would not cause unacceptable environmental impairments or impacts," the panel said.

The coalition of retirees says the situation harkens back to a dispute in 2005-2006 when the Bush Administration was considering a rewrite of its interpretation of the Organic Act to favor active recreation uses. "Thankfully, the opponents of that effort prevailed, and the official NPS interpretation remains that conservation must come first except to the extent Congress expressly directs otherwise," the retirees wrote Whittington.

The appeals court decision is available at:
<http://media.call.uscourts.gov/opinions/pub/files/201415326.pdf>.

Voters give conservation ballot initiatives a boost

Voters around the country overwhelmingly approved most of the more than \$5.4 billion in conservation initiatives before them in the November 8 elections.

That's significantly more than the \$818.7 million in conservation initiatives in the 2012 Presidential election year but significantly less than the \$8.053 billion of the 2008 Presidential election year.

California hit the sweet spot with voters approving major initiatives in San Francisco and Los Angeles by 60 percent and 73 percent respectively. However, San Diego voters rejected by a 57-to-43 margin a tax to provide \$18 billion over 40 years, including for open space.

In one of the few statewide initiatives 67 percent of voters in Rhode Island approved a \$20 million bond for environmental and recreational purposes.

According to LandVote data assembled by the Trust for Public Lands, 93 conservation initiatives were put before the voters November 8 worth a total of \$5.4 billion. In addition voters earlier this year approved an additional \$257 million for conservation.

As an example of the early voting in Butler County, Ohio, the home of former Speaker of the House John Boehner (R-Ohio), voters signed off on an open space property tax levy March 15. It set aside almost \$9 million for conservation.

In the November 8 vote the largest initiative identified by LandVote was the proposed sales tax in San Diego County that would have allocated \$2 billion to conservation, over time. Voters rejected it soundly.

The San Diego ballot would for 40 years have imposed a five-cent sales tax with money going to open space,

bike and pedestrian projects, highways and transit. The initiative would have produced a total of \$18 billion.

In Los Angeles voters approved a levy on land parcels that would put up \$491,400,000 for conservation. In San Francisco voters extended for 15 years an open space fund with \$133,145,000 allocated for conservation.

Although the only statewide conservation initiative was in Rhode Island the staff at LandVote said that statewide, conservation-related initiatives were on the ballot in Alabama and Missouri.

In Alabama voters approved a constitutional amendment that would forbid reallocating state park funds for other uses. The voted was 80-to-20 for.

In Missouri voters approved a ten-year extension of an existing one-tenth of one percent sales tax by a vote of 80-to-20. It would put up about \$42 million per year with the money equally divided between the state park system and soil replenishment programs.

The last national election in 2014 was a gangbuster year for conservation initiatives. Florida voters led the way, approving a \$9 billion conservation amendment to the state constitution.

Altogether voters in 2014 approved some \$16 billion in conservation initiatives, somewhat surprising in a time of political retrenchment.

Other approved 2014 initiatives included a \$2,150,000,000 open space program in New Jersey; a \$1.5 billion water bond in California; the renewal of a \$1.3 billion Los Angeles County program that allocates money for parks, recreation, and open space; and the renewal of a \$131 million open space program in Larimer County, Colo.

Here's a thumbnail summary of conservation initiatives approved by voters in the last half-dozen national elections:

2004 = \$3.801 billion

2006 = \$6.747 billion

2008 = \$8.053 billion

2010 = \$2.192 billion

2012 = \$819 million

2014 = \$13.203 billion

2016 = up for a vote, \$5.4 billion (\$257 million previously approved)

The Trust for Public Lands assembled the data. The data is available at www.landvote.org.

Bundy team cleared in Malheur dispute; Gold Butte next?

A federal court October 27 ruled not guilty the seven lead protestors of the occupation of the Malheur Wildlife Refuge in Oregon earlier this year, raising a concern about future such takeovers.

The most immediate flashpoint for the next disruption appears to be Gold Butte, a 350,000-acre stretch of wild desert in southern Nevada managed by the Bureau of Land Management (BLM). As it happens Gold Butte is adjacent to a ranch owned by the Bundy family, leaders of the Malheur occupation.

The White House, at the urging of Senate Minority Leader Harry Reid (D-Nev.), is close to designating Gold Butte a national monument, according to the *Washington Post*. And, the paper said, when a reporter asked Bundy family member Ryan if a designation may spark another protest, he said, "Absolutely."

In the Malheur jury decision, rather than holding that the occupation violated such laws as conspiracy to impede federal officials, the jury effectively said the occupation amounted to a protest.

The two leaders of the occupation, Ammon and Ryan Bundy, were not set free after the six-week trial. They are still in federal custody and must stand trial for a 2014 standoff in Nevada in protest of more than \$1.1 million in fees and penalties for illegally grazing on public land. The leader of the Nevada protest, Ammon and Ryan's father Cliven Bundy, is still in jail in Nevada.

The Malheur and Nevada incidents are a piece of a continuing protest in the West of alleged abusive treatment meted out by the Obama administration to public lands ranchers. And the protestors say Congress should dispose of much of the federal estate in the West.

But federal land managers say they are also under duress, subject to increasing threats, according to the environmental group, Public Employees for Environmental Responsibility, which keeps a scorecard of such threats.

Said Ed Shepard, president of the Public Lands Foundation, which represents former and current BLM employees, "We are concerned that (the Malheur jury decision) is emboldening the anti-federal, anti-public land folks. Within minutes of the verdict we heard some of these folks talk about the next occupation. We worry about the safety of the employees and this adds just another complication to their job. Armed occupations do not facilitate constructive dialogue to find real solutions to real issues."

The U.S. Attorney in Oregon who led the prosecution, Billy J. Williams, told the press October 28, "We still think it's illegal to take over a public structure on public land at the end of a gun. There's a distinction between lawful protest and committing criminal acts to prove your point."

Williams put the federal cost to put down the protest at \$12 million, including local, county, state officials and more than 1,000 FBI agents.

Seven other defendants who allegedly participated in the protest are scheduled to go to trial in February, but Williams said he will consult with Justice Department headquarters in Washington before proceeding.

Sportsmen and conservationists said they feared that the innocent verdict will lead critics of the federal government to endanger both the federal lands and federal land managers. Said Defenders of Wildlife President and CEO

Jamie Rappaport Clark, "By exonerating the leaders of this illegal occupation of federal property, the jury's misguided verdict will encourage further attacks by lawless individuals on our wildlife refuges, national forests and national parks and the dedicated federal employees that manage them for the benefit of all Americans."

Backcountry Hunters & Anglers President Land Tawney said, "We, the rightful owners of these lands, can - and should - debate their management. But threatening public servants, hijacking public lands and damaging our shared natural resources serve no beneficial purpose and have no place in a democracy like ours."

Oregon Gov. Kate Brown (D-Ore.) said she was "disappointed" by the jury's verdict. Said Brown, "The occupation of the Malheur Refuge by outsiders did not reflect the Oregon way of respectfully working together to resolve differences."

Lost in the debate over the trial was the proximate cause of the Malheur protest, which began January 2 and ended February 11.

It began in protest of the jailing for five years of public lands rancher Dwight Hammond and his son Steven Hammond. They were sent to prison January 4 by the Ninth U.S. Circuit Court of Appeals for two fires they admittedly set that burned public lands in 2001 and 2006.

In the legal issue involving the Hammonds Congress mandates a five-year prison sentence for anyone convicted of arson on the public lands. When the appeals court issued its verdict, it set off the Malheur occupation. The protestors said the circuit should have abided by lower court sentences of one year for the son and three months for the father.

Separately in the 2014 Nevada grazing dispute the FBI on February 11 arrested Cliven Bundy, who is often described as a national leader of critics of BLM and Forest Service land managers. The FBI charged him with

leading an armed protest two years ago when BLM attempted to move him off his public lands grazing permit. The feds say Cliven Bundy owes more than \$1.1 million in fees and penalties for illegally grazing on public land.

Although the takeover of the Malheur Wildlife Refuge in Oregon ended peacefully February 11, the underlying tensions over federal land management have not eased.

Rep. Greg Walden (R-Ore.), who represents the area, continued to paint the bad guys as federal land managers. Walden said at the conclusion of the standoff in February, "I will continue working to solve the underlying issues that have caused so much frustration in rural communities. We need meaningful changes to federal forest and land management policies, and we need to foster a more cooperative spirit between the federal agencies and the people who call areas like Harney County home."

The State of Utah is leading the land transfer movement. On March 23, 2012, Gov. Gary Herbert (R-Utah) signed the Transfer of Public Lands Act, HB 148, which required the transfer to the state of 31 million acres of public lands. Although the law said the transfers were to begin on Jan. 1, 2015, none have taken place yet.

The House and Senate are on record favoring some sort of partial devolution of federal lands across the West, but that's a political nonstarter. In March 2015 both the House and Senate adopted positions endorsing the disposal of federal lands to state and local governments.

They adopted those positions in the passage of fiscal year 2016 Congressional budgets. The House approved its budget (H Con Res 27) March 25, 2015, and the Senate approved its (S Con Res 11) March 27, 2015. Those positions are advisory to line committees that would still have to move additional legislation to actually authorize any land transfers.

Gold Butte: Gold Butte is located on BLM land between the Grand Canyon-

Parashant National Monument in Arizona and the Lake Mead National Recreation Area in Nevada. BLM manages Gold Butte as an area of critical environmental concern, but has no reception facilities there.

The Obama administration has the backing of conservationists and numerous tourism groups for a monument designation. Supporters include Friends of Gold Butte and Friends of Nevada Wilderness.

President Obama designated a separate, major national monument in southern Nevada just last year on July 9 - a 704,000-acre Basin and Range National Monument.

Sen. Reid is all for a national monument designation. As he said in April, "I've tried to protect Gold Butte for a long time. And the reason we haven't been able to do anything to this point is that the Bundy boys and his pals. So that's why I'm grateful for the Antiquities Act. Because of this legislation and because of the fact that the Bundys are in jail, I'm going to reach out to the White House."

Gold Butte is adjacent to the Bundy ranch, where Cliven Bundy has refused to pay grazing fees for years. Most other ranchers in the area have quit the livestock business under duress from the Endangered Species Act, etc.

Notes

NPS relists air tour exemptions.

The Park Service made several adjustments last month in listing National Park System units that host air tours but are exempt from preparing air tour management plans. If a park hosts fewer than 50 flights per year, it can be considered exempt. Fifty-four units made the list this year in NPS's annual computation. Four of the 54 park units that were exempt in 2014 lost that exemption in 2015 because they hosted more than 50 flights. They are Mesa Verde National Park, Colo.; Colonial National Historical Park, Va.; Lake Chelan National Recreation Area, Wash.; and Lassen Volcanic National Park, Calif. One park unit moved to

the exempt list because it had fewer than 50 flights last year - Cape Hatteras National Seashore, N.C. NPS and the Federal Aviation Administration prepare the list under the direction of the National Parks Air Tour Management Act of 2000 and subsequent modifications to that act.

Ten new historic sites named.

The Interior Department announced November 2 the designation of ten new National Historic Landmarks, of varied characteristics. The sites range from sites honoring LGBT history to the Edsel Ford House in Michigan. Nine of the sites are east of the Mississippi and only one in the West, Ames Monument in Albany County, Wyo. The Interior Department and the Park Service have designated more than 2,500 such sites, which mark in some way a community's identity. More information is available at <https://www.nps.gov/nhl/>.

Yellowstone closes most roads. As it does every year Yellowstone National Park November 7 announced the closure of three entrances and all but one road in the park for the winter season. The one exception is a road through the North Entrance that serves the communities of Cooke City and Silver Gate, Mont.; it is kept open year round. Yellowstone closes the other roads so that it can prepare them for snowmobile and snowcoach travel. That season begins December 15.

NPS: Veterans Day is free. The Park Service is waiving entrance fees today in all 413 units in honor of Veterans Day. In addition NPS units across the country are holding special events. "All 413 of our parks nationwide offer the chance to reflect on what our veterans fought to protect, and may also provide opportunities for veterans and their families to find peace and healing," said NPS Director Jonathan B. Jarvis.

House panel blasts wetlands rule. The House Oversight Committee majority published a report last week that charges EPA largely ignored advice from the Corps of Engineers in preparation of a wetlands permit rule.

The committee, chaired by Rep. Jason Chaffetz (R-Utah), said, "EPA did not conduct additional research (which the Corps believed was necessary) to justify the rule's conclusions." The rule of May 27, 2015, would go beyond a former regulation that only required a permit for navigable waters. It would also require permits for seasonal streams, wetlands near navigable waters and other waters. Two federal courts have blocked implementation of the rule. The House and Senate are working against the rule also. The House approved a fiscal year 2017 Interior appropriations bill (HR 5538) July 14 that would forbid EPA from implementing the rule. The Senate Appropriations Committee approved a counterpart provision June 16 in approving its appropriations bill (S 3068). The report is available at: <https://oversight.house.gov/release/>.

Do parks host milder fires? A new study conducted by three environmental groups goes against the grain by arguing that unlogged, protected forests burn less severely than logged forests. That is, national parks and wilderness areas see less ferocious fires than lands with timber cuts, even hazardous fuels. That contradicts conventional wisdom that says federal land managers should cut excessive timber fuels out of forests to prevent and limit forest fires. The House and two Senate committees have either approved or prepared legislation that would authorize expanded hazardous fuels reductions. The researchers said, "The results demonstrated that fires burned relatively cooler in areas managed for biodiversity, including national parks and wilderness areas where fires are generally allowed to proceed naturally versus areas managed for multiple use and areas with little to no mandate for protection such as private forest lands managed for timber production." The three authors, led by Curtis Bradley of the Center for Biological Diversity, published the report on October 26. The report, *Does increased forest protection correspond to higher fire severity in frequent-fire forests of the western United States?*, is available at: <http://onlinelibrary.wiley.com/doi/10.1002/ecs2.1492/full>.

Boxscore of legislation

Fiscal year 2017 appropriations (until December 9)

HR 5325 (Graves). President Obama signed into law September 29 as PL 114-223. Extends funding at fiscal 2016 levels through December 9.

Fiscal year 2017 appropriations

HR 5538 (Calvert), S 3068 (Murkowski). House approved July 14. Senate committee approved June 16. Both committees would trim LWCF spending, include fire and PILT appropriation in bill. The administration asks for more conservation spending, including full funding for LWCF.

Land and Water Conservation Fund

S 338 (Burr), S 890 (Cantwell), HR 1814 (Grijalva), S 2012 (Murkowski), S 1925 (Heinrich), S 2165 (Cantwell), unnumbered draft (Bishop), HR 4151 (Simpson), HR 2029 (Dent). Fiscal 2016 appropriations bill extends program as is for three years. Grijalva introduced April 15, 2015. Senate approved Murkowski bill April 20. Bishop posted draft November 5, 2015. Simpson introduced December 1, 2015. All but Bishop would extend program at \$900 million per year in perpetuity. Bishop would extend for seven years. S 890, HR 1814 and S 1925 would guarantee the money each year. Simpson would change allocation to 40 percent federal, 40 percent state and related initiatives and 20 percent flexible.

Urban park fund

HR 201 (Sires). Sires introduced January 7, 2015. Would authorize HUD grants and HUD loans to provide assistance to urban parks.

NPS Centennial

HR 3556 (Grijalva), S 2257 (Cantwell), HR 4680 (Bishop). House committee reported Bishop bill May 19. Senate approved placeholder legislation (S 2012) April 20. S 3556 and S 2557 are administration bills that would have Congress put up an additional \$800 million for the Park Service Centennial in 2016. Fiscal 2016 spending bill includes extra \$100 million for program. HR 4680 includes little new

money but several important program authorizations.

Federal land recreation fees

HR 1991 (Bishop), HR 2822 (Calvert), S 1645 (Murkowski), HR 719, S 2706 (Wyden), HR 4790 (Blumenauer). House committee approved HR 1991 April 29, 2015. Senate hearing September 17, 2015. Wyden and Blumenauer introduced March 17. President Obama signed into law an extension of the fee law through Sept. 30, 2017, as part of PL 114-53 of September 30, 2015. House bill would revise FLREA. Wyden and Blumenauer would streamline rec fees and permits.

Emergency fire spending

HR 167 (Simpson), S 235 (Wyden), S 508 (McCain), S 1645 (Murkowski), HR 2647 (Westerman). Simpson introduced January 6, 2015. Wyden introduced January 22, 2015. McCain introduced February 12, 2015. Senate committee approved S 1645 June 18, 2015. House approved HR 2647 July 9, 2015. All would shift emergency fire fighting costs out of line appropriations and into disaster spending. McCain would also increase timber harvests. Appropriators did not include provision in fiscal 2016 spending bill above.

Monument restrictions

HR 330 (Young), HR 488 (Amodei), S 437 (Murkowski), HR 900 (Labrador), S 228 (Crapo), HR 3946 (Gosar). Young introduced January 13, 2015. Amodei introduced January 22, 2015. Murkowski introduced February 10, 2015. Labrador introduced February 11, 2015. Crapo introduced January 21, 2015. Gosar introduced November 5, 2015. All would require Congressional or state approval of national monuments.

Wetlands regulations

HR 594 (Gosar), HR 2028 (Simpson), S 1140 (Barrasso). House approved HR 2028 May 1. Barrasso introduced April 30, 2015. Would forbid completion by EPA of regulations expanding kinds of water bodies requiring wetlands permits.

Surface transportation

S 1647 (Inhofe), HR 22 (Davis), HR 3763 (Shuster). President Obama signed into law (PL 114-94) on Dec. 4, 2015. Revises law for next six years.