

BACKGROUND

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Five Reasons to Sunset the Land and Water Conservation Fund *Katie Tubb and Nicolas D. Loris*

Abstract

A major point of contention with energy legislation in conference between the House of Representatives and the Senate is a Senate measure to permanently reauthorize the Land and Water Conservation Fund (LWCF). The LWCF enjoys broad bipartisan popularity helped along by its use of images with scenic parks and wildlife. However, there are good reasons why a permanent reauthorization is a mistake. Although many Members of Congress support the LWCF because their constituents associate it with funding for their local parks, the LWCF is in reality a program that expands federal control of America's land and water resources. Rather than focus on the LWCF, Congress should commit to good land management and environmental stewardship by freezing federal land acquisition altogether, addressing massive maintenance backlogs in the most important national parks, and allowing states, local communities, nonprofit organizations, and private individuals to drive decisions about parkland in America.

The U.S. Senate and House of Representatives have begun conferring energy legislation that is fraught with unnecessary government intervention into private-sector economic and environmental affairs. One major point of contention in the Senate's version is the permanent reauthorization of the Land and Water Conservation Fund (LWCF). The original intention of the LWCF was to assist in expanding and preserving Americans' access to outdoor recreation. The LWCF enjoys popularity in both parties, helped along by its packaging with ribbon cuttings at local parks and images of scenic lands and wildlife.

KEY POINTS

- Congress appropriates funds from the Land and Water Conservation Fund (LWCF) as it deems fit for federal and state outdoor recreation facilities like parks, pools, boat ramps, snowmobile trails, local zoos, playgrounds, golf courses, soccer fields, and ice skating rinks.
- Permanent reauthorization of the LWCF will allow the federal government to acquire more lands in perpetuity.
- The LWCF should be sunsetted. Letting the LWCF expire is not just a matter of what lands are set aside, but who manages them. States have proved they can do a better job.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3165>

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Over the years, Congress, the Department of the Interior, and the Forest Service have used the fund primarily to grow the massive landholdings of the federal government, despite its incapacity to effectively manage the land it already owns. Rather than expanding federal lands, Congress and federal land management agencies need to redirect their attention to better maintaining current lands and to granting more control to states and individuals. Private property rights are paramount to both economic freedom and environmental protection. To these ends, Congress should not permanently reauthorize the LWCF. Instead, Congress should allow the LWCF to expire and enable more state and local government and private control of America's land and water. Sunsetting the fund will result in more efficient and accountable land management, creating and preserving opportunities for economic development, outdoor recreation, and environmental protection.

What Is the LWCF?

Congress created the LWCF in 1964 with the intent to "assist in preserving, developing, and assuring accessibility to...outdoor recreation resources."¹ Under the current structure, \$900 million in revenue accrues to the LWCF every year. Congress annually appropriates these funds as it deems fit. Congress authorized the LWCF for two 25-year periods; the program expired for the first time in September 2015. Congress extended the LWCF for three years in the Consolidated Appropriations Act of 2016, and it will expire again on September 30, 2018.

Using funds primarily raised through royalty revenues from offshore energy development, the federal government uses the LWCF to purchase private land and turn it into public parks and other recreation areas. The LWCF is the primary vehicle for land purchases by the four major federal land management agencies: the Forest Service (FS), the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), and the National Park Service (NPS). Congress can also appropriate LWCF funds according

to a formula to a matching state grant program for local recreation projects.

Five Reasons to Sunset the LWCF

Supporters of the LWCF are quick to use the LWCF to measure the commitment of Members of Congress to parks and outdoor recreation. But the LWCF is a poor litmus test. The fund has become a vehicle for the growth of the federal government at the expense of better and more accountable management initiated at the state, local, and private levels.

1. Permanent reauthorization of the LWCF is an admission that the federal government should be able to acquire more lands *in perpetuity*. The federal government already owns 640 million acres and hundreds of millions more in mineral rights below the surface and offshore. Although not all federal lands deserve the same attention and maintenance, acquiring more land typically means more funds are necessary to maintain them. Resources are only spread thinner as they are stretched to serve more lands challenged with overwhelming maintenance backlogs to address issues like soil erosion, land mismanagement, improper forest maintenance, and littering. According to the Property and Environment Research Center, "Over the past decade, Congress appropriated an average of \$521 million each year to projects related to deferred maintenance, or just 4 percent of the [NPS]'s total backlog" of \$11.9 billion. Further, "Since 2000, 26 new park units have been added to the National Park System, yet discretionary appropriations from Congress remain essentially flat."²

The four federal land management agencies estimate a list of \$30 billion worth of lands to acquire and \$27 billion in state projects eligible for LWCF grants.³ Yet the Department of the Interior (DOI) does not even have its own house in order, with \$16.13 billion in deferred maintenance and repairs.⁴ Rather than acquiring more lands which the federal government cannot afford, let alone maintain, Congress should prohibit any federal land acquisition through the LWCF or any other means.

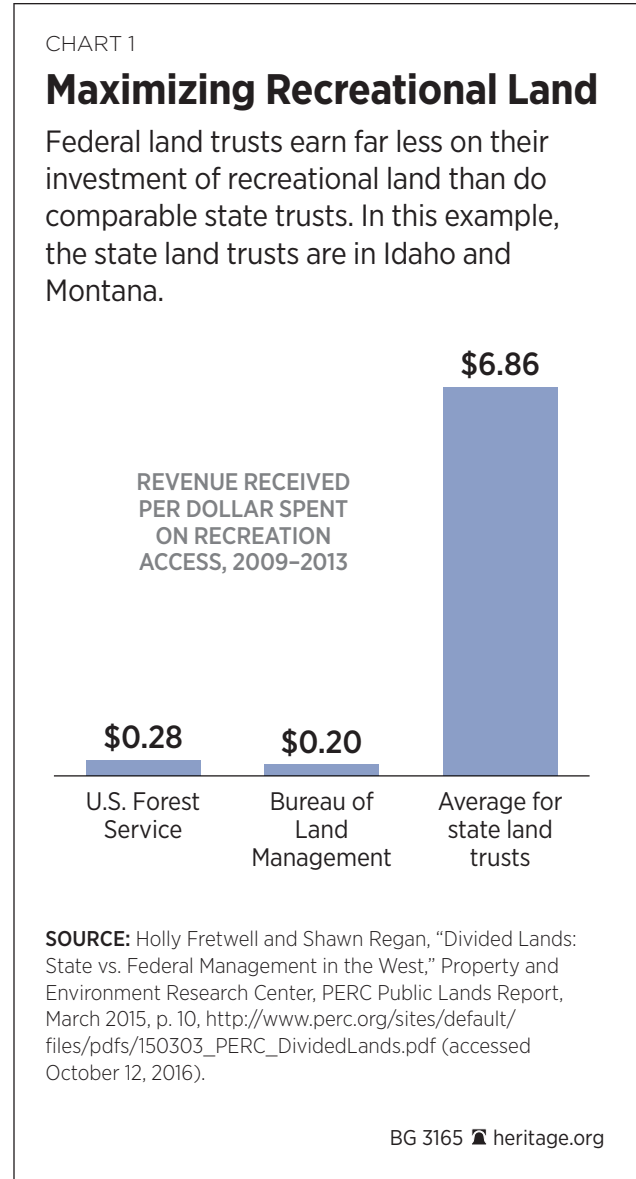
1. Land and Water Conservation Fund Act of 1965, Public Law 88-578.

2. Property and Environment Research Center, "Breaking the Backlog: 7 Ideas to Address the National Park Deferred Maintenance Problem," PERC Public Lands Report, February 2016, pp. 2-3, http://www.perc.org/sites/default/files/pdfs/BreakingtheBacklog_7IdeasforNationalParks.pdf (accessed October 12, 2016).

3. Land and Water Conservation Fund Coalition, "What Is the Land & Water Conservation Fund?" 2016, <http://www.lwcfcoalition.org/about-lwcf.html> (accessed October 19, 2016).

2. Letting the LWCF expire is not just a matter of *what* lands are set aside, but *who* manages those lands. Proponents of a larger federal estate argue that larger budgets are necessary to solve the tens of billions of dollars in maintenance backlogs. But federal management has devolved into unclear, redundant, and expensive regulations that often thwart good stewardship and enable discouragingly excessive litigation.⁵ Furthermore, the federal government has proved to be inflexible in managing land, unresponsive to local concerns, and not competitively managed. While by no means perfect, state management of public lands has proved much more successful. The BLM and FS lands lost \$4.38 per acre from 2009–2013, while trust lands in four western states earned \$34.60 per acre.⁶ In terms simply of recreation (the original purpose of the LWCF), states again do a better job of making a return on their investment. Idaho and Montana averaged \$6.86 per dollar spent on recreation on state trust lands; in contrast, the BLM earned \$0.20 and the FS \$0.28 per dollar spent, resulting in a net loss.⁷ Incentives to invest in and steward the environment are stronger when people have direct ownership and responsibility.

3. State grants go to projects that are local, not federal, in nature. The LWCF has awarded over 41,000 grants to state and local governments for a variety of projects. For instance, the LWCF has assisted in funding neighborhood pools, community parks, tennis courts, boat ramps, snowmobile trails, creek access points, local zoos, recreation centers, playgrounds, golf courses, baseball field lights, soccer fields, and ice skating rinks, to name a few.⁸ Despite their broad appeal, projects funded with LWCF grants have no place within the constitutional functions of the federal government. Townships and municipalities have a number of financing mechanisms at their disposal to pay for outdoor recreation. A municipal tax increase or private donations, for instance, could



fund a new swimming pool. In this case, the residents of the town who pay for the pool are also the ones who derive the benefits from it. In contrast, the LWCF disperses the cost among federal taxpayers and concentrates the benefits to the projects which receive grants.

4. U.S. Department of the Interior, "Agency Financial Report FY2015," November 2015, p. 137, <https://www.doi.gov/sites/doi.gov/files/uploads/DOI%20FY%202015%20Agency%20Financial%20Report.pdf> (accessed October 12, 2016).

5. Allan Fitzsimmons, *Reforming Federal Land Management: Cutting the Gordian Knot* (Lanham, MD: Rowman & Littlefield Publishers, 2012), pp. 85–111.

6. Holly Fretwell and Shawn Regan, "Divided Lands: State vs. Federal Management in the West," Property and Environment Research Center, PERC Public Lands Report, March 2015, Figure 1, http://www.perc.org/sites/default/files/pdfs/150303_PERC_DividedLands.pdf (accessed October 12, 2016).

7. *Ibid.*, Table 6.

8. Jason Alcorn, "The List of Grants," Institute for Nonprofit News, June 11, 2012, <http://invw.org/2012/06/11/lwcf-grants-database-1283/> (accessed October 12, 2016).

Eliminating the LWCF would actually yield some benefits for states. The LWCF state grant program limits federal contributions to no more than half of the project; however, there are strings attached which extend well beyond the initial funding. Grant recipients must maintain a park for public outdoor recreation in perpetuity unless they are able to propose a land exchange of equal value and recreational use. Changes to a park must also be approved by the NPS.⁹ Consequently, environmental and recreational management become more complicated even when residents no longer use a certain park or would rather shift resources to other priorities or even other parks.

A proposal in Indiana provides an ongoing example of this complication and delay. The proposal is for the restoration and expansion of a historic restaurant and pavilion at Indiana Dunes State Park, which received LWCF grants between 1972 and 1987.¹⁰ The state entered into a lease agreement in 2014 with a private company that would restore, expand, and operate a new facility at its own expense with annual lease payments going directly back to state parks. After gutting the building and adding new public beach showers and restrooms, the company was ordered by the NPS in June 2016 to stop work until the State of Indiana could get approval that all aspects of the project meet the NPS definition of a public facility and the NPS determines whether a land exchange is necessary to meet the LWCF terms.¹¹

4. The mission of the LWCF has migrated. Since 1998, 29 percent of funds (\$2.5 billion) have been diverted to an “other purposes” category of federal conservation-related activities.¹² In many instances, the appropriated funds have little to do with access to outdoor recreation, the original pur-

pose of the LWCF. There are few restrictions as to how Congress can allocate these funds. This “other” category has included funding for “facility maintenance of the land management agencies, ecosystem restoration, the Historic Preservation Fund, the Payments in Lieu of Taxes program, the Forest Legacy program, State and Tribal Wildlife Grants under the Fish and Wildlife Service (FWS), the Cooperative Endangered Species Conservation Fund, U.S. Geological Survey science and cooperative programs, and Bureau of Indian Affairs Indian Land and Water Claim Settlements, among other programs.”¹³ Even those who advocate for continuing the LWCF recognize the pervasion of diverting funds from conservation. According to the Wilderness Society, “Congress nearly always diverts the funds for other uses. This often leads to inadequate funding for vital conservation projects.”¹⁴

The Forest Legacy program, Cooperative Endangered Species Conservation Fund, and Fish and Wildlife Service State and Tribal Wildlife grants have received the vast majority of the LWCF “other purposes” allocation. Regardless of the merits of such programs, their purpose is not to increase and maintain Americans’ access to outdoor recreation; rather, they aim to pull land from public use. The Forest Legacy program acquires forests from other uses such as agriculture or home development. The Cooperative Endangered Species Conservation Fund is used for habitat conservation and restoration. The State and Tribal Wildlife grants go to fish and wildlife programs like restoration, surveys, and habitat management and monitoring. These funds and grants should be judged and funded (or not funded) on their own merits; the LWCF should not serve as an available pot of money for tangentially related programs.

9. National Park Service, “Land and Water Conservation Fund: Compliance Responsibilities and Legal Protection,” U.S. Department of the Interior, <https://www.nps.gov/subjects/lwcf/protection.htm> (October 12, 2016).

10. Indiana Department of Natural Resources, “Indiana Dunes State Park Pavilion Restoration,” July 14, 2016, <http://www.in.gov/dnr/parklake/8462.htm> (accessed October 12, 2016).

11. The NPS determined a land exchange is necessary for certain aspects of the project. Roger A. Knowlton, Acting Chief, Recreation Grants, National Park Service Midwest Region, U.S. Department of the Interior, letter to Cameron Clark, September 16, 2016, http://www.in.gov/dnr/parklake/files/sp-NPS_pavilion_approval.pdf (accessed October 21, 2016).

12. Carol Hardy Vincent, “Land and Water Conservation Fund: Appropriations for ‘Other Purposes,’” Congressional Research Service *Report for Congress* No. 44121, September 1, 2016, <http://www.fas.org/sgp/crs/misc/R44121.pdf> (accessed October 12, 2016).

13. *Ibid.*

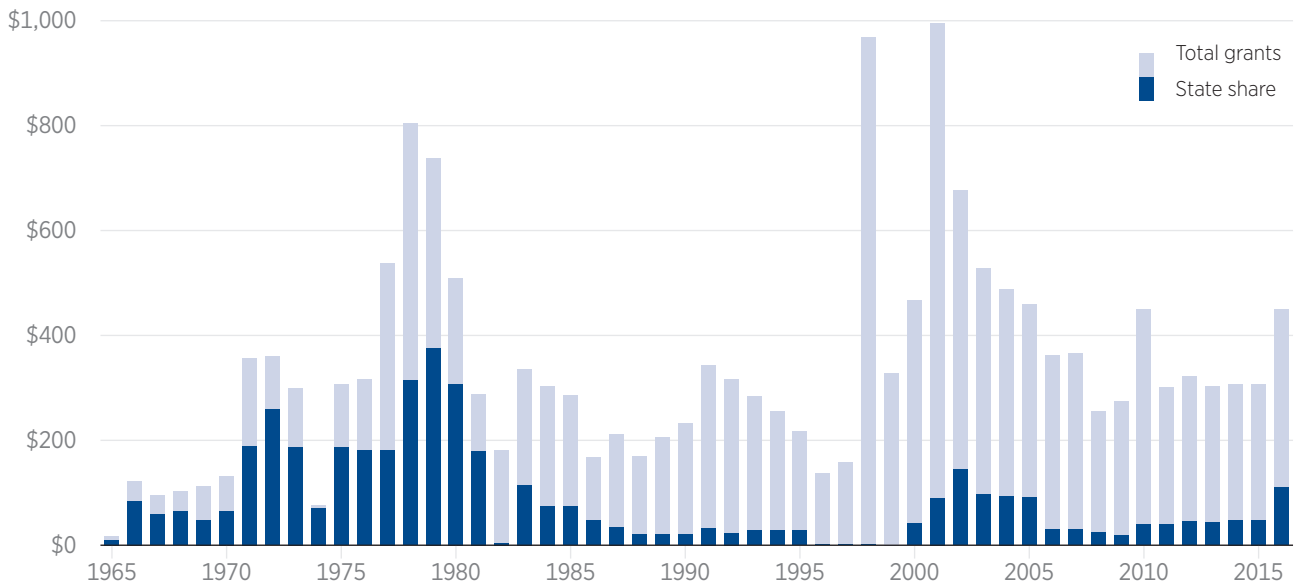
14. The Wilderness Society, “Land and Water Conservation Fund,” <http://wilderness.org/article/land-and-water-conservation-fund> (accessed October 12, 2016).

CHART 2

States Benefit Little from LWCF

Since 1982, states have received less than 15 percent of all Land and Water Conservation Fund grants.

LWCF GRANTS, IN MILLIONS



SOURCES: U.S. Department of the Interior, “FY2017 Interior Budget in Brief,” January 2016, Appendix B, https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_Appendix_B0001.pdf (accessed October 12, 2016), and Carol Hardy Vincent, “Land and Water Conservation Fund: Overview, Funding History, and Issues,” Congressional Research Service *Report for Congress* No. 33531, October 21, 2014, <https://www.nrpa.org/uploadedFiles/nrpa.org/Advocacy/Resources/LWCF%20CRS%20Report%202014.pdf> (accessed October 12, 2016).

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5. Permanent reauthorization will not guarantee funding certainty. Proponents of permanent reauthorization of the LWCF warn that failure to do so will prolong funding uncertainty for important conservation projects.¹⁵ Although \$900 million is authorized for the fund every year, Congress has only twice (1998 and 2001) appropriated all \$900 million from it.¹⁶ Since the fund’s inception, the average appropriation has been \$338 million a year. Making the LWCF permanent does not

remove Congress from having to appropriate from it every year.

Funding for the state matching grant program—arguably the most popular and transparent aspect of the LWCF—has been all but certain. Over the first 10 years, at least half of LWCF funding went to states (except in 1969); it sank to less than 1 percent during 1996–1999. Today, states receive merely one-quarter of appropriated funds, with federal projects taking up the rest.¹⁷ While the Senate ener-

15. “Drawing out the uncertainty over the program’s funding every few years serves no one.... We should make it permanent, avoid prolonged budget battles and get back to the business of protecting our natural spaces.” News release, “Ranking Member Grijalva, Rep. Fitzpatrick Introduce Bill to Permanently Establish Land and Water Conservation Fund, Prevent Sept. Expiration,” Committee on Natural Resources, U.S. House of Representatives, April 15, 2015, <https://democrats-naturalresources.house.gov/media/press-releases/ranking-member-grijalva-rep-fitzpatrick-introduce-bill-to-permanently-establish-land-and-water-conservation-fund-prevent-sept-expiration> (accessed October 12, 2016).

16. Carol Hardy Vincent, “Land and Water Conservation Fund: Overview, Funding History, and Issues,” Congressional Research Service *Report for Congress* No. 33531, October 21, 2014, <https://www.nrpa.org/uploadedFiles/nrpa.org/Advocacy/Resources/LWCF%20CRS%20Report%202014.pdf> (accessed October 12, 2016).

gy bill promises to set aside no less than 40 percent of the LWCF for states, within that amount are allotments for federal conservation programs like the Forest Legacy Program and cooperative endangered species grants.

The LWCF gives the false impression that more money and more parks equate to environmental progress and good management and resource allocation. In fact, more funding is likely to end up simply padding federal priorities. The federal government has received the majority of the LWCF funds, which have themselves been diverted to off-topic priorities like the “other programs” category. Many Members of Congress support the LWCF because their constituents associate the LWCF with their local parks.¹⁸ In reality, the LWCF is primarily a federal program that expands federal control of America’s land and water.

Conclusion

The LWCF enjoys broad bipartisan popularity helped along by its packaging of images with scenic parks and wildlife. However, the mission of the LWCF has migrated and may no longer address the current problems present in the federal estate. Congress should not permanently reauthorize the LWCF but instead allow it to expire in 2018. Rather than focusing on the LWCF, Congress should commit to good land management and environmental stewardship by freezing federal land acquisition altogether, addressing massive maintenance backlogs in the most important national parks, and allowing states, local communities, nonprofits, and private individuals to drive decisions about parkland in America.

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17. *Ibid.*, and Office of Budget, “FY2017 Interior Budget in Brief: Appendix B,” U.S. Department of the Interior, February 2016, <https://www.doi.gov/budget/appropriations/2017/highlights> (accessed October 21, 2016).

18. Andre Miller, “The Land and Water Conservation Fund Transcends Party Affiliation,” Center for Western Priorities, September 27, 2016, <http://www.westernpriorities.org/2016/09/27/the-land-and-water-conservation-fund-transcends-party-affiliation/> (accessed October 21, 2016).