

# ISSUE BRIEF

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## Permanent Reauthorization of Land and Water Conservation Fund Opens Door to Permanent Land Grabs

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Senators Lisa Murkowski (R-AK) and Maria Cantwell (D-WA) have re-introduced a federal lands package (S. 47) that failed to pass last fall.<sup>1</sup> The Senators are again pushing to expedite consideration, and the House is taking similar action. One objectionable feature of the broader federal lands bill is the permanent reauthorization of the Land and Water Conservation Fund (LWCF), an account used to expand federal land holdings and fund local recreation projects that expired in September 2018.

Congress should not reinstate the popular but problematic fund. The federal government cannot effectively manage the lands it already owns, and Congress should not enable further land acquisition. It is not the responsibility of Congress to provide for local recreation, which should be planned, prioritized, and paid for by the private sector, states, and communities. If Congress chooses to renew the LWCF, as it is likely to do, Congress should—at a minimum—focus the fund on maintaining existing federal lands and improving public access to them. Congress should use the funds to tackle the \$16 billion Department of the Interior maintenance backlog and sunset the program once the current backlog is complete.<sup>2</sup>

### What Is the LWCF?

Congress enacted the LWCF in 1964 with the intent to “assist in preserving, developing, and assuring accessibility to...outdoor recreation resources.”<sup>3</sup> The LWCF is the primary vehicle for land purchases by the four major federal land management agencies: the Forest Service, the Bureau of Land Management, the Fish and Wildlife Service, and the National Park Service. Congress can also appropriate LWCF funds according to a formula for a matching state grant program for local recreation projects.

Every year, \$900 million is available to the LWCF from funds primarily raised through royalties from offshore energy development, though Congress rarely appropriates it all. Of the \$40 billion collected in receipts from fiscal year (FY) 1965 to FY 2018, Congress has only appropriated \$18.4 billion. Of that \$18.4 billion, \$11.2 billion (61 percent) went to federal land acquisition, \$4.7 billion (25 percent) went to state grants, and \$2.6 billion (14 percent) went to other purposes.<sup>4</sup>

While many Members of Congress support the LWCF because their constituents associate it with their local parks, it in reality is primarily a federal program to meet federal objectives. State funds declined after the mid-1980s, including zero appropriations from FY 1996 to FY 1999.<sup>5</sup> Over the past 10 fiscal years, the average allocation to the states was less than 20 percent of total LWCF appropriations.<sup>6</sup>

S. 47 would permanently authorize the LWCF. Forty percent of the funds made available must be used each for state assistance and federal uses, and not less than \$15 million must be used for a new “priority list” compiled by the Secretaries of the Interior and Agriculture for federal land acquisition.<sup>7</sup>

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This paper, in its entirety, can be found at <http://report.heritage.org/ib4934>

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## Problems with Permanence

Permanent reauthorization of the LWCF legitimizes the notion that the federal government should be empowered to acquire more lands in perpetuity. The federal government already owns 640 million acres—nearly 30 percent of the entire country, and nearly half of the western United States—and hundreds of millions more below the surface and offshore.

Though not all federal land deserves the same maintenance, acquiring more land typically means that more funds are necessary to maintain them. In practice, existing resources have been spread thinner over more lands, exacerbating maintenance backlogs to address issues like soil erosion, land mismanagement, improper forest maintenance, and littering.<sup>8</sup>

Empowering Washington with the means to acquire more land also fails to recognize and address deep problems with federal land management. The most important issues facing federal lands are not consolidating inholdings or protecting new lands, but rather unclear, overlapping, expensive, and at-times-contradictory policies that often thwart good stewardship and enable excessive litigation. The federal government has proved to be inflexible in managing land, unresponsive to local concerns, and not competitively managed.<sup>9</sup>

Rather than acquiring more lands that the federal government cannot afford to purchase, let alone prove it can maintain, Congress should prohibit any additional federal land acquisition through the LWCF, or any other means.

## Local Recreation Is Not a Federal Responsibility

Since 1965, the Interior Department has funded over 42,000 projects for outdoor recreation: neighborhood pools, parks, tennis courts, boat ramps, snowmobile trails, zoos, playgrounds, golf courses, baseball field lights, soccer fields, and ice skating rinks, to name a few.<sup>10</sup> In 2017, for instance, Interior announced \$13.3 million for 22 projects, including \$450,000 for two soccer fields in Missouri and \$306,447 that paid for more than half of a new splash pad and park playground in Delaware.<sup>11</sup>

Policymakers at all levels of government generally jump at the opportunity to spend federal tax dollars. One LWCF advocate unwittingly summarizes why the fund has widespread support from federal, state, and local politicians: “Any talk of raising local taxes is met with pushback. The beauty of this [law] is, it gets funds to communities they otherwise wouldn’t receive.”<sup>12</sup>

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1. Senator Mike Lee (R-UT) objected to unanimous consent of the bill, in part because of the lack of transparency in moving the bill forward, but also out of concern for its potential in growing the federal estate. See news release, “Sen. Lee Comments on Public Lands Bill,” U.S. Senator Mike Lee, December 21, 2018, <https://www.lee.senate.gov/public/index.cfm/press-releases?ID=453AED16-732B-49B2-B04F-CD715F228E30> (accessed January 15, 2019).
  2. U.S. Department of Interior, “DOI Maintenance Backlog: Statement of the U.S. Department of the Interior, before the House Natural Resources Committee, on Exploring Innovative Solutions to Reduce the Department of Interior’s Maintenance Backlog,” March 6, 2018, <https://www.doi.gov/ocl/doi-maintenance-backlog> (accessed January 15, 2019).
  3. Land and Water Conservation Fund Act of 1965, Public Law 88-578.
  4. Carol Hardy Vincent, “Land and Water Conservation Fund: Overview, Funding History, and Issues,” Congressional Research Service, August 17, 2018, <https://fas.org/sgp/crs/misc/RL33531.pdf> (accessed January 15, 2019).
  5. *Ibid.*
  6. *Ibid.*
  7. S. 47, Section 3001, [https://www.energy.senate.gov/public/index.cfm?a=files.serve&File\\_id=2171BEBE-F9B2-4A3B-8984-79CC81A366BE](https://www.energy.senate.gov/public/index.cfm?a=files.serve&File_id=2171BEBE-F9B2-4A3B-8984-79CC81A366BE) (accessed January 17, 2018).
  8. 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 and 3, [http://www.perc.org/sites/default/files/pdfs/BreakingtheBacklog\\_7IdeasforNationalParks.pdf](http://www.perc.org/sites/default/files/pdfs/BreakingtheBacklog_7IdeasforNationalParks.pdf) (accessed January 15, 2019).
  9. Jason Hayes, “Conflict to Cooperation: Collaborative Management of Federal Lands in Michigan,” The Mackinac Center for Public Policy, 2018, <https://www.perc.org/wp-content/uploads/2018/10/Conflict-to-Cooperation-Hayes.pdf> (accessed January 15, 2019).
  10. National Park Service, “LWCF in Your Neighborhood,” <https://www.nps.gov/subjects/lwcf/lwcf-in-your-neighborhood.htm> (accessed January 15, 2019).
  11. News release, “Interior Announces \$13.3 Million for Improvements to Local Parks and Recreation in 22 Cities,” U.S. Department of the Interior, July 19, 2018, <https://www.doi.gov/pressreleases/interior-announces-133-million-improvements-local-parks-and-recreation-22-cities> (accessed January 15, 2019).
  12. Mark Davis, “Federal Outdoor Recreation Funding at Risk,” *Powell Tribune*, September 11, 2018, <http://www.powelltribune.com/stories/federal-outdoor-recreation-funding-at-risk,15911> (accessed January 15, 2019).
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The reality, however, is that states and townships should debate and prioritize community amenities and the means to pay for them. Taxpayers in Louisiana should not have to subsidize soccer fields in Missouri. The people who stand to benefit most from these projects are the ones who should pay for them. When the financing of these projects is not tethered to the communities that derive the most value from them, it is much easier to spend money frivolously, rather than properly assess whether the project is worth the cost and the long-term maintenance.

### LWCF's Migrating Mission

Increasingly, Congress has diverted more LWCF funds to the “other purposes” category of federal conservation activities. While 14 percent of the money has gone to “other purposes” over the life of the program, that percentage has increased to 30 percent of the funds in the past 20 years.<sup>13</sup> In many instances, the appropriated funds have little to do with access to outdoor recreation, the original purpose of the LWCF. No concrete definition exists for “other purposes,” and there are few restrictions on how Congress may allocate these funds.

The Forest Legacy Program, the Cooperative Endangered Species Conservation Fund, and the U.S. Fish and Wildlife Service's State Wildlife Grant and Tribal Wildlife Grant programs have received the vast majority of the LWCF “other purposes” allocation. Funding for the Forest Legacy Program and the Cooperative Endangered Species Conservation Fund has become second nature for appropriators: Congress has appropriated LWCF money for these two programs annually since FY 2008.<sup>14</sup>

Regardless of the merits of such programs, their purpose is not to increase and maintain Americans' access to outdoor recreation, but to restrict land from

use. The Forest Legacy Program acquires forests to protect them from other uses, such as agriculture or home development. The Cooperative Endangered Species Conservation Fund is used for habitat conservation, restoration, and other related habitat-conservation activities. State and Tribal Wildlife Grants go to fish and wildlife programs, such as habitat restoration, wildlife surveys, and habitat management and monitoring. Congress should judge and fund, or not fund, these programs on their own merit.

### Tackling the National Park System's Deferred Maintenance Backlog

Short of the ideal of letting the LWCF remain expired, Congress could devote funds entirely to maintenance of existing lands. The Department of the Interior estimates its maintenance backlog to be nearly \$16 billion, with nearly 70 percent occurring at America's national parks.<sup>15</sup> The National Park Service's maintenance backlog—an aggregation of all delayed maintenance projects, including roads, bridges, parking lots, visitors centers, thousands of miles of trails, and sewage and utility systems<sup>16</sup>—is estimated at more than \$11.6 billion.<sup>17</sup> Annual appropriations have consisted of a very small percentage of the overall backlog.<sup>18</sup> The LWCF's current \$21.6 billion in unappropriated funds far exceeds the needs of the backlog.

However, rather than relying on appropriations, alternative solutions exist to address the backlog. Marginally increasing visitor fees and authorizing park managers, who have specialized knowledge, to allocate resources for park priorities and use innovative solutions to reduce the backlog, can have a dramatic impact.<sup>19</sup> Rather than expanding the federal estate through a permanent LWCF authorization, selling off excess lands would be a source of revenue and an opportunity for better management.

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13. Hardy Vincent, “Land and Water Conservation Fund: Overview, Funding History, and Issues.”

14. *Ibid.*

15. U.S. Department of the Interior, “DOI Maintenance Backlog.”

16. Hardy Vincent, “Land and Water Conservation Fund: Overview, Funding History, and Issues.”

17. As of September 2017. See National Park Service, “What Is Deferred Maintenance?” July 30, 2018, <https://www.nps.gov/subjects/infrastructure/deferred-maintenance.htm> (accessed January 15, 2019).

18. Hearing, *Testimony of Holly Fretwell, Outreach Director and Research Fellow, Property and Environment Research Center (PERC)*, Subcommittee on National Parks, Energy and Natural Resources Committee, U.S. Senate, Restore Our Parks Act (S. 3172), July 11, 2018, [https://www.energy.senate.gov/public/index.cfm/files/serve?File\\_id=80E9D20E-A569-468C-AF6F-6772692AF3AA](https://www.energy.senate.gov/public/index.cfm/files/serve?File_id=80E9D20E-A569-468C-AF6F-6772692AF3AA) (accessed January 15, 2019).

19. Hannah Downey and Tate Watkins, “We Will Better Protect National Parks for Just Pennies More Per Visit,” Property and Environment Research Center, April 25, 2018, <https://www.perc.org/2018/04/25/we-will-better-protect-national-parks-for-just-pennies-more-per-visit/> (accessed January 15, 2019).

## Conclusion

The LWCF enjoys broad bipartisan popularity helped along by packaging its message with images of scenic parks and wildlife. However, there are good reasons for Congress to leave the program expired. The mission of the LWCF has migrated and may no longer reflect current realities of the federal estate where deep problems need to be addressed. If Congress extends authorization of the LWCF for any period of time, policymakers should amend existing statutes to prohibit the acquisition of new land and instead allocate them to address maintenance of America's national parks and other Interior-related deferred maintenance. Congress should sunset the program once the Interior Department completes the deferred maintenance tasks.

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