

Senate Conservation Bill Can't Offset Its Billions in Spending

Katie Tubb

KEY TAKEAWAYS

The LWCF, a primary federal tool to acquire land, needs reform to increase accountability and fiscal responsibility and to curtail extensive federal land holdings.

S. 3422 unwisely makes the LWCF a mandatory program, erodes congressional oversight, encourages more federal land purchases, and offers no spending offsets.

Congress should consider how to maintain the 640 million acres the federal government already owns—not enable unchecked land acquisition.

The Senate is currently considering the Great American Outdoors Act (S. 3422), a policy priority noted by Majority Leader Mitch McConnell (R-KY) in early March, and suggested for debate in June as part of negotiations on another coronavirus relief package.¹ There are two main pieces to the bill: (1) a new fund to address deferred maintenance on federal lands, and (2) a measure to restructure the Land and Water Conservation Fund (LWCF) as a mandatory spending program.²

There are a variety of legitimate concerns about the LWCF, the federal government's primary tool for acquiring new land—chief among them being the questions of who makes decisions for local land ownership and use; how those decisions affect communities, especially in rural areas; and the bureaucratic difficulty of altering those decisions, which render them effectively permanent. In the past year, Congress has

This paper, in its entirety, can be found at <http://report.heritage.org/ib5082>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

made several iterative changes to the LWCF and is proposing to make a third change with S. 3422, which is perhaps the most expansive and problematic of the changes.

Current Law

Congress created the LWCF in 1965 to “assist in preserving, developing, and assuring accessibility to...outdoor recreation resources.”³ Though it was intended as a predominantly state-focused program, three-fourths of funding has gone to federal activity, most of which consists of land acquisition by the Bureau of Land Management (BLM), the Forest Service (FS), the National Park Service (NPS), and the Fish and Wildlife Service (FWS). The two major changes by Congress in the past year were to:

1. Make the LWCF permanent. Before that, the fund was re-evaluated and renewed by Congress roughly every 25 years.
2. Require that states and federal activities each receive no less than 40 percent of the funds appropriated by Congress, in an effort to restore the original intent of the law as a state program.⁴

Normally, Congress appropriates up to \$0.9 billion a year to particular purposes and projects, the remainder being set aside in the Treasury. Money is only available through appropriations to federal land agencies or to the state cost-sharing program for planning, acquisition, and development of lands and waters for outdoor recreation activities. Appropriations bills often also include rescission of previous spending from the fund. For example, in the Further Consolidated Appropriations Act of 2020, Congress appropriated \$70.7 million to the FWS for “administrative expenses, and for acquisition of land or waters, or interest therein...[and] land conservation partnerships;” it rescinded \$3.6 million from FWS “projects with cost savings or failed or partially failed projects.”⁵

Congress is now proposing to make several changes that eliminate this process.

Proposed Changes and Problems

In addition to the previous changes, S. 3422 proposes to take one step further and all but remove Congress from the program’s implementation by refashioning it as a mandatory spending program.⁶ Specifically, the fund will continue to accrue \$0.9 billion per year, which may be spent “without further

appropriation or fiscal year limitation.”⁷ In practice, the bill proposes that the President set LWCF allocations through the President’s annual budget request. If Congress does not make any specific allocations in that fiscal year’s appropriations bill (specifically the “Department of Interior, Environment and Related Agencies” appropriations bill), then the President’s proposal becomes final. The President and those acting on his behalf may use whatever remains of the \$0.9 billion as they see fit according to the purposes of the fund.

It also eliminates a few seemingly obscure checks on the federal land agencies. For instance, the bill would repeal a prohibition that currently prevents the LWCF from being used to acquire more than 15 percent of the acreage to the National Forest System in the American West.⁸ The federal government already owns more than 50 percent of land in the 11 Western states and Alaska, including more than half of Oregon (53 percent), Alaska (61 percent), Idaho (62 percent), Utah (63 percent), and Nevada (80 percent).

Turning the LWCF into a mandatory spending program has serious negative consequences:

1. **Delegates away Congress’s power of the purse.** The Constitution uniquely gives Congress the power of the purse. Restructuring the LWCF as a mandatory program largely delegates this power to bureaucrats at the NPS, the BLM, the FWS, and the FS. Importantly, it appears that Congress has no ability to limit how much of the annual \$0.9 billion a President can spend. Congress can develop its own annual allocation plan, but if it allocates less than the amount that the President proposes, control over the remaining allocation still resides with the President.
2. **Spends rather than saves.** The proposed mandatory spending program would establish a process that is largely directed and administered by executive agencies, is predisposed to spend rather than to save, and provides little incentive to spend judiciously. At least under the current structure as an appropriated program, Congress must debate which projects to support and how much to appropriate, and retains the option to later rescind certain funds.
3. **Does not offset spending.** A previous estimate by the Congressional Budget Office (CBO) clarifies that “pay as you go” requirements would indeed be triggered.⁹ While the CBO smooths out the projected estimated costs of the bill by conservatively estimating actual expenses over the 10-year budget window, the reality is that Congress has little idea how costly this program could become. The bill is unhelpfully

vague and appears to allow a President room to claim immediate access to the \$22.1 billion never-yet appropriated from the fund, in addition to the \$0.9 billion available to be spent every year. Such an interpretation could bring total potential spending power up to \$31.1 billion in the first 10 years alone. Regardless, the bill proposes no means to pay for such spending.

By including these changes in a bill to create a new lands maintenance fund, S. 3422 presumably aims to garner support amongst legislators who would normally object to such extensive changes to the LWCF for justifiable concerns about fiscal responsibility and the already extensive federal land holdings. However, the proposed changes to the LWCF are deeply problematic and sully whatever conservation value the bill has.

The federal government already owns more than 640 million acres, and as the first half of S. 3422 rightly acknowledges, maintenance of these lands is a beleaguering issue. Full and permanent funding of the LWCF affirms the notion that the federal government should be empowered to acquire ever more lands in perpetuity. Instead, Congress should be talking about how to “assist in preserving, developing, and assuring accessibility” to the lands the federal government already owns.

Does Congress Really Want a New Entitlement Program?

Despite its popularity with urban communities, East Coast tourists, and outdoor recreation corporations, the LWCF is problematic for a variety of reasons, and the changes proposed in S. 3422 put accountability further out of reach by removing America’s elected representatives from the fund’s administration. Creating a new mandatory program and transferring authority over the LWCF to the President weakens Congress’s power of the purse and makes the program less accountable to voters and their elected representatives.

S. 3422 combines these expansive changes to the LWCF with a well-intended measure to address maintenance backlogs on federal lands. However, Congress would be creating a bigger maintenance problem by further enabling federal land acquisition, with no means to pay for it. Debate over the LWCF is not about who loves nature more; it is about how best to take care of what the federal government already owns.

Katie Tubb is Senior Policy Analyst for Energy and the Environment in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom, at The Heritage Foundation.

Endnotes

1. Alexander Bolton, "McConnell Gives Two Vulnerable Senators a Boost with Vote on Outdoor Recreation Bill," *The Hill*, May 21, 2020, <https://thehill.com/homenews/senate/499084-mcconnell-gives-two-vulnerable-senators-a-boost-with-vote-on-recreation-bill> (accessed June 3, 2020).
2. For more information on the National Parks and Public Land Legacy Restoration Fund, see forthcoming paper by Nicolas Loris, "Tackling the Deferred Maintenance Backlog in America's National Parks," Heritage Foundation.
3. Land and Water Conservation Fund Act of 1965, Public Law 88-578.
4. Since the fund's creation, states have only received 26 percent of the funds appropriated by Congress, the remaining 60 percent going to federal land acquisition and 14 percent to other federal conservation purposes.
5. Further Consolidated Appropriations Act, 2020, Public Law 116-94.
6. Great American Outdoors Act, S. 3422, 116th Congress, 2nd Sess., <https://www.congress.gov/116/bills/s3422/BILLS-116s3422pcs.pdf> (accessed June 3, 2020).
7. Section 200303(a).
8. Technically, the 100th meridian line.
9. Congressional Budget Office, "S. 1081, Land and Water Conservation Fund Permanent Funding Act," Cost Estimate, January 21, 2020, <https://www.cbo.gov/system/files/2020-01/s1081.pdf> (accessed June 3, 2020).