

# CRS Report for Congress

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## **Land and Water Conservation Fund: Overview, Funding History, and Current Issues**

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# Land and Water Conservation Fund: Overview, Funding History, and Current Issues

## Summary

The Land and Water Conservation Fund (LWCF) Act of 1965 was enacted to help preserve, develop, and assure access to outdoor recreation facilities to strengthen the health of U.S. citizens. It created the Land and Water Conservation Fund in the U.S. Treasury as a funding source to implement the outdoor recreation goals in the law.

The LWCF has been the principal source of monies for land acquisition for outdoor recreation by the four federal agencies — the National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service. Congress typically identifies which areas are to be acquired with the funds it provides. The LWCF also funds a matching grant program to assist states (and localities) in recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities. The states award their grant money through a competitive selection process based on statewide recreation plans and establish their own priorities and criteria. Finally, in recent years, beginning in FY1998, LWCF has been used to fund an array of other federal programs with related purposes. There are no limitations on what programs can be funded from the LWCF.

The LWCF accumulates \$900 million annually from designated sources. Congress determines the level of appropriations each year, and appropriations have fluctuated widely since the origin of the program. FY2001 marked the highest funding ever, with appropriations exceeding the authorized level by reaching \$1.0 billion. Total LWCF appropriations, and in general the funding levels for land acquisition and the state grant program, have declined each year since FY2001.

Throughout the history of the program, total LWCF appropriations (\$14.3 billion) have been unevenly allocated among federal land acquisition (62%), the state grant program (28%), and other programs (10%). Similarly, federal land acquisition funds have been allocated unevenly among the four federal agencies.

There is a difference of opinion as to the appropriate level of funds for LWCF and how those funds should be used. Current congressional issues include deciding the amount to appropriate for land acquisition and identifying which lands should be acquired; deciding the level of funding for the state grant program; and determining which, if any, other programs to fund from the LWCF. The primary context for debating these issues is Interior appropriations legislation.

This report is expected to be updated annually. For the most recent action on LWCF, see the “Land and Water Conservation Fund” section of CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*.

## Contents

Introduction .....	1
How the Fund Works .....	1
Purposes of LWCF Appropriations .....	2
Federal Land Acquisition .....	2
Stateside Program .....	3
Other Purposes .....	4
Funding History .....	4
Overview of FY1965-FY2006 .....	4
Allocation Among Land Acquisition, Stateside, and Other Purposes ..	7
Current Issues .....	9

## List of Figures

Figure 1. LWCF Appropriations, FY1965-FY2006 .....	5
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## List of Tables

Table 1. Total LWCF Appropriations, FY2001-FY2006 .....	7
Table 2. LWCF Appropriations for Other Purposes, FY1998-FY2006 .....	8

# Land and Water Conservation Fund: Overview, Funding History, and Current Issues

## Introduction

The Land and Water Conservation Fund (LWCF) Act of 1965<sup>1</sup> was enacted to help preserve, develop, and assure access to outdoor recreation resources. A main goal of the law was to facilitate participation in recreation and strengthen the “health and vitality” of U.S. citizens. The law sought to accomplish these goals by “providing funds” for federal acquisition and development of lands and other areas and by “providing funds for and authorizing” federal assistance to states in recreation planning, acquiring lands and waters, and development of recreation facilities.

The law created the Land and Water Conservation Fund in the Treasury as a funding source to implement the outdoor recreation goals it set out. The LWCF is a “trust fund” that accumulates revenues from federal outdoor recreation user fees, the federal motorboat fuel tax, and surplus property sales. To supplement these sources to reach the annual authorized level of \$900 million, the fund accumulates revenues from oil and gas leases on the Outer Continental Shelf (OCS). During the past decade, the OCS revenues have accounted for almost 100% of the deposits.

Monies in the fund are available for outdoor recreation purposes only if appropriated by Congress, and the level of annual appropriations has varied widely since the origin of the fund. Current congressional issues include (1) deciding the amount to appropriate for federal land acquisition and identifying which lands should be acquired, (2) deciding the level of funding for the state grant program, and (3) determining what, if any, other programs should be funded through LWCF and at what level. The primary context for debating these issues is the annual Interior appropriations legislation. For the most recent action on LWCF, see the “Land and Water Conservation Fund” section of CRS Report RL33399, *Interior, Environment, and Related Agencies: FY2007 Appropriations*.

## How the Fund Works

The LWCF is not a true trust fund in the way “trust fund” is generally understood in the private sector. The fund is credited with revenues totaling \$900 million annually, but these credited monies cannot be spent unless appropriated by Congress. Unappropriated funds remain in the U.S. Treasury and can be spent for other federal activities. From FY1965 through FY2006, about \$29 billion has been credited to the LWCF. About half that amount — \$14.3 billion — has been

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<sup>1</sup> Act of Sept. 3, 1964; P.L. 88-578, 78 Stat. 897. 16 U.S.C. §§460l-4, et seq.

appropriated. Further, interest is not accrued on the accumulated unappropriated balance that has been credited to the LWCF. While some supporters assert that the LWCF was originally intended to be a revolving fund, whereby the money would be maintained in a separate account that could accrue interest, this has not been the case. The fund's basic purpose has not been altered even though the authorizing legislation has been amended, most notably to raise the funding ceiling and to mandate that offshore oil and gas leasing revenues should make up any shortfall from other specified financing sources.

## Purposes of LWCF Appropriations

Appropriations from LWCF have been made for three general purposes: (1) federal acquisition of land and waters and interests therein; (2) grants to states for recreational planning; acquiring recreational lands, waters, or related interests; and developing outdoor recreational facilities; and (3) related purposes (starting in FY1998).<sup>2</sup>

**Federal Land Acquisition.** The LWCF remains the principal source of funds for federal acquisition of lands for outdoor recreation. Most federal lands are acquired (and managed) by four agencies — the Forest Service (FS) in the Department of Agriculture, and the National Park Service (NPS), Fish and Wildlife Service (FWS), and Bureau of Land Management (BLM) in the Department of the Interior.<sup>3</sup> These four agencies manage about 94% of all federally owned lands. Of these agencies, only the FWS has another significant source of acquisition funding. Specifically, under the Migratory Bird Conservation Account, the FWS has a permanently appropriated source of funding for land acquisition.<sup>4</sup>

The process for appropriating funds for federal land acquisition is similar from year to year. The annual budget submission from each of the four federal agencies includes proposals of which lands the agencies seek to acquire with requested funds. The four FY2007 requests, for example, would fund acquisitions at 36 sites. Section 7 of the LWCF Act (16 U.S.C. §460l-9) provides that federal funds may be used for purposes including water development projects with recreational benefits; land acquisition in areas administered by the Secretary of the Interior for recreational purposes; land acquisition in national park, national forest, and national wildlife system units. The large backlog of potential acquisitions provides each agency with options in its annual request. For instance, the NPS estimates the cost of its acquisition backlog after FY2006 at \$1.86 billion. Congress reviews agency requests, then determines which areas will be acquired and the funding level it will provide for each acquisition. In general, most of the funds have been earmarked to specific sites. In recent years, Congress typically has provided each agency with a

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<sup>2</sup> Hereafter these purposes are referred to respectively as (1) federal land acquisition, (2) the stateside program, and (3) other purposes.

<sup>3</sup> For an introduction to these agencies and their responsibilities, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*.

<sup>4</sup> For more information on the Migratory Bird Conservation Account, see the "FWS Acquisition Authority" section of CRS Report RL32393.

portion of the funding for managing the acquisition program as well as for “emergencies,” “inholdings,” “hardships,” and/or “exchanges.”

Appropriations law typically provides that LWCF funds remain available until expended, meaning the funds can be carried over from fiscal year to fiscal year. Often an appropriation is not used in the fiscal year provided, because the process for completing a land acquisition has many components and often takes more than one year.<sup>5</sup>

**Stateside Program.** Another portion of the LWCF, administered by the NPS, provides matching grants to states (including the District of Columbia and U.S. territories) for recreation planning, acquisition of lands and waters, and facility development. Grants are provided for outdoor recreation purposes only, rather than for indoor facilities such as community centers. Through FY2005, over 40,000 grants have been provided to state and local governments for outdoor recreation projects. This figure includes 10,600 grants for acquisition; 26,420 grants for developing recreation facilities; 2,760 grants for redeveloping older recreational facilities; and 641 state planning grants for studies of recreation potential, need, opportunity, and policy. Recipients have acquired approximately 3 million acres.

Acquisitions funded through LWCF grants must remain in recreation use in perpetuity, unless the Secretary of the Interior approves of the conversion of the land to another use and replacement lands are substituted. Conversions occur due to changing state needs, such as to use park lands to build schools, widen roads, and develop civic facilities. The NPS approves about 50-75 conversions yearly nationwide, according to the agency.

Appropriations to the state grant program typically do not include earmarks or other directions to the NPS to guide how these funds should be distributed or spent. The Secretary of the Interior apportions the appropriation for state grants in accordance with a formula set out in §6 of the LWCF Act (16 U.S.C. §460l-8). The formula calls for a portion of the appropriation to be divided equally among the states and the remaining appropriation to be apportioned based on need, as determined by the Secretary.<sup>6</sup> In current practice, population is the biggest factor in determining state need. No state can receive more than 10% of the total appropriation.

States have up to three years to use the money — the fiscal year in which the apportionment is made and the next two fiscal years. It is rare for a state not to use the money during this time, according to the NPS. Under law, the Secretary is to reapportion any amount that is not paid or obligated during the three-year period.

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<sup>5</sup> LWCF funds are among the first to be borrowed for wildland fire fighting when funds appropriated for fire fighting are insufficient. Borrowed funds typically are repaid in a subsequent appropriations bill.

<sup>6</sup> The apportionment among states (including the District of Columbia and U.S. territories) for each of the last five fiscal years — FY2002-FY2006 — is on the NPS website at [<http://www.nps.gov/nrcr/programs/lwcf/funding.html>].

To be eligible for a grant, a state must prepare and update a statewide recreation plan. This plan usually addresses the needs and opportunities for recreation and includes a program for reaching recreational goals. It generally does not include specific projects. Under law, the plan is required to be approved by the Secretary, and in practice it is sent to the NPS for approval. The states award their grant money through a competitive process based on their recreation plans and their own priorities and selection criteria. They can use the money for state projects or for pass-through to localities. States send their top-ranked projects to the NPS for formal approval and obligation of grant money.

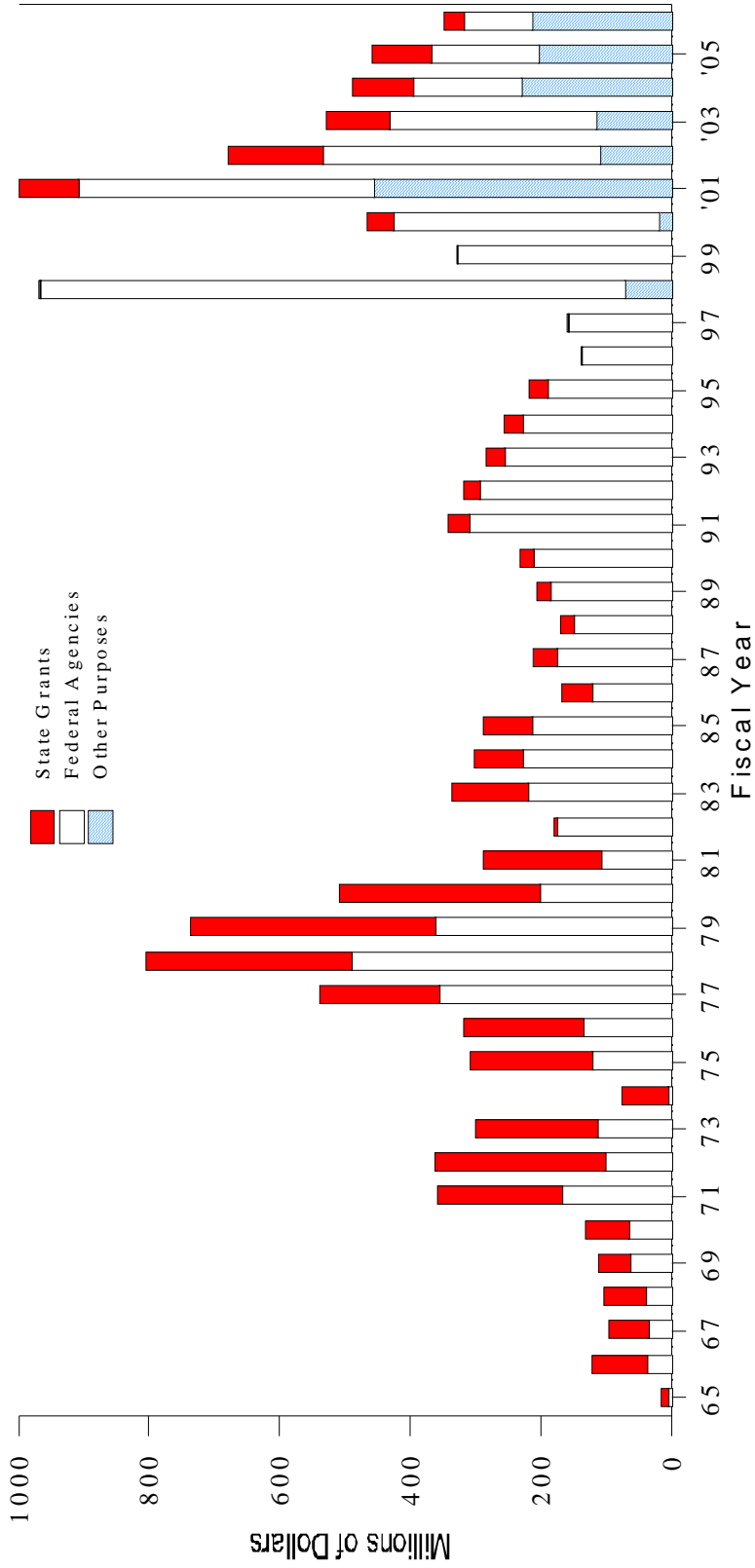
Payments to states are not to cover more than 50% of a project's costs, and the remaining cost is to be borne by the state. States typically receive a 50% federal payment which they match with state funds. For instance, in FY2005 states requested and received less than 50% for about only 10% of all projects.

**Other Purposes.** Section 7 of the LWCF Act (16 U.S.C. §460l-9) states how LWCF funds are to be used for federal purposes “unless otherwise allotted in the appropriation Act making them available.” A portion of the LWCF appropriation has been provided for other federal purposes in FY1998 and each year since FY2000. Because there is no set of “other programs” specified to be funded from LWCF, Presidents have sought funds for a variety of programs and Congress has chosen which, if any, other programs to fund from LWCF. For instance, for FY2006, President Bush sought LWCF funds for 15 programs within the FWS, FS, and other agencies, and Congress provided funding for five of these programs. Since FY1998, the LWCF has been used for a broad array of other programs, including the maintenance needs of the four land management agencies, FS highway rehabilitation and maintenance, the Historic Preservation Fund, the Payments in Lieu of Taxes program, FS State and Private Forestry programs, FWS State and Tribal Wildlife Grants, and FWS Cooperative Endangered Species Grants.

## Funding History

**Overview of FY1965-FY2006.** Total annual appropriations from the LWCF have fluctuated widely since the origin of the program over four decades ago (see bar graph below). Until FY1998, LWCF funding did not exceed \$400 million, except from FY1977-FY1980, when it ranged from \$509 (FY1980) to \$805 million (FY1978), and averaged \$647 million annually. LWCF appropriations spiked dramatically in FY1998 — to \$969 million — from the FY1997 level of \$159 million. FY1998 was the first year that LWCF appropriations exceeded the authorized level of \$900 million. They included \$270 million in the usual funding titles for land acquisition by the four federal land management agencies; an additional \$627 million in a separate title, funding both the acquisition of the Headwaters Forest in California and New World Mine outside Yellowstone National Park; and \$72 million for other programs.

**Figure 1.**  
**LWCF Appropriations, FY 1965-FY 2006**



Source and Note: The primary source for these data is the DOI Budget Office, December 22, 2005. The graph does not reflect \$76.0 million provided for the transition quarter from July 1, 1976 to September 30, 1976.



Another spike occurred in FY2001, when appropriations again exceeded the authorized level and totaled \$1.0 billion. This record level of funding was provided partly in response to President Clinton's Lands Legacy Initiative, which sought \$1.4 billion for 21 resource protection programs including the LWCF. It also was provided in response to some congressional interest in providing increased and more certain funding for the LWCF. The 106<sup>th</sup> Congress had been considering legislation to fully fund the LWCF and to make it operate like a private sector trust fund. Such proposals sought to divert offshore oil and gas revenues to a Conservation and Reinvestment Act (CARA) Fund and to permanently appropriate receipts credited to the LWCF, among other related purposes. When it became clear that CARA legislation would not be enacted, Congress included aspects of the legislation in the FY2001 Interior and Related Agencies Appropriations law (P.L. 106-291). These provisions established the Conservation Spending Category (CSC), with the LWCF as a major component in the CSC. The CSC provisions set a target for total funding for all the component programs in FY2001 at \$1.6 billion, including \$1.2 billion through Interior appropriations and \$400 million through Commerce appropriations. Under law, the target was to increase each year until it reached \$2.4 billion in FY2006. However, Congress generally has not used the CSC structure in appropriating funds to the LWCF and related programs. The CSC was authorized in Interior Appropriations law through FY2006, while the Commerce Appropriations law authorized it for only FY2001.<sup>7</sup>

Total LWCF appropriations, and in general the funding levels for each federal agency and the stateside program, have declined every year since FY2001. **Table 1**, below, lists appropriations from FY2001 to FY2006 and shows this decline for each federal agency and the state grant program. Most recently, for FY2006, Congress appropriated \$346.8 million in total LWCF appropriations. This was slightly more than half the amount requested by the Administration — \$680.6 million. The largest difference occurred in funds for other programs, with the Administration requesting \$524.3 million and Congress appropriating \$214.1 million. FY2006 funding was a 24% decline from the FY2005 level.

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<sup>7</sup> For more information on CARA and the CSC, see CRS Report RS20471, *The Conservation Spending Category: Funding for Natural Resource Protection*, by Jeffrey A. Zinn.

**Table 1. Total LWCF Appropriations, FY2001-FY2006**  
(in millions of dollars)

Purpose	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
<b>Land Acquisition</b>						
Bureau of Land Management	\$56.5	\$49.9	\$33.2	\$18.4	\$11.2	\$8.6
Fish and Wildlife Service	\$121.2	\$94.3	\$72.9	\$38.1	\$37.0	\$28.0
National Park Service	\$124.8	\$130.0	\$74.0	\$41.7	\$55.1	\$34.4 <sup>f</sup>
Forest Service	\$150.9	\$149.7	\$132.9	\$66.4	\$61.0	\$41.8
<i>Total Land Acquisition</i>	<i>\$453.4</i>	<i>\$423.9</i>	<i>\$316.0<sup>b</sup></i>	<i>\$164.6</i>	<i>\$164.3</i>	<i>\$120.1<sup>e</sup></i>
<b>State Grants</b>	\$90.3	\$143.9	\$97.4	\$93.8	\$91.2	\$29.6
<b>Other Programs</b>	\$456.0	\$109.8 <sup>a</sup>	\$115.5 <sup>c</sup>	\$229.7 <sup>d</sup>	\$203.5	\$214.1
<b>Total</b>	<b>\$999.7</b>	<b>\$677.6<sup>a</sup></b>	<b>\$528.9<sup>bc</sup></b>	<b>\$488.1<sup>d</sup></b>	<b>\$459.0</b>	<b>\$346.8<sup>f</sup></b>

**Source:** The primary source for this data is the DOI Budget Office, December 23, 2005.

- a. This figure reflects a \$25.0 million rescission of FY2001 funds for State Wildlife Grants.
- b. This figure includes \$3.0 million for the Bureau of Indian Affairs for Indian Land and Water Claim Settlements that is not shown in the figures above.
- c. This figure reflects a \$40.0 million rescission of FY2002 funds for the Landowner Incentive Program and a \$10 million rescission of FY2002 funds for the Private Stewardship Grants Program.
- d. This figure includes \$5.0 million for Bureau of Indian Affairs settlements and \$5.0 million for FWS resource management.
- e. This figure includes \$7.3 million in appropriations for DOI Departmental Management for land acquisition appraisal services.
- f. The NPS land acquisition and total appropriation figures are reduced by \$9.8 million due to the use of prior year funds for NPS federal land acquisition. The total only also is reduced by \$17.0 million due to the use of prior year funds for NPS land acquisition and state assistance. Thus, the figures in this column exceed the total by \$17.0 million.

**Allocation Among Land Acquisition, Stateside, and Other Purposes.** The \$14.3 billion appropriated from the fund through FY2006 has been unevenly allocated among federal land acquisition, the stateside program, and other purposes, as shown on the bar graph above. The largest portion of the total — \$9.0 billion (62%) — has been appropriated for federal land acquisition. The four federal land management agencies have received differing portions of this \$9.0 billion. Specifically, the NPS has received \$4.0 billion (44%); the FS, \$2.5 billion (28%); the FWS, \$1.7 billion (20%), and the BLM, \$0.7 billion (8%).

The stateside program has received the second largest portion of LWCF appropriations — \$3.9 billion (28% of the total, which includes funds for grant administration). In the early years, more funds generally went to the stateside program than to the four federal agencies combined. The stateside program has declined as a portion of total LWCF appropriations since the early 1980s, and received no appropriations (except for program administration) from FY1996 through FY1999. Over the last five years (FY2002-FY2006), funding for the stateside program has been roughly 20% of total LWCF appropriations, except that FY2006 stateside funding fell to 8%.

Other purposes have received the remaining portion of total LWCF appropriations — \$1.4 billion (10%). No funds were provided for other purposes until FY1998. By contrast, 27% of LWCF appropriations from FY1998 through FY2006 have been for other programs. While the funds have been provided for various purposes to different agencies, the FWS and FS have received the largest shares: about \$881 million and \$309 million respectively of the \$1.4 billion appropriated for other purposes since FY1998.

Both the dollar amount and percentage of LWCF appropriations provided to other purposes have varied widely throughout this period, as shown in **Table 2**, below. The dollar value of the appropriations for other purposes was much higher in FY2001 than any other year, when these appropriations were used to fund programs in the Clinton Administration's Lands Legacy Initiative. The highest percentage of funds provided for other purposes occurred in FY2006, in response to President Bush's request for funding for an array of other programs. In recent years, Congress has appropriated significantly less for other purposes than the Administration has requested. For instance, for each year from FY2003-FY2006, the Bush Administration sought between \$524 million and \$586 million, for an average of \$560 million. Congress appropriated between \$115 million and \$230 million each year, for an average of \$191 million.

**Table 2. LWCF Appropriations for Other Purposes,  
FY1998-FY2006**  
(in millions of dollars)

<b>Fiscal Year</b>	<b>Total LWCF Appropriation</b>	<b>Appropriation for Other Programs</b>	<b>Other Programs as % of Total Appropriation</b>
FY1998	\$969.1	\$72.0	7%
FY1999	\$328.2	\$0	0%
FY2000	\$466.9	\$20.0	4%
FY2001	\$999.7	\$456.0	46%
FY2002	\$677.6	\$109.8	16%
FY2003	\$528.9	\$115.5	22%
FY2004	\$488.1	\$229.7	47%
FY2005	\$459.0	\$203.5	44%
FY2006	\$346.8	\$214.1	62%

## Current Issues

There are differing opinions as to the appropriate level of LWCF appropriations and what these funds should be used for. The LWCF enjoys broad support from resource protection advocates, many of whom seek stable and predictable funding through consistent levels of appropriations or permanent appropriations. Most of these advocates seek higher appropriations in general, while some have specific priorities, such as higher acquisition funding for one of the four federal agencies, the state grant program, or a particular site or area. Advocates of higher federal land acquisition funding promote a strong federal role in acquiring and managing sensitive areas and natural resources.

Others seek reduced levels of funds for LWCF based on varied concerns. They include concerns about further acquisition of privately-owned land by the federal government either generally or at specific sites, especially in the West, where federal ownership is already concentrated. The concerns involve preferences for private ownership, limits that federal agencies may place on uses of their lands, and reduced local tax revenues that result from public ownership. Some opponents believe that maintaining (and rehabilitating) the land and facilities that federal agencies already own should take priority over further acquisitions. Since federal agencies cannot use LWCF funds for maintenance, supporters of this priority favor more funding to other accounts that can be used for maintenance and less for LWCF.

As part of the annual appropriations process, Congress sets the overall funding for each agency for land acquisition, identifies which areas will be acquired, and specifies the amount of funding for each particular acquisition. If funding for land acquisition continues to decline or is relatively low, these choices may be more difficult and there may be more competition for limited funds. Since the early 1990s, the appropriations debate has grown more complicated as perspectives on resource protection have changed. One change is that alternatives to acquisition that may provide potentially lower levels of protection but at less cost (such as easements) have become more widely used by federal agencies. A second change is that resource protection is discussed increasingly for either larger areas with multiple landowners — such as ecosystems, landscapes, or watersheds — or for managing systems where only a portion of the land is in public ownership. In these complex situations success depends on cooperation and partnerships, and the LWCF may be less critical or looked to as one component in cooperative protection efforts.

One area of congressional focus has been the stateside program, with debate over the level of funds for grants. The Bush Administration did not request funds for new stateside grants in FY2006 and FY2007 on the grounds that state and local governments have alternative sources of funding for parkland acquisition and development, the current program could not adequately measure performance or demonstrate results, and large federal deficits require a focus on core federal responsibilities. Stateside supporters assert that the program contributes significantly to statewide recreation planning; state leadership in protection and development of recreation resources; and long-term outdoor recreation overall, and particularly through locally-sponsored projects that are readily accessible to communities. They see the program as a way to help fiscally-constrained local governments, leverage state and local funds for recreation, and save money in other areas (e.g. health).

Another focus has been on which, if any, programs other than land acquisition and stateside grants should be funded through the LWCF. Some seek to channel LWCF funding to a broader array of programs to protect federal lands. For instance, the Bush Administration has sought LWCF funds for cooperative conservation programs through which federal land managers partner with other landowners to protect natural resources and improve recreation on lands under diverse ownership. Traditional fund beneficiaries have expressed concern about expanding the uses of appropriations if that expansion is accompanied by reductions in the amount available for federal land acquisition or state grants.