



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

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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. The law created the Land and Water Conservation Fund in the U.S. Treasury as a funding source to implement its outdoor recreation goals.

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 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.

The LWCF is authorized to accumulate \$900 million annually from designated sources, with most of the money derived from oil and gas leasing in the Outer Continental Shelf. 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 nearly \$1 billion. Total LWCF appropriations have declined nearly each year since FY2001.

Throughout the history of the program, total LWCF appropriations (approximately \$15 billion) have been unevenly allocated among federal land acquisition (62%), the state grant program (27%), and other programs (11%). Similarly, federal land acquisition funds have been allocated unevenly among the four federal agencies. More recent legislation (P.L. 109-432) provided that a portion of revenues from certain OCS leasing will be provided to the state grant program. These funds would supplement any funds appropriated from LWCF.

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.

For the most recent action on LWCF, see the “Land and Water Conservation Fund” of CRS’s most recent report on appropriations for Interior, Environment, and Related Agencies.

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Introduction

The Land and Water Conservation Fund (LWCF) Act of 1965¹ 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 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). For many years, the OCS revenues have accounted for almost all 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 the most recent CRS report on appropriations for Interior, Environment, and Related Agencies.²

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 FY2008, about \$30.8 billion has been credited to the LWCF. About half that amount—\$15.0 billion—has been appropriated.³ 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.

¹ Act of Sept. 3, 1964; P.L. 88-578, 78 Stat. 897. 16 U.S.C. §§4601-4, et seq.

² Currently, the most recent report is CRS Report RL34461, *Interior, Environment, and Related Agencies: FY2009 Appropriations*.

³ This figure includes approximately \$153 million in FS appropriations inadvertently not recorded by the FS as derived from LWCF, according to the DOI Budget Office (December 18, 2008).

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).⁴

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.⁵ These four agencies manage about 95% of all federally owned lands. Of these agencies, only the FWS has another significant source of acquisition funding. Specifically, under the Migratory Bird Conservation Fund the FWS has a permanently appropriated source of funding for land acquisition.⁶

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 typically has included proposals for lands the agencies seek to acquire with requested LWCF funds. The FY2009 requests sought to fund relatively few acquisitions. Specifically, the three DOI agencies sought funds for acquisitions at 10 sites, while the FS did not seek funds for new acquisitions in FY2009. 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. 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. For instance, in FY2008 Congress specified funds for 75 acquisitions by the four federal agencies.

In recent years, Congress typically has provided the agencies with a portion of the acquisition funding for one or more related purposes. For instance, funds have been provided for acquisition management to cover the costs of land purchases, such as appraisals and title research. Acquisition funds also have been provided to cover the costs of land exchanges, as well as the acquisition of lands within the boundaries of federal land units (“inholdings”) that may become available throughout the year. Further, in some cases funds have been appropriated for “emergencies” or “hardships,” for acquisition of lands from an owner who must sell quickly and where the agency determines there is a need to purchase the lands quickly.

⁴ Hereafter these purposes are referred to respectively as (1) federal land acquisition, (2) the stateside program, and (3) other purposes.

⁵ For an introduction to these agencies and their responsibilities, see CRS Report RL32393, *Federal Land Management Agencies: Background on Land and Resources Management*.

⁶ For more information on the Migratory Bird Conservation Fund, see the FWS land acquisition section of CRS Report RL34273, *Federal Land Ownership: Current Acquisition and Disposal Authorities*.

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.⁷

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 FY2008, 41,208 grants have been provided to state and local governments for outdoor recreation projects. This figure includes 7,487 grants for acquisition; 26,868 grants for developing recreation facilities; 2,949 grants for redeveloping older recreational facilities; 672 state planning grants for studies of recreation potential, need, opportunity, and policy; and 3,232 grants for a combination of these activities. Recipients have acquired 2.6 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.⁸ 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 federal 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.

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. Under law, payments to states are not to cover more than 50% of a project's

⁷ 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.

⁸ The apportionment among states (including the District of Columbia and U.S. territories) for each of the last seven fiscal years—FY2002-FY2008—is on the NPS website at <http://www.nps.gov/nrcr/programs/lwcf/funding.html>.

costs, and in practice states typically receive a 50% federal payment. The remaining cost is to be borne by the state.⁹

Additional monies are provided for state grants under provisions of the Gulf of Mexico Energy Security Act of 2006.¹⁰ Specifically, 12.5% of the revenues from certain OCS leasing in the Gulf of Mexico is directed to the stateside program in accordance with the terms of the LWCF Act. The funds are to be in addition to any amounts appropriated by Congress for LWCF. The money is available without further appropriation, and is available until expended. An estimated \$8.2 million in proceeds from pertinent OCS leasing was projected to be collected in FY2008 and disbursed to the stateside program in FY2009.

Other Purposes

Section 7 of the LWCF Act (16 U.S.C. §460l-9) lists the federal purposes for which LWCF funds are to be used “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 FY2008, President George W. Bush sought LWCF funds for 11 programs within the FWS, FS, and other agencies, and Congress provided funding for two 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-FY2008

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 rarely exceeded \$400 million; from FY1977-FY1980, funding ranged from \$509 million (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.¹¹ 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.

⁹ For more information on the stateside program, see the *Land and Water Conservation Fund State Assistance Program: Federal Financial Assistance Manual* on the NPS website at <http://www.nps.gov/nrcr/programs/lwcf/manual/lwcf.pdf>.

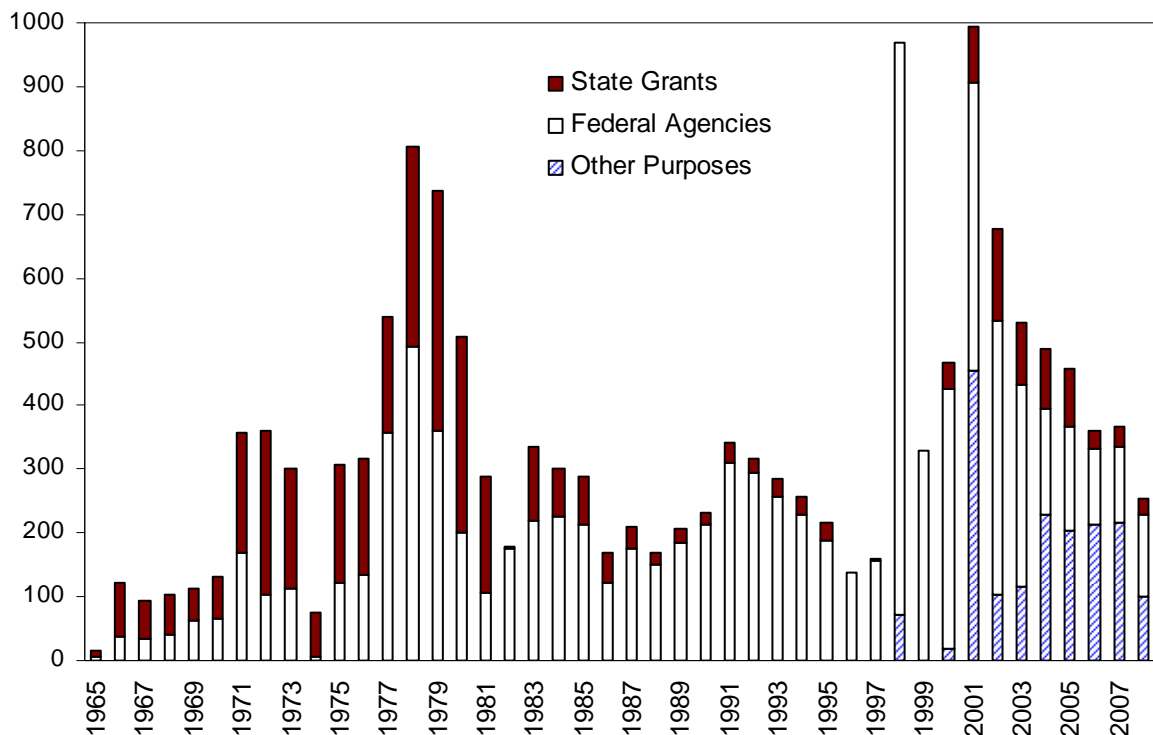
¹⁰ §105, Division C, P.L. 109-432.

¹¹ The LWCF had accumulated receipts sufficient to cover an appropriation exceeding the annual authorization. Specifically, in 1997 the LWCF had a balance of \$11.9 billion in unappropriated receipts, which represented the difference between the receipts into the Fund and the appropriations from the Fund since its creation.

Another spike occurred in FY2001, when appropriations again exceeded the authorized level and totaled nearly \$1 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 securing increased and more certain funding for the LWCF. The 106th Congress considered 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 did not use 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.

Figure 1. LWCF Appropriations, FY1965-FY2008
(\$ millions)



Source: The primary source for these data is the DOI Budget Office, data received December 18, 2008.

Notes: The graph does not reflect \$76 million provided for the transition quarter from July 1, 1976 to September 30, 1976.

Total LWCF appropriations, and the funding levels for each federal agency and the stateside program, have declined 74% since the peak in FY2001. **Table 1**, below, lists appropriations from FY2001 to FY2008 and shows this decline for each federal agency and the state grant program. Most recently, for FY2008 Congress appropriated \$255.1 million in total LWCF appropriations. This was about two-thirds of the amount requested by the Administration for FY2008—\$378.7 million. The largest difference occurred in funds for other programs, with the Administration requesting \$313.1 million and Congress appropriating \$101.3 million.

Table 1. Total LWCF Appropriations, FY2001-FY2008

(in millions of dollars)

Purpose	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
Land Acquisition								
Bureau of Land Management	\$52.3	\$49.9	\$33.2	\$18.4	\$11.2	\$8.6	\$8.6	\$8.9
Fish and Wildlife Service	\$121.2	\$99.1	\$72.9	\$38.1	\$37.0	\$28.0	\$28.0	\$34.6
National Park Service	\$124.8	\$130.0	\$74.0	\$41.7	\$55.1	\$34.4 ^a	\$34.4	\$44.4
Forest Service	\$150.9	\$149.7	\$132.9	\$66.4	\$61.0	\$40.9	\$41.9	\$41.2
<i>Total Land Acquisition</i>	<i>\$449.2</i>	<i>\$428.8</i>	<i>\$316.0^b</i>	<i>\$164.6</i>	<i>\$164.3</i>	<i>\$119.2^c</i>	<i>\$120.4^d</i>	<i>\$129.1</i>
State Grants	\$90.3	\$143.9	\$97.4	\$93.8	\$91.2	\$29.6	\$29.6	\$24.6
Other Programs	\$455.9	\$104.6 ^e	\$115.5 ^f	\$229.7 ^g	\$203.5	\$213.1	\$216.1	\$101.3
Total	\$995.4	\$677.2^e	\$528.9^{fb}	\$488.1^g	\$459.0	\$361.9^a	\$366.1	\$255.1

Source: The primary source for this data is the DOI Budget Office, data received December 18, 2008.

- a. 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.
- b. This figure includes \$3 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 includes \$7.3 million in appropriations for DOI Departmental Management for land acquisition appraisal services.
- d. This figure includes \$7.4 million in appropriations for DOI Departmental Management for land acquisition appraisal services.
- e. This figure reflects a \$25 million rescission of FY2001 funds for State Wildlife Grants.
- f. This figure reflects a \$40 million rescission of FY2002 funds for the Landowner Incentive Program and a \$10 million rescission of FY2002 funds for the Private Stewardship Grants Program.
- g. This figure includes \$5 million for Bureau of Indian Affairs settlements and \$5 million for FWS resource management.

Allocation Among Land Acquisition, Stateside, and Other Purposes

The \$15.0 billion appropriated from the fund through FY2008 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—\$9.3 billion (62%)—has been appropriated for federal land acquisition. The four federal land management agencies have received differing portions of this \$9.3 billion. Specifically, the NPS has received \$4.1 billion (43%); the FS, \$2.6 billion (28%); the FWS, \$1.9 billion (20%), and the BLM, \$0.7 billion (8%).

The stateside program has received the second largest portion of LWCF appropriations—\$4.0 billion (27% 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. Since FY2000, funding for the stateside program has ranged from a low of about \$25 million (FY2008) to a high of about \$144 million (FY2002). Stateside funding has averaged 14% of total LWCF appropriations since FY2000, and 9% of LWCF funding from FY2006 to FY2008.

Other purposes have received the remaining portion of total LWCF appropriations—\$1.6 billion (11%). No funds were provided for other purposes until FY1998. By contrast, 29% of LWCF appropriations from FY1998 through FY2008 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 \$1.0 billion and \$360 million respectively of the \$1.6 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 current 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 and FY2007, 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 FY2008 the Bush Administration sought \$313.1 million for other programs of a total request of \$378.7 million. Congress appropriated \$101.3 million for other programs of a total of \$255.1 million.

**Table 2. LWCF Appropriations for Other Purposes,
FY1998-FY2008**
(in millions of dollars)

Fiscal Year	Total LWCF Appropriation	Appropriation for Other Programs	Other Programs as % of Total Appropriation
FY1998	\$969.1	\$72.0	7%
FY1999	\$328.2	\$0	0%
FY2000	\$466.9	\$20.0	4%
FY2001	\$995.4	\$455.9	46%
FY2002	\$677.2	\$104.6	15%
FY2003	\$528.9	\$115.5	22%
FY2004	\$488.1	\$229.7	47%
FY2005	\$459.0	\$203.5	44%
FY2006	\$361.9	\$213.1	59%
FY2007	\$366.1	\$216.1	59%
FY2008	\$255.1	\$101.3	40%

Source: The primary source for this data is the DOI Budget Office, data received December 18, 2008.

Current Issues

There are differing opinions as to the appropriate level of LWCF appropriations and what these funds should be used for. The LWCF has 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 private 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. Alternatives to acquisition which may provide potentially lower levels of protection but at less cost (such as easements) have become more widely used by federal agencies. Also, 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 viewed as 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 for several years 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 and leverage state and local funds for recreation. Further, advocates assert that investments in recreation save money in other areas; for instance, they say that these investments promote healthier lifestyles and thus save health care expenditures.

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 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.

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