



May 3, 2019

# Land and Water Conservation Fund (LWCF): Frequently Asked Questions

## What is the Land and Water Conservation Fund?

The Land and Water Conservation Fund Act of 1965 (LWCF Act; 54 U.S.C. §§200301 et seq.) was enacted to help preserve, develop, and ensure access to outdoor recreation resources. The law created the LWCF in the Department of the Treasury as a dedicated funding source to implement its stated outdoor recreation goals. Similar to other special funds in the federal budget, the LWCF is an accounting mechanism to link dedicated receipts with the spending of those receipts.

## How does the LWCF get revenue?

Under the LWCF Act, the fund is credited with revenues totaling \$900 million annually. The revenues come from three sources: (1) surplus federal property sales, (2) the federal motorboat fuel tax, and (3) revenues from oil and gas leases on the Outer Continental Shelf (OCS). Since the early 1990s, nearly all revenues deposited in the LWCF have been from OCS receipts.

In addition to the \$900 million, the LWCF receives money under provisions of the Gulf of Mexico Energy Security Act of 2006 (GOMESA; P.L. 109-432, §105, Div. C). Specifically, 12.5% of the revenues from qualified OCS leases under GOMESA are directed to the LWCF for a state grant program (see below). States can receive a maximum of \$125 million annually in mandatory funding under

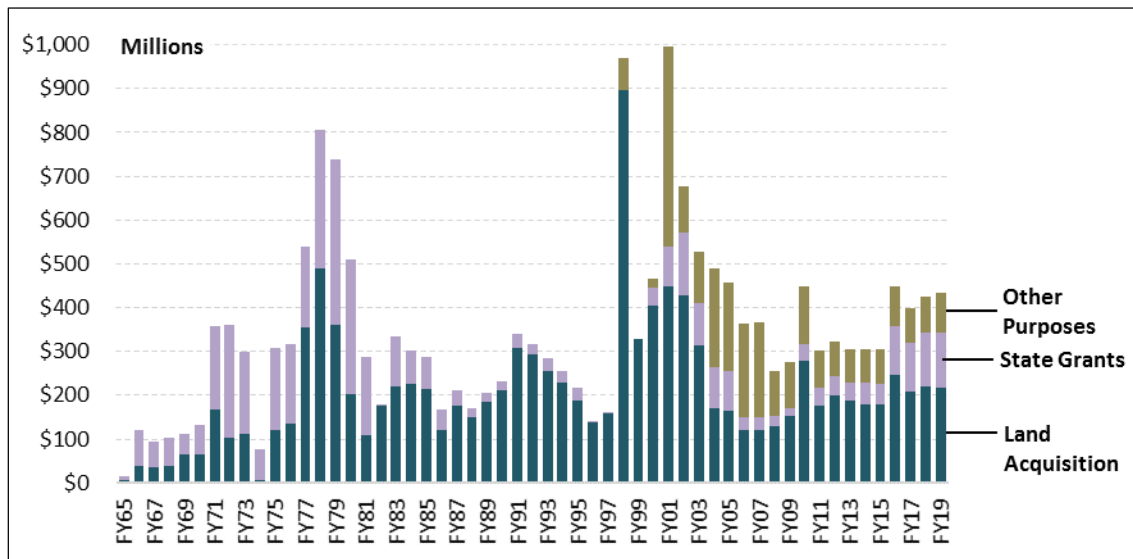
GOMESA (except in FY2021 and FY2022, when the maximum is \$162.5 million).

## What can money in the LWCF be used for?

The LWCF Act identifies “federal purposes” for which appropriations from the fund are to be allotted by the President “unless otherwise allotted in the appropriation Act making them available” (54 U.S.C. §200306). The “federal purposes” in the act focus on acquisition of land by the federal government. The LWCF Act also sets out a matching grant program for “financial assistance to states,” to foster outdoor recreation (54 U.S.C. §200305).

In practice, appropriations from the fund have been made for three main purposes: (1) land acquisition by the four major federal land management agencies—the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and Forest Service (FS); (2) a matching grant program to assist states with outdoor recreation, including recreational planning, acquiring recreational lands and waters, and developing outdoor recreational facilities (Secretary of the Interior, through the NPS); and (3) other federal programs with related purposes, such as grants under the FS’s Forest Legacy program and the FWS’s Cooperative Endangered Species Conservation Fund. **Figure 1** shows the historical appropriations for the three purposes.

Figure 1. LWCF Annual Discretionary Appropriations, FY1965-FY2019



Sources: For FY1965-FY2013, Department of the Interior, Office of Budget. For FY2014-FY2019, the annual *Interior Budget in Brief* and congressional documents accompanying the annual appropriations bill.

Notes: Figures are not adjusted for inflation. The graph does not reflect \$76 million for a 1976 transition quarter. “State Grants” reflects the NPS state matching grant program for outdoor recreation. Beginning in FY1998, appropriations have been provided from the LWCF each year, except FY1999, to fund purposes in addition to state grants and land acquisition (referred to herein as “other purposes”).

**How can money be taken out of the LWCF?**

In general, monies in the fund are available only as provided in appropriations acts, which constitutes discretionary appropriations. However, a portion of the appropriations for the state matching grant program is available without further legislative action, which constitutes mandatory spending under GOMESA.

**Do LWCF discretionary appropriations count toward budgetary caps?**

Yes. Monies from the LWCF made available in appropriations acts are subject to spending caps, such as the statutory limits set by the Budget Control Act of 2011 (P.L. 112-5) and recently modified by the Bipartisan Budget Act of 2018 (P.L. 115-123). (The monies from the LWCF made available under GOMESA do not constitute discretionary appropriations and therefore are not subject to such caps.)

**Is there any money currently in the LWCF?**

Yes. From FY1965 through FY2019, about \$40.9 billion has been credited to the LWCF under both the LWCF Act and GOMESA. Less than half that amount—about \$18.9 billion—has been appropriated, leaving an unappropriated balance of approximately \$22.0 billion in the fund. (Figures were derived primarily from data provided by the Department of the Interior [DOI], Office of Budget.) The balance is to remain credited to the fund until appropriated or otherwise reduced by new law.

**How much of the appropriations have been mandatory, and why have the mandatory appropriations increased recently?**

Of the \$18.9 billion total appropriations made available from the LWCF since FY1965, \$146.6 million has been mandatory (and \$18.8 billion has been discretionary).

Mandatory appropriations of \$8.4 million in proceeds from OCS leasing under GOMESA were first collected in FY2008 and disbursed to the LWCF state matching grant program in FY2009. Such disbursements subsequently decreased through FY2017. DOI had anticipated that mandatory appropriations would increase significantly beginning in FY2018 due to additional revenues from leasing in the Gulf of Mexico under Phase II of GOMESA. DOI reported mandatory appropriations for the LWCF of \$62.6 million for FY2018 and projected \$71.6 million for FY2019, although this estimate is subject to change based on actual collections.

**What provisions of the LWCF Act expired on September 30, 2018?**

The provisions of the act that provided for \$900 million in specified revenues to be deposited annually into the LWCF expired on September 30, 2018. (These provisions were later renewed and made permanent; see below.)

Related provisions of law did not expire, such as the authority to carry out the purposes of the LWCF Act, including the authority to appropriate monies from the fund. The LWCF Act does not include an expiration date and therefore continues indefinitely, unless changed by law. Also, provisions of GOMESA that direct 12.5% of the revenues from qualified OCS leases to the LWCF did not expire. Moreover, the authorities of the four major land management agencies to acquire land were unaffected. These authorities derive from other laws and differ among

the agencies, ranging from relatively broad general authority (BLM) to no general authority (NPS).

**What changes has the 116<sup>th</sup> Congress made to the LWCF Act?**

On March 12, 2019, through the John D. Dingell, Jr., Conservation, Management, and Recreation Act (P.L. 116-9, §3001), Congress made permanent the provisions of the LWCF Act that provide for \$900 million in revenues to be deposited in the fund annually (54 U.S.C. §200302).

The law made several other changes to the LWCF Act. One change specified that, of the total made available through appropriations or deposits under GOMESA, not less than 40% is to be used for “federal purposes” and not less than 40% is to be used to provide “financial assistance to states.” A second change specified that, of the amounts appropriated annually, a portion (not less than 3%, or \$15.0 million, whichever is greater) is to be used for acquisitions that foster access to federal land for recreational purposes. Other amendments set out criteria for the agencies to consider in selecting which lands to acquire, such as management efficiencies and the recreational value of the land, and altered the apportionment of funds for the state grant program to treat the U.S. territories and DC the same as states.

**Has the 116<sup>th</sup> Congress made the LWCF permanent?**

In P.L. 116-9 (§3001), Congress made permanent the provisions of the LWCF Act that provide for \$900 million in specified revenues to be deposited in the fund each year (as described above). However, Congress did not permanently appropriate these monies (i.e., make them mandatory funding); they continue to require action by Congress to be appropriated from the fund (i.e., they continue to constitute discretionary appropriations). In the 116<sup>th</sup> Congress, measures have been introduced (but not enacted) to permanently appropriate the \$900 million annually deposited into the fund (i.e., to make the \$900 million mandatory funding).

**Would legislation score if it permanently appropriated the \$900 million deposited each year into the LWCF?**

Yes. Current law does not provide the legal authority to spend the monies in the LWCF, including its balances (except mandatory spending under GOMESA; see above). Therefore, any legislation that would provide permanent authority to spend the monies in the LWCF would be scored as *new budget authority* and *new outlays* for purposes of budget enforcement. That is, given existing budget rules, any legislation providing such authority presumably would be subject to certain budget points of order if not offset.

For additional background on the LWCF, including historical appropriations, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent.

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