Committee on Natural Resources

Rob Bishop, Chairman
Hearing Memorandum

November 16, 2015

To: All Natural Resources Committee Members

From: Spencer Kimball, Subcommittee on Federal Lands, x6-7736
Kate MacGregor, Subcommittee on Energy & Mineral Resources, x5-9297

Hearing: Legislative hearing on a discussion draft of H.R. ___ (Rep. Rob Bishop), *"Protecting America's Recreation and Conservation Act"* to reauthorize and reform the Land Water Conservation Fund.

A legislative hearing will be held on a discussion draft of H.R. __ (Rep. Rob Bishop), *"Protecting America's Recreation and Conservation Act"* on **November 18, 2015 at 10:00 AM in Room 1324 Longworth.**

Bill Summary

H.R. ___ (Rep. Rob Bishop), the "Protecting America's Recreation and Conservation Act" ("PARC Act"), drafted by Chairman Bishop, reauthorizes and reforms the Land Water Conservation Fund.

Invited Witnesses

Mr. Bill Bryan
Director
Missouri State Parks and Recreation
Jefferson City, Missouri

Dr. Madeline Burillo
Associate Vice Chancellor of Workforce Instruction
Houston Community College
Houston, Texas

Mr. Travis Campbell
Chief Executive Officer
Far Bank Enterprises
Bainbridge Island, Washington

Ms. Kristen Sarri
Principal Deputy Assistant Secretary, Policy Management and Budget
U.S. Department of the Interior
Washington, D.C.

Mr. Tom Wolfe
Principle
Public Affairs Consulting
Arlington, Virginia

Background

The Land and Conservation Fund (LWCF) was established in 1964 to "preserve, develop, and ensure access to outdoor recreation facilities to strengthen the health of U.S. citizens."[1] Today, the program is funded primarily by revenues derived from offshore oil and natural gas development, with small amounts of additional revenue from the sale of surplus federal real estate and taxes on motorboat fuel. While the program is currently authorized at up to $900 million a year, approximately $300 million, on average, has been appropriated for the program in recent years. [2]

While the original Act provided at least 60 percent of available funding to states,[3] subsequent Congressional amendments and influence by special interests resulted in **61 percent** of the total $17.1 billion appropriated throughout the history to the program going not to the states, but **for federal land acquisition**.[4] This has happened as the nation has amassed a national debt of $18.6 trillion, and climbing.

During this time, the Stateside Assistance Grant Program ("Stateside Program"), which provides matching grants to **states** for locally-supported recreation projects and parks, **received only 25 percent** of appropriated LWCF funds.[5] This program has provided billions of dollars to state and local governments to execute over 40,000 grants for a wide variety of recreation projects.[6] **In fiscal year 2015**, however, **just 16 percent** of LWCF funds – $48 million – went to the Stateside Program.[7] "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."[8] This has happened despite states and local governments being much better suited to carry out recreational facilities and projects than the federal government.

This lopsided funding ratio has restricted funds for establishing recreation projects and facilities that can responsibly be managed and maintained by state and local entities while, at the same time, has vastly expanded the federal estate. This expansion has negatively impacted states and rural communities in multiple ways, particularly through lost tax revenue—but also as a

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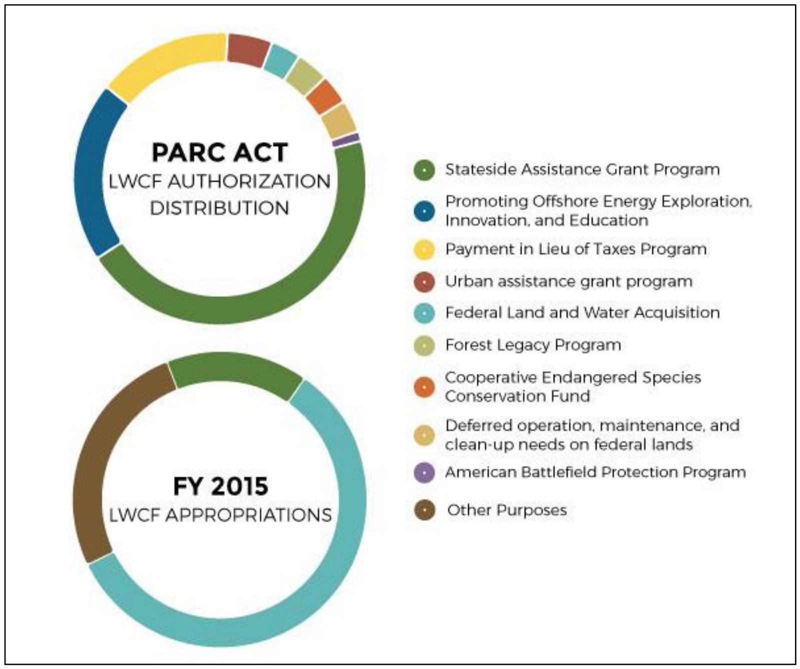
[1] Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 4601-4.
[2] Carol Hardy Vincent. *Land and Water Conservation Fund: Overview, Funding History, and Issues* (CRS Report No. RL33531). Washington, DC: Congressional Research Service. June 17, 2015. P. 8
[3] PL 88-578. Section 4(a).
[4] Carol Hardy Vincent. *Land and Water Conservation Fund: Overview, Funding History, and Issues* (CRS Report No. RL33531). Washington, DC: Congressional Research Service. June 17, 2015. Summary Page.
[5] Ibid. Summary Page.
[6] Ibid. P. 4.
[7] Ibid. P. 4.
[8] Ibid. P. 10

result of the mismanagement of newly acquired federal land. As of 2014, the estimated combined **deferred maintenance and operations backlog** facing federal land management agencies was **$18.8 billion**.[9]

For these reasons, reform of the law—and a fresh approach—are long overdue. While many proponents for the status quo, including the Obama Administration[10], continue to clamor for permanent reauthorization of the law as is, the allocation of LWCF funding needs to be recalibrated to ensure that the greatest areas of need receive the greatest amount of funds. To that end, as was intended decades ago, the majority of LWCF funds should be made available to states and local communities to implement and properly maintain parks and recreational facilities, rather than irresponsibly adding more and more land to the federal estate.



A new approach should also ensure the federal government uses a portion of the funding to address maintenance and operations issues to provide recreational access on existing federal lands. To protect private landowners' rights, the Act needs to ensure that lands may not be acquired through eminent domain. Funds should be used to continue important federal programs like the Forest Legacy Program, but also other critical programs such as the Payment In-Lieu of Taxes Program (PILT). Finally, a portion of LWCF funds must also be reinvested in its primary revenue source – offshore oil and gas development. All of these prioritizes are encapsulated in this discussion draft.

Specifically, the PARC Act:

- Significantly increases funds available to states, local governments, and cities for vital recreation projects;

- Provides a minimum amount of funds for federal land acquisition and significantly limits what can be acquired by the federal government;

[9] Carol Hardy Vincent. *Deferred Maintenance of Federal Land Management Agencies: FY2005-Fy2014 Estimates* (CRS Report No. R43997). Washington, DC: Congressional Research Service. April 21, 2015. Summary Page.
[10] U.S. Department of the Interior, National Park Service, Budget Justifications and Performance Information, Fiscal Year 2015. P. LASA-1.

- Makes funds available for existing programs, including the American Battlefield Protection Program, Forest Legacy Program, and Cooperative Endangered Species Conservation Fund;
- Eliminates the use of LWCF funds for acquisition of land through eminent domain or condemnation;
- Ensures funds are used to address deferred maintenance and operations backlogs, and clean-up efforts on existing federal lands;
- Establishes an offshore oil and gas pilot program and technology hub and provides STEM-focused higher education grants, all to help sustain the primary source of LWCF revenue, which is derived from offshore oil and gas development;
- Provides needed resources for the Payment In-Lieu of Taxes program, which benefits rural counties with large amounts of federal land.

Major Provisions of the Discussion Draft

Stateside and Urban Grant Programs

Stateside Assistance Grant Program (not less than 45% of the overall amount)

The LWCF Stateside Program provides grants to states (including the District of Columbia and U.S. territories) for recreation planning, acquisition of land and water, and facility development and is administered by the National Park Service (NPS). Many Stateside projects are highlighted by Members of Congress and others when they discuss the success of the LWCF.

Over 40,000 grants, totaling over $4 billion and matched for over $8 billion, have been approved under the Stateside Program for acquisition, development and planning of outdoor recreation opportunities. [11] Nearly every county in the country – 98% -has benefited from the Stateside Program. According to NPS, “seventy-five percent (75%) of the total funds obligated have gone to locally sponsored projects to provide close-to-home recreation opportunities that are readily accessible to America's youth, adults, senior citizens and the physically or mentally challenged.”[12]

America’s State Parks, many of which have been developed, enhanced, or rehabilitated using LWCF State Assistance funding, contribute $20 billion to local and state economies.[13] Further the nation’s local and regional parks create approximately $140 billion in economic activity per year and support nearly 1 million jobs.[14]

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[11] National Park Service LWCF Stateside Grants (1965-2014).
[12] Ibid.
[13] Testimony of Lewis Ledford, Executive Director, National Association of State Park Directors before the Senate Energy and Natural Resources Committee. April 22, 2015. P. 1.
[14] George Mason University Center for Regional Analysis prepared for the National Recreation and Park Association. November 2015.

The grants require a minimum of a 1:1 match and must comply with a comprehensive outdoor recreation plan developed by states. To ensure that federal grants money is being used appropriately, states must demonstrate that projects are carried out as originally intended, consistent with the intent of Act. Due to due an anti-conversion clause in existing law, projects may not be converted for non-recreational use without Secretarial approval.

The original Act provided at least 60 percent of available funding to states[15], but that language was removed in a 1976 amendment, leaving only a requirement that 40% be used for federal purposes.[16] Over time, neglect for the Stateside Program resulted in a gradual decrease in funding. Between FY1996 and FY 1999, the Stateside Program received just $2 million in funding.[17] In FY 2015, $48 million was provided for the Stateside Program, just 16 percent of overall annual LWCF funding.[18] Yet in 2012, NPS reported that the total amount needed by states to maintain, improve, and expand their park systems and recreational facilities was approximately $18.9 billion.[19] The demand for additional grant money for these stateside projects is now greater than ever.

To better achieve LWCF's original intent, the bill increases the minimum amount states would receive as the share for these grants — not less than 45 percent of the overall annual appropriated amount. Of that, the bill requires that 30 percent of funds available for this program be used in urban areas of greater than 20,000. In the existing law, the first 40% of any appropriated funds is equally distributed to states, the District of Columbia, and U.S. territories. The remaining 60% is distributed based on population and on need as determined by the Secretary.[20] The PARC Act amends this part of the Program so that 50% of the total amount provided for the program must be equally distributed to states, in order to ensure that rural, less populous states receive an equitable share in light of the new urban sub-allocation.

Community Improvement through Innovation, Engagement, and Support Program (not less than 5% of the overall amount)

While urban areas are home to 80% of Americans,[21] only 2% of historic Stateside Assistance funding has been spent on projects in America's 100 largest cities.[22] As such, a more equitable share of LWCF funding should be spent to help America's largest cities promote recreational opportunities to youth, veterans, and others that may not otherwise be available. The PARC Act establishes the new *Community Improvement through Innovation, Engagement, and Support Program ("CITIES"),* under LWCF, and ensures it would receive no less than 5% of the total annual appropriated amount. The CITIES program would provide grants of up to $2,000,000 for cities to build, maintain, and rehabilitate indoor and outdoor recreational facilities. Like the Stateside Program, CITIES would be managed by NPS. All grants under the

[15] PL 88-578. Section 4(a).
[16] Carol Hardy Vincent. *Land and Water Conservation Fund: Overview, Funding History, and Issues* (CRS Report No. RL33531). Washington, DC: Congressional Research Service. June 17, 2015. P. 2
[17] Ibid. P. 8
[18] Ibid.
[19] LWCF State and Local Assistance Program. National Park Service Annual Report. 2012. P. 17.
[20] U.SC. Title Chapter 54, Subsection 200305.
[21] United States Census Bureau. Frequently Asked Questions.
[22] National Park Service data provided by NPS to the City Parks Alliance. 2014.

program must be matched on at least a 1:1 basis and priority will be given to cities that are economically disadvantaged or are underserved in terms of recreational opportunities.

Federal Programs

Federal land and water acquisition (not more than 3.5% of the overall amount)

The federal government currently owns **640 million acres**, or approximately three out of every 10 acres in the United States.[23] As of 2005, LWCF funds had been used to acquire approximately 4.5 million acres of federal land – an area the size of New Jersey.[24] As of 2014, the existing deferred maintenance and operations backlog facing federal land management agencies was $18.8 billion.[25]

Since the federal government is more inclined to add more land to the federal estate than performing routine maintenance on existing lands, land acquired using LWCF funding has no doubt exacerbated this backlog. Due to the size of the current federal estate combined with the agencies' inability to maintain it, continuing to spend hundreds of millions of dollars on new land is reckless and negligent. Even the federal agencies themselves can't quantify how much land they have acquired through LWCF funds.

The PARC Act refocuses the priorities and intent of LWCF by allowing only a small portion of the overall annual appropriated amount to be used for federal land acquisition - not more than 3.5%. It also restricts what may be acquired by stipulating that funds are only available for the purchase of inholdings (defined as a parcel that abuts existing federal lands on at least 75 percent of its border) and that only 15 % of total acreage acquired annually may be west of the 100th Meridian.

In addition, to improve Americans' recreational access, 33 percent of funds provided for this purpose must be used to secure or enhance public access on existing Federal lands for hunting, recreational fishing, or recreational shooting. This level of funding and restriction on use will ensure that acquisitions are limited, sensible, and justifiable under the original intent of the Act.

Deferred operation, maintenance, and clean-up needs on existing federal lands (not more than 3.5% of the overall amount)

Maintaining existing federal lands and resolving the dysfunction of federal land management should be as important of a priority as adding more land to the federal estate. With a nearly $19 billion federal deferred maintenance backlog,[26] the bill ensures that up to 3.5

[23] Carol Hardy Vincent, Laura A. Hanson, and Jerome P. Bjelopera. *Federal Land Ownership: Overview and Data* (CRS Report No. R42346). Washington, DC: Congressional Research Service, 2014. Summary Page
[24] Jeffrey A. Zinn. *Land and Water Conservation Fund: Current Status and Issues*. (CRS Report No. RS21503). Washington, DC: Congressional Research Service, June 2005. P. 1.
[25] Carol Hardy Vincent. *Deferred Maintenance of Federal Land Management Agencies: FY2005-Fy2014 Estimates* (CRS Report No. R43997). Washington, DC: Congressional Research Service. April 21, 2015. Summary Page.
[26] Carol Hardy Vincent. *Deferred Maintenance of Federal Land Management Agencies: FY2005-Fy2014 Estimates* (CRS Report No. R43997). Washington, DC: Congressional Research Service. April 21, 2015. Summary Page.

percent of the annual appropriated amount may be used to address the backlog. It also stipulates that at least 20% of those funds must be used in conjunction with and matched by a non-governmental entity.

Forest Legacy Program (not more than 3.5% of the overall amount)

The PARC Act ensures that up to 3.5 percent of the annual appropriated amount may be used for the Forest Legacy Program, which provides money to states and others to protect environmentally sensitive forests. The bill requires the Forest Legacy Program funds be made available only for projects that create or improve vehicular and recreational access to forested lands or for those that protect forests where there is production of forest products consistent with a state-approved multiple resource forest plan.

Cooperative Endangered Species Conservation Fund (not more than 3.5% of the overall amount)

The PARC Act ensures that up to 3.5 percent of the annual appropriated amount may be used for the Cooperative Endangered Species Conservation Fund (section 6 of the Endangered Species Act), which provides grants to states and territories to execute voluntary conservation projects for candidate, proposed, and listed species on non-federal lands.

American Battlefield Protection Program (not more than 1% of the overall amount)

The PARC Act bill ensures that up to one (1) percent of the annual appropriated amount may be used for the American Battlefield Protection Program, which promotes the preservation and protection of historic battlefields on American soil.

Payment In-Lieu of Taxes Program (not less than 15% of the overall amount)

To ensure a stable and predictable and much-needed revenue source for the PILT program, the PARC Act provides not less than 15 percent of the overall annual appropriated amount be available for the program. The program provides payments to local governments that help offset losses in property taxes due to non-taxable Federal lands within their boundaries. PILT payments are particularly important in rural western counties with large amounts of federal lands.

Promoting Offshore Exploration, Innovation and Education *(not less than 20% of the overall amount)*

STEM Grants for the Offshore Energy Workforce

According to a recent report issued by the National Research Council of the National Academies entitled "Emerging Workforce Trends in the U.S. Energy and Mining Industries," our nation's energy renaissance has created significant demand for workers and equipment, yet "…a large portion of the existing workforce, professional and non-professional, is less than 5 years from retirement."[27] Given the impacts of this so-called 'Big Crew Change,' individuals with technical and advanced degrees in geology, geophysics, petroleum and natural gas engineering and drilling are in high demand. While improving education opportunities in these fields would be the natural solution, the aforementioned report outlines the decline in geoscience departments and faculty across the country, faculty and STEM teacher shortages at institutions of higher education, and the overall lack of petroleum engineers in the education pipeline to replace those who will soon be retiring. The same is true of the renewable energy workforce which faces the same challenges: "…The problem in finding the appropriate wind workforce is the same one that afflicts the rest of the U.S. energy industry…the wind sector competes with other energy sectors, manufacturing, and construction for workers from a shrinking pool of talent."[28]

In recognition of the report's recommendations,[29] and the need to invest in new pathways to higher education in these specific fields, 18% of the overall funding provided in the PARC Act is invested in higher education grants to be awarded by the Secretary of the Interior for higher education programs throughout the nation. The Governor of each state is afforded the opportunity to nominate four institutions, including one community college and one minority-serving institution.

The bill then directs the Secretary of the Interior to pick 20 of these institutions annually to receive grants to provide student scholarships, enhance curriculum development and promote research in fields related to offshore energy, including renewable energy, development. In order to be nominated by a Governor, the bill provides that eligible schools must demonstrate leadership in academic fields related to offshore energy development, and preference would be required for institutions that promote educational opportunities for our nation's veterans.

Offshore Energy Innovation Hub

Technological innovation has been the driving force behind our nation's significant increase in oil and gas production, particularly from state and private lands. Horizontal drilling, when paired with hydraulic fracturing, has alone led to an energy renaissance with natural gas prices at historic lows. Thanks to this innovation, the dialogue in Washington and throughout the country has shifted from that of energy dependence and foreign imports to one of energy booms and the possibility of greater exports to reduce our nation's trade deficit. Additionally, innovative safety technologies are being utilized in the Gulf and Arctic waters to ensure that offshore drilling is conducted in a way that protects our shores.

With this in mind, 1% of overall funding in the PARC Act is provided to establish an "Offshore Energy Innovation Hub" to allow federal stakeholders, academia, students, and industry to collaborate on innovative technologies that advance offshore energy exploration and production. Priority areas for the Hub include offshore safety, Arctic environments, and other

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[27] *Emerging Workforce Trends in the U.S. Energy and Mining Industries: A Call to Action*. National Research Council. P. 33.

[28] Ibid; p. 133.

[29] http://dels.nas.edu/resources/static-assets/materials-based-on-reports/reports-in-brief/energy-mining-workforce.pdf

deepwater technological challenges outlined in the 2007 National Petroleum Council Report – areas recognized to be "…opportunities for practical government and industry cooperation." [30]

Outer Continental Shelf Pilot Offices

While the LWCF Act derives a small portion of funding from revenues and collections from surplus property sales and the motorboat fuels tax, the vast majority of funding derives from leasing, rental, and royalty revenue collected as a result of offshore oil and natural gas exploration and development on the Outer Continental Shelf (OCS).[31] In FY 2008, federal revenue from oil and gas development generated $18 billion,[32] which was in large part due to substantial bidding on leases in the Arctic and Central Gulf of Mexico.

In FY 2014, federal revenue from development on the OCS totaled $7.4 billion – less than half of that amount. With the Obama Administration's recent decision to cancel future leasing in Arctic areas[33] and the Department of Interior's March 2015 announcement of the lowest revenue produced from a Central Gulf lease sale in a decade,[34] there is little assurance that the long relied upon revenue source for the LWCF will remain reliable in future decades. Further, many associations that support the permanent reauthorization of the LWCF oppose the activity that generates revenue into the fund.[35]

Offshore revenues cannot be taken for granted. That is why the PARC Act dedicates 1% of the overall funding to help sustain this revenue stream by establishing a pilot office program to streamline federal permitting for energy development on the OCS, including offshore renewable technologies. The bill establishes a total of three pilot offices, one in the Gulf of Mexico, one in Alaska, and one on the South Eastern seaboard. The purpose of the program is mainly to collocate key staff who are critical to the offshore permitting and approval process and ensure that they are all working together to promote safe and efficient operations.

Cost

A Congressional Budget Office cost estimate has not yet been completed for this bill.

Administration Position

Unknown at this time.

Effect on Current Law (Ramseyer)

[30] http://www.npchardtruthsreport.org/download.php; Pgs. 191-192.
[31] http://www.nps.gov/lwcf/lwcf_act.pdf; Pgs. 1-2.
[32] http://statistics.onrr.gov/ReportTool.aspx
[33] https://www.doi.gov/pressreleases/interior-department-cancels-arctic-offshore-lease-sales
[34] http://www.boem.gov/Sale-235-Stats/
[35] http://wilderness.org/update/shell-arctic-offshore-drilling-wilderness-society-joins-lawsuit-stop-dangerous-plan and http://wilderness.org/six-ways-oil-and-gas-drilling-bad-news-environment