

**National Affairs and Legislation Committee**  
**The Garden Club of America**  
**111<sup>th</sup> Congress, 2<sup>nd</sup> Session — February 9, 2010**

**Update #7 — Land and Water Conservation Fund**

**The Land and Water Conservation Fund (LWCF)** is the premier federal funding source for land conservation.

- On the federal side, it is used to acquire lands for national parks, wildlife refuges, forests, wild and scenic river corridors, scenic and historic trails, and Bureau of Land Management lands. Thanks to the LWCF, critically important lands from Cape Cod National Seashore to Sleeping Bear Dunes National Lakeshore (MI) to the Appalachian Trail to the Santa Monica Mountains National Recreation Area have been preserved.
- On the state side, LWCF is used for local and regional parks, trails, and forests and other recreational areas and facilities in almost every county in America, including such notable sites as Brooklyn's Coney Island Board Walk, Griffith Park in Los Angeles, Myrtle Beach State Park (SC), and Tualatin Hills Nature Park (OR).
- Since 1998, LWCF funds have been used for other programs from the Forest Service, Fish and Wildlife Service, and National Park Service.

**Relevant Garden Club of America positions:**

The 2010 position paper on National Parks and Public Lands call *for fully funding the LWCF and using the federal portion for its intended purpose the purchase and restoration of public lands.*

**NOW is the time to voice your support:**

- If you are in favor of increased funding for the LWCF, contact your representative and senators *this month* and tell them that you hope they will support the administration's 2011 budget request when the budget and appropriations processes get underway. You can urge them also to support full funding by 2014.
- If you believe that in the future the LWCF should automatically receive \$900 million annually without going through the appropriations process, you can urge your representative to support the LWCF portion of H.R. 3545 and ask your senators cosponsor S. 2747. Ask them to work to get those measures enacted and thereby ensure that LWCF is funded as originally intended at \$900 million annually. (See pp.4-5 for more details.)

**Background:**

The LWCF was enacted in 1965<sup>1</sup> to preserve, develop and assure access to outdoor recreation resources. The law, which expires in 2015, established a Land and Water Conservation Fund in the Treasury. It



receives revenue from two minor sources: federal motorboat fuel taxes and receipts from surplus government property sales. The bulk of LWCF revenues come from oil and gas leases on the Outer Continental Shelf (OCS). These proceeds are deposited to the LWCF in amounts

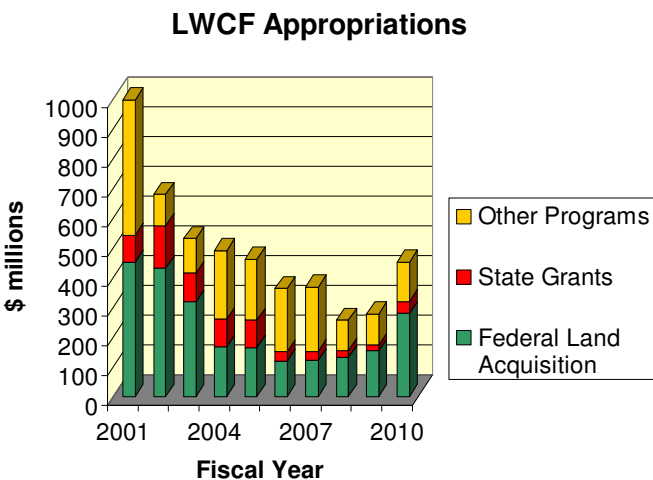
sufficient to bring the annual total to \$900 million. The idea was to use the funds obtained from depleting one natural resource (oil and gas) to preserve and protect another resource, our precious lands.

<sup>1</sup> Public Law 88-578, 78 Stat.897, 16 U.S.C. §§ 4601-4, et seq.

The problem with this scheme is that the credited monies cannot be spent unless appropriated by Congress. Unappropriated funds remain in the Treasury and can be (and usually are) spent for other federal activities. From FY1965 to FY 2008 only *half* the more than \$30 billion credited to the LWCF was actually appropriated. To add insult to injury, the LWCF is not credited with any interest on the accumulated unappropriated balance. What's even worse, the original \$900 million amount has never been revised to account for inflation during the intervening years. It would take *\$6.2 billion today* to purchase as much as could be bought for \$900 million in 1965 when the program was launched.<sup>2</sup>

**How the program works:**

- **The federal LWCF program** is administered by four agencies: the Forest Service in the Department of Agriculture, the National Park Service, the Fish and Wildlife Service and the Bureau of Land Management. Each agency annually proposes new acquisitions from its large backlog. Congress reviews agency requests and earmarks funds for specific sites in the Interior, Environment Appropriations bill.<sup>3</sup> There were 36 such federal acquisitions funding in FY 2007, 75 in FY 2008, 69 in FY 2009 and 66 in FY 2010. Congress usually provides each agency with additional funds for managing the acquisition program and responding to emergencies or quick acquisition of lands from an owner who must sell quickly. Funds are also provided for the operation of the federal appraisal office.
- **The Stateside LWCF program** provides matching grants to states and territories to protect local and state parks and recreational areas for people close to home, with the federal match not exceeding 50%. Stateside funds are apportioned by the Interior Department according to a formula. States have up to three years to use the money. They must first have a statewide recreation plan. States can spend the money on their own projects or pass it through to localities.
- **Other programs:** Since FY1998, a substantial portion of the LWCF appropriations have gone to “other programs” as permitted under the statute. Congress has decided which programs would receive LWCF funding, rather than the president. For example, President Bush sought LWCF funding in FY 2008 for eleven Fish and Wildlife and Forest Service programs; Congress awarded funding for two. Some of the “other programs” since 1998 have included maintenance needs of the four land management agencies, Forest Service Historic Preservation, Payments in Lieu of Taxes, FWS State and Tribal Wildlife Grants.



**Funding history:**

In 2009, President Obama committed to reaching the \$900 million full funding level over the next five years. For the FY 2010 budget, he requested almost \$420 million. The enacted level was higher—\$450 million.

<sup>2</sup> The highest funding for the core federal acquisition and stateside programs was \$805 million in FY 1978. In today's dollars that amount is equivalent to \$3 billion.

<sup>3</sup> To see the list for FY2010, go to the Interior Appropriations conference report (pdf – scroll down to page 155) on Thomas/GPO at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_reports&docid=f:hr316.111.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_reports&docid=f:hr316.111.pdf)

The history of LWCF appropriations is one of spikes and troughs. LWCF appropriations seldom exceeded \$400 million from the 1970s through the 1990s, but there were three “spikes.” In FY1978, \$805 million was appropriated, all for the core federal and state acquisition programs and none for “other programs.”<sup>4</sup> Another spike occurred in FY1998 when \$969 million was appropriated, the first year that LWCF funding exceeded the authorized \$900 million level. With a balance credited to the LWCF of nearly \$12 billion, Congress that year appropriated a separate title for acquisition of the Headwaters Forest in California and New World Mine near Yellowstone plus \$72 million for other acquisitions. This one-time spike corresponded with the Clinton Lands Legacy initiative.

A third spike in FY2001 saw appropriations of nearly \$1 billion, in response to congressional efforts to enact the Conservation and Reinvestment Act. Rather than enact this legislation, Congress and the Clinton Administration carved out a compromise which sought \$1.4 billion for 21 resource protection programs including the LWCF. This ambitious “Conservation Spending Category” established in the 2001 Interior Appropriations bill set out a goal of gradually increasing LWCF appropriations to \$2.4 billion by FY 2006. Disappointingly, there was no follow through. Instead, as the graph on page 2 indicates, funding gradually declined to a low of \$255 million in FY2008, of which only \$154 million was for the core federal land acquisition and stateside grants.

**LWCF Appropriations—looking good for FY2011:** The Obama Administration’s 2011 budget called for freezing total non-security discretionary spending for three years. However, within that freeze, some programs would be increased while others would be cut or eliminated. The LWCF was one of the lucky winners.

The administration requested *\$620 million for FY 2011*, which if enacted would put LWCF on track for achieving full funding of \$900 million by 2014. The budget request for the BLM, FWS, and NPS land acquisitions was roughly double the FY2010 level. The Forest Service budget request included \$5 million for Highlands Conservation. The request for stateside grants was \$50 million. The budget request also included about \$200 million for “other programs” in addition to the core land acquisition federal and state programs.

The outlook is fairly good that the administration’s requested total will be enacted, considering that last year Congress appropriated more than the administration’s request for LWCF. Within the LWCF appropriations, separate amounts are identified (i.e. earmarked) for specific acquisitions by the four federal agencies, for stateside grants, and for other programs. The extent to which specific items in the enacted FY2011 appropriations match those in the administration’s request remains to be seen.

### **Push for increased LWCF funding:**

Several groups are mobilizing to push for substantial and assured funding for the LWCF.

- **LWCF Coalition** is a group of dozens of nonprofit conservation and recreation organizations nationwide<sup>5</sup>. Their March 3, 2009 report<sup>6</sup> entitled *Conserving America’s Landscapes* advocates full and dedicated funding of the LWCF. They point to the decline in federal funding for the core federal acquisition and stateside programs<sup>7</sup>, even while demand for land preservation has surged due to development

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<sup>4</sup> This was the most the federal acquisition and stateside programs ever received. This figure does not include an additional \$76 million appropriated for the transition quarter when the fiscal year was shifted forward by three months.

<sup>5</sup> Members include among others The Trust for Public Lands, Nature Conservancy, The Wilderness Society, Trout Unlimited, National Wildlife Federation, National Wildlife Refuge Association, National Park Conservation Association, Partnership for the National Trails System, Outdoor Industry Association, National Audubon Society, Sierra Club, Land Trust Alliance, Highlands Coalition, Appalachian Trail Conservancy, plus many more national, regional and state land conservation and outdoor recreation groups local partners’ coalitions.

<sup>6</sup> [http://www.tpl.org/content\\_documents/lwcf\\_report\\_webfinal.pdf](http://www.tpl.org/content_documents/lwcf_report_webfinal.pdf)

<sup>7</sup> Like others interested in land conservation, this group does not view the LWCF resources appropriated for “other programs” as part of the core land conservation effort. Thus, although total LWCF appropriations in FY 2008 were

pressure—open space roughly the size of Connecticut is being lost to development every day and fewer and fewer children are getting outdoors. Concerns include the need to protect water resources and valuable ecosystems not only for scenic and recreational purposes but also because of their importance in an era of climate change and because of their economic significance to their localities and regions. They point out that many “irreplaceable wildlands, fish and wildlife habitats, scenic areas, historic sites and neighborhood parks are being developed, fragmented, and otherwise sacrificed because there is simply not enough LWCF money to go around.” The coalition recommends:

- Dedicated full funding at \$900 million annually for LWCF grants plus funding for acquisition management personnel in the four federal agencies to develop a strategic land acquisition program.
  - A Forest Legacy Program annual allocation of \$125. Through the use of easements, the Forest Legacy provides a creative tool to enable states and communities to keep their working forests intact while still maintaining local forest economies.
  - A portion of carbon allowance receipts from climate change legislation should “be dedicated to federal land acquisition to help wildlife and natural resource systems adapt to environmental changes, with specific allocations to the Land and Water Conservation Fund, the Forest Legacy Program, and other conservation programs.”
- Outdoor Resources Review Group of Great America Outdoors reported in July, 2009 calling for full funding the LWCF and setting a target of \$5 billion a year by 2015, the LWCF's 50<sup>th</sup> anniversary. Besides increased funding, the bipartisan group called for using transparent geospatial planning tools to overcome fragmentation among multiple programs, public-private partnerships, an elevated priority for regional- or landscape-level conservation, a new network of blue ways and water trails along rivers and coastal waterways, and adaptation of resource lands and waters to the impacts of climate change. Honorary co-chairs of this group were Senate Energy and Natural Resources Committee chairman Bingaman (D-NM) and Ranking Republican on the Senate Interior Appropriations Subcommittee Alexander (TN). Patrick Noonan, Chairman emeritus of the Conservation Fund, was a co-chair.
  - Second Century Commission: In September, 2009, National Parks Conservation Association and the Second Century Commission reported that nearly \$200 million is needed annually for land conservation within the National Parks—lands that now are on the market—and a total of \$2 billion is needed for backlogs in inholding acquisitions through the LWCF. The Commission called for fully funding the LWCF to enable the Park Service's highest-priority land acquisitions to move forward.

### Legislation:

- H.R. 3534, a very comprehensive Consolidated Land, Energy, and Aquatic Resources Act of 2009 was introduced by House Natural Resources Committee chairman Rahall (D-WV) on September 8, 2009. Title IV of the bill would extend the 2015 expiration date of the current statute to 2040. It would amend the existing statute to make \$900 million available each fiscal year for expenditure without further appropriations.<sup>8</sup> Half the money would be for stateside grants and the other half would be used for federal land acquisition (and apparently none at all for “other programs”).

The committee held hearings September 16-17, 2009 but there has been no further action and no additional cosponsors have signed on to the bill. Lyle Hodkiss, a loan officer and rancher from Choteau, MT testified about the importance of LWCF to his community, where LWCF funding has been used to purchase conservation easements to protect working ranches, thereby retaining the traditional ranching way of life in that rural area.

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\$255 million, their report says that appropriations in FY 2008 were less than \$155 million, because they do not count the \$101 million that went to the Fish and Wildlife Service, Forest Service non-land-acquisition purposes, historic preservation or payments in lieu of taxes.

<sup>8</sup> This would essentially give the program “entitlement” or mandatory spending status.

- **S. 2747**, The Land and Water Conservation Authorization and Funding Act of 2009 was introduced by Energy and Natural Resources chairman Bingaman (D-NM) and Finance Committee chairman Baucus (D-MT) on November 6, 2009. It would strike the 2015 expiration date and would make \$900 million available each fiscal year “without further appropriation.”<sup>7</sup> It does not propose any changes in the way LWCF funds are allocated.

The Senate committee has taken no actions. However, six Democratic senators have cosponsored the measure.<sup>9</sup>

- **Issues:**

- **Entitlement status:** Budget aficionados sometimes joke that an “entitlement” is an appropriation that has died and gone to heaven. Entitlement programs never have to plead their case before the tight-fisted appropriations committees. Their funds are permanently appropriated and flow automatically without further legislative action. Understandably, LWCF advocates want entitlement status to avoid the spikes and troughs that make strategic land conservation investment impossible to plan. They would like to see LWCF funding from the designated OCS receipts retained in the account each year while still maintaining congressional oversight over the specifics of how the funds are allocated. However, this is a big hurdle since the nation has record-high ongoing federal deficits, existing entitlement costs (\$2.20 trillion in FY 2010) that already *exceed* total federal receipts (\$2.16 trillion)<sup>10</sup>, and federal debt levels headed toward unsustainability. In such a climate, this will be a difficult endeavor regardless of the original intent of the 1965 Act.
- **Other programs:** Several times in the past decade, LWCF funds going to “other programs” have equaled or exceeded amounts appropriated for core federal and stateside land acquisition. Land acquisition advocates would like *all* the LWCF money devoted to federal and stateside land and forest acquisition. The problem is that this would mean that money for the “other programs” would have to be squeezed from elsewhere within the Function 300 discretionary total—the pot of money allocated under the budget process for environmental programs—leaving less for EPA, NOAA, Corps of Engineers and so forth.
- **Ecosystem, watershed, and landscape:** In an era of climate change and intense developmental pressure, many land conservation projects are much larger in scale than the typical LWCF land acquisition project. Increasingly, LWCF funding is being used as only one tool in an array of preservation techniques.
- **Economic values of LWCF:** Federal and state public lands as well as local parks and outdoor recreation sites greatly enhance communities' quality of life, which in turn helps large cities and small towns attract new residents and businesses and helps generate tourism-related jobs and revenues—\$24 billion in recreation and tourism according to the Dept. of Interior's 2009 annual report. Active outdoor recreation, including hunting, fishing, camping, climbing, hiking, paddling, backcountry skiing, mountain biking and wildlife viewing drive a total of \$730 billion in annual economic activity, supporting 6.5 million jobs ( of every 20 U.S. jobs) and stimulating 8 percent of all consumer spending, according to the Outdoor Industry Association.

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<sup>9</sup> Sanders (VT), Schumer (NY), Tester (MT), Udall (CO), Udall (NM), Wyden (OR)

<sup>10</sup> See Tables 2.1 and 8.1 in FY2011 administration budget at <http://www.whitehouse.gov/omb/budget/Historicals>.

**How you can help:**

If you are in favor of increased funding for the LWCF, **right now** is the time to contact your representative and senators and tell them that you hope they will support the administration’s budget request for the coming fiscal year. You can urge them to support full funding by 2014. The more legislators who hear from constituents that LWCF is important to them, the better its chances for getting the full amount requested by the administration. There are not enough dollars to satisfy all budget requests this year, so the programs that have the most supporters will stand a better chance than those without many advocates. Even if your legislators are not members of the Appropriations Committee, ask them to put in a good word for LWCF funding with their appropriations colleagues—including a letter of support if possible.

If you oppose letting the LWCF expire in 2015, be sure to mention this.

If you believe that LWCF should be assured of funds from the designated OCS receipts that are supposed to come to the program each year as envisioned in the 1965 Act, regardless of other competing demands, you can urge your representative to support the LWCF provisions of H.R. 3534 and urge your Senators to become cosponsors of S. 2747 and to work to get those measures enacted, thereby giving LWCF mandatory entitlement (i.e. off budget) status.

**How to contact your legislators:**

To send e-mail to your senator, go to [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm](http://www.senate.gov/general/contact_information/senators_cfm.cfm) and scroll to the senator’s name. There you will see a “web form” address in red type. Click o that address and follow the directions for sending e-mail.

To send e-mail to your representative, go to <http://www.house.gov/house/MemberWWW.shtml>. Click on your representative’s name, and then look for the “contact” box on the member’s web site and follow the directions for sending e-mail.

To telephone any congressman or senator: Call the Capitol switchboard: 202-224-3121. Ask for your legislator’s office. When the phone is answered, say that you want to leave a message about upcoming legislation A young aide will take the message or send you to the legislator’s voice mail. This seems impersonal, but is nevertheless effective—legislators keep track of how many calls come in on different issues and the direction in which sentiment is running. Even a relatively small number of calls are enough to warrant serious consideration of the view expressed.

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NAL updates serve in an **advisory** capacity, based on committee research. Individual clubs and members may act on any issue as they choose.  
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