

LAND AND WATER CONSERVATION FUND  
REAUTHORIZATION AND FAIRNESS ACT

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DECEMBER 20, 2018.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 502]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 502) to permanently reauthorize the Land and Water Conservation Fund, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Land and Water Conservation Fund Reauthorization and Fairness Act”.

**SEC. 2. REAUTHORIZATION OF LAND AND WATER CONSERVATION FUND.**

- (a) IN GENERAL.—Section 200302 of title 54, United States Code, is amended—
- (1) in subsection (b), in the matter preceding paragraph (1), by striking “During the period ending September 30, 2018, there” and inserting “There”; and
  - (2) in subsection (c)(1), by striking “through September 30, 2018”.
- (b) ALLOCATION OF FUNDS.—Section 200304 of title 54, United States Code, is amended—
- (1) by striking “There” and inserting the following:  
“(a) IN GENERAL.—There”;
  - (2) by striking “Not less than 40 percent of such appropriations shall be available for Federal purposes.”; and
  - (3) by adding at the end the following:

“(b) ALLOCATION OF FUNDS.—Of the total amount made available to the Fund through appropriations and deposited into the fund under section 105(a)(2)(B) of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note)—

“(1) not less than 40 percent of such amount shall be used for Federal purposes under section 200306; and

“(2) not less than 40 percent of such amount shall be used to provide financial assistance to States under section 200305.”.

(c) PARITY FOR TERRITORIES AND THE DISTRICT OF COLUMBIA.—Section 200305(b) of title 54, United States Code, is amended by striking paragraph (5).

(d) PUBLIC ACCESS.—Section 200306 of title 54, United States Code, is amended by adding at the end the following:

“(c) PUBLIC ACCESS.—

“(1) IN GENERAL.—Of the amounts made available for expenditure in any fiscal year under section 200303, not less than the greater of 3 percent of the amounts or \$20,000,000 shall be made available for projects identified on the priority list developed under paragraph (2).

“(2) PRIORITY LIST.—The Secretary of the Interior and the Secretary of Agriculture, in consultation with the head of each affected Federal agency, shall annually develop a priority list for projects related to Federal land under the jurisdiction of the applicable Secretary.

“(3) CRITERIA.—Projects identified on the priority list developed under paragraph (2) shall—

“(A) maintain or increase public access to existing Federal public land for hunting, fishing, recreational shooting, or other outdoor recreational purposes through acquisition of rights-of-way or acquisition of land (or any interest in land), including through equal value land exchanges; or

“(B) enhance, maintain, or restore access on existing trails or rights-of-way.”.

## PURPOSE OF THE BILL

The purpose of H.R. 502 is to permanently reauthorize the Land and Water Conservation Fund.

## BACKGROUND AND NEED FOR LEGISLATION

The Land and Water Conservation Fund Act of 1965 (LWCF, Public Law 88–578, 54 U.S.C. 200301 et seq.) was enacted to preserve, develop, and ensure public access to outdoor recreation resources.<sup>1</sup> The law created the Land and Water Conservation Fund in the Treasury. The fund is credited with revenues totaling \$900 million annually under the LWCF, but these credited monies cannot be spent unless appropriated by Congress. The LWCF has generally been used to support federal land acquisition; State matching grant programs to assist in recreational planning, acquiring State lands and waters, and developing outdoor recreational facilities; and other federal programs with outdoor recreation purposes. The authority to appropriate funding for LWCF does not expire and authorities of federal land management agencies to acquire land derive from statutes other than the LWCF.

While expenditures from the LWCF are authorized at \$900 million annually under the law, as mentioned above these monies cannot be spent unless appropriated by Congress. Congress can determine what, if any, appropriations should be provided from the balance in the LWCF and the purposes of those appropriations. Since its establishment, approximately \$40 billion has been deposited into the LWCF, but only \$18.4 billion has been appropriated, leaving an unappropriated balance of \$21.6 billion. Of the \$18.4 billion that has been appropriated from the LWCF, \$11.2 billion has gone

<sup>1</sup> Carol Hardy Vincent. *Land and Water Conservation Fund (LWCF): Frequently Asked Questions Related to Provisions Scheduled to Expire on September 30, 2018*. (CRS In Focus No. IF10323). Washington, DC: Congressional Research Service, 2018.

to federal land acquisition, \$4.7 billion has been granted to States, and \$2.6 billion has been used to fund other government recreation programs. LWCF funds have also been appropriated to support other federal programs and activities, including facility maintenance of the land management agencies.<sup>2</sup>

Money going into the LWCF comes from three specific sources: the federal motorboat fuel tax, surplus property taxes, and revenues from oil and gas leases on the federal Outer Continental Shelf (OCS). The LWCF has historically accumulated most of its money from OCS leases, and since the beginning of the fund in Fiscal Year 1965, 95% of credited LWCF money has come from OCS leases. The LWCF also receives money under the Gulf of Mexico Energy Security Act of 2006 (GOMESA, Public Law 109-432). Under GOMESA, additional monies from OCS leasing accrue in the LWCF and can only be used for State grants to support outdoor recreation. Unlike other monies credited to the fund, GOMESA dollars are not subject to appropriation.

The only authority that expires under the LWCF is the ability to accrue additional revenue into the Fund. Authorization for the deposit of monies into the LWCF expired on September 30, 2018.

As ordered reported, H.R. 502 permanently authorizes the LWCF. It also allocates funding so that no less than 40% would be available for federal purposes and no less than 40% would be available for the Stateside program. It also provides parity for the U.S. territories of American Samoa, Guam, Puerto Rico, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the District of Columbia, in receiving funding from the LWCF. Finally, the bill directs the greater of 3% or \$20 million of the federal portion of LWCF funding be used for public access projects related to federal land. These projects would be identified by the Secretaries of the Interior and Agriculture, in consultation with the heads of affected federal agencies.

#### COMMITTEE ACTION

H.R. 502 was introduced on January 12, 2017, by Congressman Raúl M. Grijalva (D-AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Federal Lands and the Subcommittee on Water, Power and Oceans. On September 13, 2018, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. Congressman Rob Bishop (R-UT) offered an amendment in the nature of a substitute designated 083. The following amendments were offered to the amendment in the nature of a substitute: Congressman Paul A. Gosar (R-AZ) offered an amendment designated 130; it was not adopted by a roll call vote of 10 yeas and 18 nays, as follows:

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<sup>2</sup>Carol Hardy Vincent. Land and Water Conservation Fund: Appropriations for "Other Purposes" (CRS Report R44121). Washington, DC: Congressional Research Service, 2018.

**Committee on Natural Resources**

U.S. House of Representatives

115th Congress

Date: 09.13.18 10:45 a.m.

Recorded Vote #:1

Meeting on / Amendment on: FC Markup Gosar [130] to the ANS to HR 502 (Rep. Raul M. Grijalva)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>			
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>			
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>				<b>Ms. González-Colón, PR</b>		X	
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>		X	
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>		X	
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>							
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	10	18	

Congressman Gosar offered an amendment designated 269; it was not adopted by voice vote. Congressman Gosar offered an amendment designated 270, with a time stamp of 8:17 am; it was not adopted by a roll call vote of 11 yeas and 20 nays, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

115th Congress

Date: 09.13.18

Recorded Vote #:2

Meeting on / Amendment on: FC Markup Gosar [270; 8:17 A.M.] to the ANS to HR 502 (Rep. Raul M. Grijalva)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>		X	
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>		X	
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>		X	
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>		X	
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>							
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	11	20	

Congressman Gosar offered an amendment designated 270, with a time stamp of 8:19 am; it was not adopted by voice vote. Congressman Gosar offered an amendment designated 272; it was not adopted by a roll call vote of 10 yeas and 21 nays, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

115th Congress

Date: 09.13.18

Recorded Vote #:3

Meeting on / Amendment on: FC Markup Gosar [272] to the ANS to HR 502 (Rep. Raul M. Grijalva)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>		X	
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>		X	
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>	X		
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>		X	
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>		X	
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>		X	
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>							
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	10	21	



Congressman Gosar offered an amendment designated 115; it was not adopted by a roll call vote of 11 yeas and 19 nays, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

115th Congress

Date: 09.13.18

Recorded Vote #4

Meeting on / Amendment on: FC Markup Gohmert [115] to the ANS to HR 502 (Rep. Raul M. Grijalva)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>		X	
<b>Mr. Wittman, VA</b>				<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>	X		
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>		X	
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>		X	
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>		X	
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>							
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	11	19	

Congressman Tom McClintock (R-CA) offered and withdrew an amendment designated 074. Congressman Bruce Westerman (R-AR) offered an amendment designated #1; it was not adopted by a roll call vote of 11 yeas and 21 nays, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

115th Congress

Date: 09.13.18

Recorded Vote #:5

Meeting on / Amendment on: FC Markup Westerman [#1] to the ANS to HR 502 (Rep. Raul M. Grijalva)

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. Cook, CA</b>			
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. McEachin, VA</i>		X	
<b>Mr. Young, AK, Chairman Emeritus</b>				<b>Mr. Westerman, AR</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Brown, MD</i>			
<b>Mr. Gohmert, TX, Vice Chairman</b>	X			<b>Mr. Graves, LA</b>	X		
<i>Ms. Bordallo, Guam</i>		X		<i>Mr. Clay, MO</i>			
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Hice, GA</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Gomez, CA</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Sablan, CNMI</i>				<i>Ms. Velázquez, NY</i>			
<b>Mr. McClintock, CA</b>	X			<b>Mr. Webster, FL</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Bergman, MI</b>		X	
<b>Mr. Pearce, NM</b>				<b>Ms. Cheney, WY</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Johnson, LA</b>			
<b>Mr. Thompson, PA</b>	X			<b>Ms. González-Colón, PR</b>		X	
<i>Mr. Lowenthal, CA</i>		X		<b>Mr. Gianforte, MT</b>		X	
<b>Mr. Gosar, AZ</b>	X			<b>Mr. Curtis, UT</b>		X	
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mr. Gallego, AZ</i>		X					
<b>Mr. Tipton, CO</b>		X					
<i>Ms. Hanabusa, HI</i>		X					
<b>Mr. LaMalfa, CA</b>	X						
<i>Ms. Barragán, CA</i>		X					
<b>Mr. Denham, CA</b>							
<i>Mr. Soto, FL</i>		X		<b>TOTAL:</b>	11	21	

The amendment in the nature of a substitute was adopted by voice vote. The bill, as amended, was adopted and favorably reported to the House of Representatives by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

#### COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, September 25, 2018.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 502, the Land and Water Conservation Fund Reauthorization and Fairness Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

#### *H.R. 502—Land and Water Conservation Fund Reauthorization and Fairness Act*

H.R. 502 would permanently authorize the annual deposit of at least \$900 million from various federal sources into the Land and Water Conservation Fund (LWCF). Amounts in the fund are used to acquire land and to make grants to states to support outdoor recreation. The current authorization expires on October 1, 2018.

The LWCF is permanently authorized to spend any amounts deposited in the fund if they are subsequently appropriated. By permanently authorizing deposits into the fund, H.R. 502 would increase the amounts that are available for appropriation. Assuming appropriations from the fund are provided at historical levels, the fund has sufficient balances to cover appropriations for the next five years. Therefore, CBO estimates that the transfer would not increase spending subject to appropriation.

The bill also would modify certain LWCF program requirements and would direct the Department of the Interior and the Department of Agriculture to develop a list of priority projects to increase access to public lands. Using information on the costs of similar

tasks, CBO estimates that implementing those provisions would cost less than \$500,000; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 502 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 502 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 502 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would benefit state governments by permanently authorizing federal assistance from the LWCF.

The CBO staff contacts for this estimate are Janani Shankaran (for federal costs) and Jon Sperl (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to permanently reauthorize the Land and Water Conservation Fund.

#### EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill contains no directed rulemakings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

## TITLE 54, UNITED STATES CODE

\* \* \* \* \*

### SUBTITLE II—OUTDOOR RECREATION PROGRAMS

\* \* \* \* \*

#### CHAPTER 2003—LAND AND WATER CONSERVATION FUND

\* \* \* \* \*

#### § 200302. Establishment of Land and Water Conservation Fund

(a) **ESTABLISHMENT.**—There is established in the Treasury the Land and Water Conservation Fund.

(b) **DEPOSITS.**—~~During the period ending September 30, 2018, there~~ *There* shall be deposited in the Fund the following revenues and collections:

(1) All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of the provisions of law set forth in section 572(a) or 574(a) to (c) of title 40 or under authority of any appropriation Act that appropriates an amount, to be derived from proceeds from the transfer of excess property and the disposal of surplus property, for necessary expenses, not otherwise provided for, incident to the utilization and disposal of excess and surplus property) received from any disposal of surplus real property and related personal property under chapter 5 of title 40, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Nothing in this chapter shall affect existing laws or regulations concerning disposal of real or personal surplus property to schools, hospitals, and States and their political subdivisions.

(2) The amounts provided for in section 200310 of this title.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—In addition to the sum of the revenues and collections estimated by the Secretary to be deposited in the Fund pursuant to this section, there are authorized to be appropriated annually to the Fund out of any money in the Treasury not otherwise appropriated such amounts as are necessary to make the income of the Fund not less than \$900,000,000 for each fiscal year ~~through September 30, 2018~~.

(2) **RECEIPTS UNDER OUTER CONTINENTAL SHELF LANDS ACT.**—To the extent that amounts appropriated under paragraph (1) are not sufficient to make the total annual income of the Fund equivalent to the amounts provided in paragraph (1), an amount sufficient to cover the remainder shall be credited to the Fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(3) AVAILABILITY OF DEPOSITS.—Notwithstanding section 200303 of this title, money deposited in the Fund under this subsection shall remain in the Fund until appropriated by Congress to carry out this chapter.

\* \* \* \* \*

#### § 200304. Statement of estimated requirements

【There】 (a) *IN GENERAL.*—There shall be submitted with the annual budget of the United States a comprehensive statement of estimated requirements during the ensuing fiscal year for appropriations from the Fund. 【Not less than 40 percent of such appropriations shall be available for Federal purposes.】

(b) *ALLOCATION OF FUNDS.*—*Of the total amount made available to the Fund through appropriations and deposited into the fund under section 105(a)(2)(B) of the Gulf of Mexico Energy Security Act of 2006 (43 U.S.C. 1331 note)—*

(1) *not less than 40 percent of such amount shall be used for Federal purposes under section 200306; and*

(2) *not less than 40 percent of such amount shall be used to provide financial assistance to States under section 200305.*

#### § 200305. Financial assistance to States

(a) *AUTHORITY OF SECRETARY TO MAKE PAYMENTS.*—The Secretary may provide financial assistance to the States from amounts available for State purposes. Payments may be made to the States by the Secretary as provided in this section, subject to such terms and conditions as the Secretary considers appropriate and in the public interest to carry out the purposes of this chapter, for outdoor recreation:

(1) Planning.

(2) Acquisition of land, water, or interests in land or water.

(3) Development.

(b) *APPORTIONMENT AMONG STATES.*—Amounts appropriated and available for State purposes for each fiscal year shall be apportioned among the States by the Secretary, whose determination shall be final, in accordance with the following formula:

(1) Forty percent of the 1st \$225,000,000; 30 percent of the next \$275,000,000; and 20 percent of all additional appropriations shall be apportioned equally among the States.

(2) At any time, the remaining appropriation shall be apportioned on the basis of need to individual States by the Secretary in such amounts as in the Secretary's judgment will best accomplish the purposes of this chapter. The determination of need shall include consideration of—

(A) the proportion that the population of each State bears to the total population of the United States;

(B) the use of outdoor recreation resources of each State by persons from outside the State; and

(C) the Federal resources and programs in each State.

(3) The total allocation to a State under paragraphs (1) and (2) shall not exceed 10 percent of the total amount allocated to all of the States in any one year.

(4) The Secretary shall notify each State of its apportionments. The amounts shall be available for payment to the



State for planning, acquisition, or development projects as prescribed. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which the notification is given and for 2 fiscal years thereafter shall be reapportioned by the Secretary in accordance with paragraph (2) without regard to the 10 percent limitation to an individual State specified in this subsection.

[(5) For the purposes of paragraph (1), the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands shall be deemed to be one State, and shall receive shares of the apportionment in proportion to their populations.]

(c) MATCHING REQUIREMENTS.—Payments to any State shall cover not more than 50 percent of the cost of planning, acquisition, or development projects that are undertaken by the State. The remaining share of the cost shall be borne by the State in a manner and with funds or services as shall be satisfactory to the Secretary.

(d) COMPREHENSIVE STATE PLAN.—

(1) REQUIRED FOR CONSIDERATION OF FINANCIAL ASSISTANCE.—A comprehensive statewide outdoor recreation plan shall be required prior to the consideration by the Secretary of financial assistance for acquisition or development projects. The plan shall be adequate if, in the judgment of the Secretary, it encompasses and will promote the purposes of this chapter. No plan shall be approved unless the chief executive official of the State certifies that ample opportunity for public participation in plan development and revision has been accorded. The Secretary shall develop, in consultation with others, criteria for public participation, which criteria shall constitute the basis for the certification by the chief executive official. The plan shall contain—

(A) the name of the State agency that will have authority to represent and act for the State in dealing with the Secretary for purposes of this chapter;

(B) an evaluation of the demand for and supply of outdoor recreation resources and facilities in the State;

(C) a program for the implementation of the plan; and

(D) other necessary information, as determined by the Secretary.

(2) FACTORS TO BE CONSIDERED.—The plan shall take into account relevant Federal resources and programs and shall be correlated so far as practicable with other State, regional, and local plans. Where there exists or is in preparation for any particular State a comprehensive plan financed in part with funds supplied by the Secretary of Housing and Urban Development, any statewide outdoor recreation plan prepared for purposes of this part shall be based on the same population, growth, and other pertinent factors as are used in formulating plans financed by the Secretary of Housing and Urban Development.

(3) PROVISION OF ASSISTANCE WHEN PLAN NOT OTHERWISE AVAILABLE OR TO MAINTAIN PLAN.—The Secretary may provide financial assistance to any State for projects for the preparation of a comprehensive statewide outdoor recreation plan when the plan is not otherwise available or for the maintenance of the plan.

(4) WETLANDS.—A comprehensive statewide outdoor recreation plan shall specifically address wetlands within the State as an important outdoor recreation resource as a prerequisite to approval, except that a revised comprehensive statewide outdoor recreation plan shall not be required by the Secretary, if a State submits, and the Secretary, acting through the Director, approves, as a part of and as an addendum to the existing comprehensive statewide outdoor recreation plan, a wetlands priority plan developed in consultation with the State agency with responsibility for fish and wildlife resources and consistent with the national wetlands priority conservation plan developed under section 301 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3921) or, if the national plan has not been completed, consistent with the provisions of that section.

(e) PROJECTS FOR LAND AND WATER ACQUISITION AND DEVELOPMENT OF BASIC OUTDOOR RECREATION FACILITIES.—

(1) IN GENERAL.—In addition to assistance for planning projects, the Secretary may provide financial assistance to any State for the types of projects described in paragraphs (2) and (3), or combinations of those projects, if the projects are in accordance with the State comprehensive plan.

(2) ACQUISITION OF LAND OR WATER.—

(A) IN GENERAL.—Under paragraph (1), the Secretary may provide financial assistance for a project for the acquisition of land, water, or an interest in land or water, or a wetland area or an interest in a wetland area, as identified in the wetlands provisions of the comprehensive plan (other than land, water, or an interest in land or water acquired from the United States for less than fair market value), but not including incidental costs relating to acquisition.

(B) RETENTION OF RIGHT OF USE AND OCCUPANCY.—When a State provides that the owner of a single-family residence may, at the owner's option, elect to retain a right of use and occupancy for not less than 6 months after the date of acquisition of the residence and the owner elects to retain such a right—

(i) the owner shall be deemed to have waived any benefits under sections 203 to 206 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4623 to 4626); and

(ii) for the purposes of those sections the owner shall not be deemed to be a displaced person as defined in section 101 of that Act (42 U.S.C. 4601).

(3) DEVELOPMENT OF BASIC OUTDOOR RECREATION FACILITIES.—Under paragraph (1), the Secretary may provide financial assistance for a project for development of basic outdoor recreation facilities to serve the general public, including the development of Federal land under lease to States for terms of 25 years or more. No assistance shall be available under this chapter to enclose or shelter a facility normally used for an outdoor recreation activity, but the Secretary may permit local funding, not to exceed 10 percent of the total amount allocated to a State in any one year, to be used for construction of a shel-

tered facility for a swimming pool or ice skating rink in an area where the Secretary determines that the construction is justified by the severity of climatic conditions and the increased public use made possible by the construction.

(f) PAYMENTS.—

(1) CRITERIA FOR MAKING PAYMENTS.—The Secretary may make a payment to a State only for a planning, acquisition, or development project that is approved by the Secretary. The Secretary shall not make a payment for or on account of any project with respect to which financial assistance has been given or promised under any other Federal program or activity, and no financial assistance shall be given under any other Federal program or activity for or on account of any project with respect to which the assistance has been given or promised under this chapter. The Secretary may make payments from time to time in keeping with the rate of progress toward the satisfactory completion of a project. The approval of all projects and all payments, or any commitments relating thereto, shall be withheld until the Secretary receives appropriate written assurance from the State that the State has the ability and intention to finance its share of the cost of all of the projects, and to operate and maintain by acceptable standards, at State expense, the properties or facilities acquired or developed for public outdoor recreation use.

(2) PAYMENT RECIPIENTS.—Payments for all projects shall be made by the Secretary to the chief executive official of the State or to a State official or agency designated by the chief executive official or by State law having authority and responsibility to accept and to administer funds paid under this section for approved projects. If consistent with an approved project, funds may be transferred by the State to a political subdivision or other appropriate public agency.

(3) CONVERSION TO OTHER THAN PUBLIC OUTDOOR RECREATION USE.—No property acquired or developed with assistance under this section shall, without the approval of the Secretary, be converted to other than public outdoor recreation use. The Secretary shall approve a conversion only if the Secretary finds it to be in accordance with the then-existing comprehensive statewide outdoor recreation plan and only on such conditions as the Secretary considers necessary to ensure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location. Wetland areas and interests therein as identified in the wetlands provisions of the comprehensive plan and proposed to be acquired as suitable replacement property within the same State that is otherwise acceptable to the Secretary, acting through the Director, shall be deemed to be of reasonably equivalent usefulness with the property proposed for conversion.

(4) REPORTS AND ACCOUNTING PROCEDURES.—No payment shall be made to any State until the State has agreed to—

(A) provide such reports to the Secretary in such form and containing such information as may be reasonably necessary to enable the Secretary to perform the Secretary's duties under this chapter; and

- (B) provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement and accounting for Federal funds paid to the State under this chapter.
- (g) RECORDS.—A recipient of assistance under this chapter shall keep such records as the Secretary shall prescribe, including records that fully disclose—
- (1) the amount and the disposition by the recipient of the proceeds of the assistance;
  - (2) the total cost of the project or undertaking in connection with which the assistance is given or used; and
  - (3) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.
- (h) ACCESS TO RECORDS.—The Secretary, and the Comptroller General, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any records of the recipient that are pertinent to assistance received under this chapter.
- (i) PROHIBITION OF DISCRIMINATION.—With respect to property acquired or developed with assistance from the Fund, discrimination on the basis of residence, including preferential reservation or membership systems, is prohibited except to the extent that reasonable differences in admission and other fees may be maintained on the basis of residence.
- (j) COORDINATION WITH FEDERAL AGENCIES.—To ensure consistency in policies and actions under this chapter with other related Federal programs and activities and to ensure coordination of the planning, acquisition, and development assistance to States under this section with other related Federal programs and activities—
- (1) the President may issue such regulations with respect thereto as the President considers desirable; and
  - (2) the assistance may be provided only in accordance with the regulations.
- (k) CAPITAL IMPROVEMENT AND OTHER PROJECTS TO REDUCE CRIME.—
- (1) AVAILABILITY AND PURPOSE OF FUNDS.—In addition to assistance for planning projects, and in addition to the projects identified in subsection (e), and from amounts appropriated out of the Violent Crime Reduction Trust Fund, the Secretary may provide financial assistance to the States, not to exceed \$15,000,000, for projects or combinations thereof for the purpose of making capital improvements and other measures to increase safety in urban parks and recreation areas, including funds to—
- (A) increase lighting within or adjacent to public parks and recreation areas;
  - (B) provide emergency telephone lines to contact law enforcement or security personnel in areas within or adjacent to public parks and recreation areas;
  - (C) increase security personnel within or adjacent to public parks and recreation areas; and
  - (D) fund any other project intended to increase the security and safety of public parks and recreation areas.

(2) **ELIGIBILITY.**—In addition to the requirements for project approval imposed by this section, eligibility for assistance under this subsection shall depend on a showing of need. In providing funds under this subsection, the Secretary shall give priority to projects proposed for urban parks and recreation areas with the highest rates of crime and, in particular, to urban parks and recreation areas with the highest rates of sexual assault.

(3) **FEDERAL SHARE.**—Notwithstanding subsection (c), the Secretary may provide 70 percent improvement grants for projects undertaken by a State for the purposes described in this subsection.

**§ 200306. Allocation of Fund amounts for Federal purposes**

(a) **ALLOWABLE PURPOSES AND SUBPURPOSES.**—

(1) **IN GENERAL.**—Amounts appropriated from the Fund for Federal purposes shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President for the purposes and subpurposes stated in this subsection.

(2) **ACQUISITION OF LAND, WATER, OR AN INTEREST IN LAND OR WATER.**—

(A) **SYSTEM UNITS AND RECREATION AREAS ADMINISTERED FOR RECREATION PURPOSES.**—Amounts shall be allotted for the acquisition of land, water, or an interest in land or water within the exterior boundary of—

(i) a System unit authorized or established; and

(ii) an area authorized to be administered by the Secretary for outdoor recreation purposes.

(B) **NATIONAL FOREST SYSTEM.**—

(i) **IN GENERAL.**—Amounts shall be allotted for the acquisition of land, water, or an interest in land or water within inholdings within—

(I) wilderness areas of the National Forest System; and

(II) other areas of national forests as the boundaries of those forests existed on January 1, 1965, or purchase units approved by the National Forest Reservation Commission subsequent to January 1, 1965, all of which other areas are primarily of value for outdoor recreation purposes.

(ii) **ADJACENT LAND.**—Land outside but adjacent to an existing national forest boundary, not to exceed 3,000 acres in the case of any one forest, that would comprise an integral part of a forest recreational management area may also be acquired with amounts appropriated from the Fund.

(iii) **LIMITATION.**—Except for areas specifically authorized by Act of Congress, not more than 15 percent of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.

(C) **ENDANGERED SPECIES AND THREATENED SPECIES; FISH AND WILDLIFE REFUGE AREAS; NATIONAL WILDLIFE**

REFUGE SYSTEM.—Amounts shall be allotted for the acquisition of land, water, or an interest in land or water for—

(i) endangered species and threatened species authorized under section 5(a) of the Endangered Species Act of 1973 (16 U.S.C. 1534(a));

(ii) areas authorized by section 2 of the Refuge Recreation Act (16 U.S.C. 460k–1);

(iii) national wildlife refuge areas under section 7(a)(4) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(a)(4)) and wetlands acquired under section 304 of the Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3922); and

(iv) any area authorized for the National Wildlife Refuge System by specific Acts.

(3) PAYMENT AS OFFSET OF CAPITAL COSTS.—Amounts shall be allotted for payment into miscellaneous receipts of the Treasury as a partial offset for capital costs, if any, of Federal water development projects authorized to be constructed by or pursuant to an Act of Congress that are allocated to public recreation and the enhancement of fish and wildlife values and financed through appropriations to water resource agencies.

(4) AVAILABILITY OF APPROPRIATIONS.—Appropriations allotted for the acquisition of land, water, or an interest in land or water as set forth under subparagraphs (A) and (B) of paragraph (2) shall be available for those acquisitions notwithstanding any statutory ceiling on the appropriations contained in any other provision of law enacted prior to January 4, 1977, or, in the case of national recreation areas, prior to January 15, 1979, except that for any such area expenditures shall not exceed a statutory ceiling during any one fiscal year by 10 percent of the ceiling or \$1,000,000, whichever is greater.

(b) ACQUISITION RESTRICTIONS.—Appropriations from the Fund pursuant to this section shall not be used for acquisition unless the acquisition is otherwise authorized by law. Appropriations from the Fund may be used for preacquisition work where authorization is imminent and where substantial monetary savings could be realized.

(c) PUBLIC ACCESS.—

(1) *IN GENERAL.*—Of the amounts made available for expenditure in any fiscal year under section 200303, not less than the greater of 3 percent of the amounts or \$20,000,000 shall be made available for projects identified on the priority list developed under paragraph (2).

(2) *PRIORITY LIST.*—The Secretary of the Interior and the Secretary of Agriculture, in consultation with the head of each affected Federal agency, shall annually develop a priority list for projects related to Federal land under the jurisdiction of the applicable Secretary.

(3) *CRITERIA.*—Projects identified on the priority list developed under paragraph (2) shall—

(A) maintain or increase public access to existing Federal public land for hunting, fishing, recreational shooting, or other outdoor recreational purposes through acquisition of rights-of-way or acquisition of land (or any interest in land), including through equal value land exchanges; or

*(B) enhance, maintain, or restore access on existing trails  
or rights-of-way.*

\* \* \* \* \*

## ADDITIONAL VIEWS

H.R. 502 permanently authorizes the Land and Water Conservation Fund (LWCF), a popular bipartisan program that invests revenues from energy exploration into the conservation of land and water resources throughout the country. This program originated the idea that we should reinvest the profit from the exploitation of one resource into the conservation of another, and the fact that this bill has 240 bipartisan cosponsors—well over a majority of the House of Representatives—demonstrates that Americans overwhelmingly support LWCF.

At markup, the committee adopted an amendment in the nature of a substitute (ANS) offered by Chairman Bishop. The ANS is the product of bipartisan negotiations and represents a modest compromise designed to ensure a permanent future for LWCF.

Most importantly, the ANS establishes a 40% guarantee for state and local grants, a program administered by the National Park Service commonly referred to as stateside LWCF, that provides financial assistance to states and local governments for the development of parks, recreation facilities and the preservation of open space. These grants have a huge impact and have always been a critical component of LWCF. However, a strict guarantee for state grants, without some assurance that LWCF priorities like Federal land acquisition are not significantly impacted, has been a recent sticking point in negotiations over the future of LWCF. The initial resistance to establishing a guaranteed minimum for state grants is due in part to the fact that it is the only portion of LWCF that currently receives any guaranteed money.

Following the adoption of the Gulf of Mexico Energy Security Act of 2009 (GOMESA), the stateside program began receiving mandatory appropriations from the proceeds of certain oil and gas leases in the Gulf of Mexico. Over the last ten years it has received \$75 million in mandatory spending—a number that, given the current price of oil and state of development in the Gulf of Mexico, is only expected to increase. In fact, the Department of the Interior estimates that the state grant program will receive approximately \$850 million to \$1 billion in mandatory dollars over the next ten years. This revenue stream, which is over and above the \$900 million annually deposited (when it's authorized) into LWCF, is available without any further action by Congress. All other LWCF spending is discretionary and subject to the annual appropriation process, so any guarantee for the stateside program that doesn't account for the mandatory GOMESA money could unfairly disadvantage other programs. The ANS resolves this concern by requiring Congress to account for all money directed into LWCF when it calculates the new 40% guarantee. This strikes a fair balance that protects the integrity of LWCF.



The ANS also includes language adopted from H.R. 4179—Rep. Bordallo’s legislation that ensures parity for the territories and the District of Columbia—and increases the recreation set-aside included in the underlying bill from 1.5% to 3%. The recreation set-aside is a guarantee that money will be used to promote access for sportsmen and other recreational users—something that is a priority for both sides of the aisle. We are happy to work with the Chairman to increase guarantee for recreation access. To that end, we would like to continue refining the language regarding trails and rights-of-way to verify that the intended use is specifically to promote recreation access.<sup>1</sup> There may be additional details of the proposal that still need to be smoothed over, but we view this as an equitable solution that provides some certainty for state grants and ensures other programs funded by LWCF are not jeopardized.

Unfortunately, despite the broad popularity of LWCF, a series of Republican amendments offered by Representatives Gosar, Westerman, and McClintock attempted to disrupt and limit the reach of the program. Fortunately, these amendments were defeated and the bill, as amended, was ordered to be reported by voice vote. We look forward to working with the Chairman to provide a permanent future for LWCF.

RAÚL M. GRIJALVA,  
*Ranking Member, Committee*  
*on Natural Resources.*  
 GRACE F. NAPOLITANO.  
 NANETTE DIAZ BARRAGÁN.  
 WM. LACY CLAY.  
 JARED HUFFMAN.  
 COLLEEN HANABUSA.

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<sup>1</sup>Sec. 2(d)(3)(B) authorizes the Secretary, in developing the priority list for recreation access, to include projects that “enhance, maintain, or restore access on existing trails or rights-of-way.” This language should be clear that it is intended to promote access for recreation, not any other types of activities.

## DISSENTING VIEWS

H.R. 502 permanently reauthorizes the Land and Water Conservation Fund (LWCF) to the tune of \$900 million annually. The bill that passed the House Committee on Natural Resources seeks to accomplish this while making only one significant change to LWCF, despite the program having accumulated several significant flaws over the years.

Specifically, the amendment in the nature of a substitute (ANS) offered by Chairman Bishop requires that 40 percent of funds made available for LWCF are allocated to Federal purposes and that 40 percent are allocated to stateside programs. Given that the stateside program has sunk to as low as 12 percent of total LWCF funding, this is a step in the right direction.<sup>1</sup> However, the original 1965 law ensured 60 percent of LWCF money went to states and 40 percent went to the federal government. “It turns out that the 60–40 split was not very controversial in the mid-1970s, according to an E&E Daily review of roughly a dozen hearing transcripts, committee reports, floor debates and conference reports. In fact, the original funding formula was endorsed by Democratic-led committees in both chambers, as well as the Sierra Club.”<sup>2</sup> Moving away from the initial 60–40 formula when LWCF was initially reauthorized has proven to be erroneous. States and local communities on the ground are in most instances better stewards of the taxpayer dollar than a faraway bureaucracy in Washington, D.C. The percentage of LWCF revenues allocated to stateside programs should be further increased.

According to the nonpartisan Congressional Research Service (CRS), the federal government now owns nearly 640 million acres of land and water.<sup>3</sup> The fact that the federal government owns more than 45% of the land in 11 Western States presents major challenges for the people living in and around the federally-controlled land. As massive as those figures are, they don’t even include all of the acreage designated as national monuments. Over the past century, Presidents have utilized the Antiquities Act 233 times to designate 840 million acres of land and water as national monuments. The Obama Administration alone locked up more than 553 million acres of land and water through the Antiquities Act.

While we support many aspects of LWCF, including increasing sportsmen’s access and consolidating checkerboards of land, we have become frustrated over the years that extremist groups have hijacked parts of LWCF to lockup more land and water and prohibit such properties from multiple-use. CRS reported in 2015, “On average over the last five years, \$184 million was provided for fed-

<sup>1</sup> <https://dailycaller.com/2018/10/09/land-and-water-conservation/>

<sup>2</sup> Phil Taylor. How states lost the battle for LWCF cash. E&E News. November 4, 2015.

<sup>3</sup> Katie Hoover. The Federal Land Management Agencies. (CRS In Focus No. IF10585). Washington, DC: Congressional Research Service, 2018.

eral land acquisition under LWCF.”<sup>4</sup> Further, in 2018 CRS reported that of \$18.4 billion appropriated through fiscal year 2018 for LWCF, a staggering \$11.2 billion has been utilized to acquire more federal land.<sup>5</sup>

The Trump Administration, to its credit, proposed to reduce land acquisition to \$8 million for fiscal year 2019, down from the \$154 million that appropriators provided the previous fiscal year. Despite requests by the Administration to slow the unsustainable growth of the federal estate, appropriators continue to provide hundreds of millions each year for new federal land acquisition. Given the Department of the Interior’s (DOI) total deferred maintenance backlog currently exceeds \$16 billion,<sup>6</sup> the federal government should not be spending hundreds of millions of dollars each fiscal year on new land acquisition. Any reauthorization of LWCF should limit new federal land acquisition. An amendment offered by Committee Vice-Chairman Louie Gohmert that received 11 votes at the markup attempted to limit land acquisition in the West as well as the overall percentage of LWCF dollars that can be used for new land acquisition.

When considering LWCF reauthorization, directing portions of the revenues in the fund to the Payments In Lieu of Taxes (PILT) program should be part of the discussion. There is precedent for such action. In 2000, nearly \$50 million went to PILT from the LWCF account. PILT was first signed into law in October 1976 and was created to compensate local governments for large quantities of un-taxable federal lands within their jurisdiction. Given more than \$11 billion from LWCF has been used for new land acquisition, it only makes sense that a portion of LWCF dollars should be used to compensate local communities for the reduction of economic development opportunities and value-based taxation within their borders as a result of such acquisitions. We would also note the PILT lawsuit that originated in Kane County, Utah and the implication that counties have been shortchanged of PILT payments to which they are entitled. Directing funds from the LWCF account to PILT would help ensure a reliable source of funding for the PILT program.<sup>7</sup>

There are many problems associated with consideration of permanent and mandatory LWCF spending to the tune of \$900 million. House Leadership rules don’t allow for authorizations longer than seven years.<sup>8</sup> According to the nonpartisan Congressional Research Service, from the origin of LWCF in fiscal year 1965 until fiscal year 1998, the discretionary total seldom reached \$400 mil-

<sup>4</sup> 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.

<sup>5</sup> Carol Hardy Vincent. Land and Water Conservation Fund: Overview, Funding History, and Issues (CRS Report No. RL33531). Washington, DC: Congressional Research Service. August 17, 2018.

<sup>6</sup> NPS. “National Park Service Asset Inventory Summary” Data as of September 30, 2017. [https://www.nps.gov/subjects/plandesignconstruct/upload/FY17-Asset-Inventory-Summary-AIS-Servicewide\\_Report\\_508-3.pdf](https://www.nps.gov/subjects/plandesignconstruct/upload/FY17-Asset-Inventory-Summary-AIS-Servicewide_Report_508-3.pdf).

<sup>7</sup> <https://www.naco.org/articles/pilt-counties-feds-my-owe-you-money>.

<sup>8</sup> <https://rules.house.gov/115th-congress-legislative-protocols>.

lion, surpassing this level only in four years.<sup>9</sup> Further, the average amount appropriated into law to the LWCF for the last 15 fiscal years is \$364.6 million. An amendment introduced by Subcommittee Chair Paul Gosar that reduced the LWCF authorization level to \$425 million received 10 votes from the Committee. Further, Chairman Bishop recently cautioned the Senate against requiring mandatory annual spending for the Land and Water Conservation Fund.<sup>10</sup>

The Fifth Amendment states that no person can “be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” Condemnation and eminent domain grossly violate this most basic American right. Chairman Bishop has previously pointed out that LWCF funds have been used for at least six controversial eminent domain projects.<sup>11</sup> LWCF needs to be reformed to ensure private property rights are properly protected. Accordingly, LWCF dollars utilized for non-federal lands should be used for easements and to purchase property from willing sellers, not to seize private property through eminent domain.

Any reauthorization of LWCF should these reforms. Failure to do so may result in the loss of support from dissenting views signers and our other colleagues in the House. Finally, we must register a procedural objection to the Committee giving Members a little over 12 hours’ notice for this markup and to review bill text and to draft amendments. This deviation is all the more striking for being out for character of the Committee. We request such breaches of protocol not be repeated.

Sincerely,

PAUL A. GOSAR.  
TOM MCCLINTOCK.  
DANIEL WEBSTER.  
DOUG LAMALFA.  
LOUIE GOHMERT.  
LIZ CHENEY.

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<sup>9</sup>Carol Hardy Vincent. Land and Water Conservation Fund: Overview, Funding History, and Issues (CRS Report No. RL33531). Washington, DC: Congressional Research Service. August 17, 2018.

<sup>10</sup>Kellie Lunney. ICYMI: Mandatory LWCF Spending Would ‘Blow’ Up Bill—Bishop. E&E News. September 27, 2018.

<sup>11</sup>Rob Bishop. Guest column: Land and Water Conservation Fund needs reform to meet original goal. America’s State Parks. August 7, 2016.