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The Great American Outdoors Act, P.L. 116-152

The Great American Outdoors Act (P.L. 116-152) established a new fund with mandatory spending authority to address deferred maintenance needs of five federal agencies. The law also made available the deposits to an existing fund—the Land and Water Conservation Fund (LWCF)—as mandatory spending and made other changes to the LWCF Act (54 U.S.C. §§200301 et seq.). Section 1 of the law provides the short title as the “Great American Outdoors Act.” Section 2 pertains to the new deferred maintenance fund, and Section 3 relates to the LWCF. This In Focus addresses selected provisions of the law.

National Parks and Public Land Legacy Restoration Fund

The Bureau of Land Management (BLM), Forest Service (FS), Fish and Wildlife Service (FWS), and National Park Service (NPS) maintain thousands of diverse assets, such as roads and buildings. Each agency has a backlog of deferred maintenance (DM), defined as maintenance not performed as needed and put off for a future time. For FY2018, the backlog for NPS was reported at \$11.9 billion, FS at \$5.2 billion, FWS at \$1.3 billion, and BLM at \$1.0 billion. Additionally, the Department of the Interior (DOI) reported DM of \$1.8 billion for Indian Affairs, including the Bureau of Indian Education (BIE). For all the agencies except BIE, a major portion of DM is in transportation assets.

In the past, most funding for agency DM has come from discretionary appropriations. The agencies also have mandatory spending authorities, including transportation maintenance funding under the Fixing America’s Surface Transportation Act (P.L. 114-94), entrance and recreation fees under the Federal Lands Recreation Enhancement Act (16 U.S.C. §§6801-6814), and others.

P.L. 116-152 established the National Parks and Public Land Legacy Restoration Fund (Legacy Restoration Fund) to address DM for the five agencies (NPS, FS, FWS, BLM, and BIE). The fund is to receive annual deposits for FY2021-FY2025 of 50% of all federal energy revenues (from oil, gas, coal, or renewable energy) credited in the preceding fiscal year as miscellaneous receipts to the Treasury, up to a cap of \$1.9 billion annually. The law states that it would not affect the disposition of energy revenues due to states, trust funds, or special funds (such as the LWCF or the Historic Preservation Fund, 54 U.S.C. §303102) and that it would not affect revenues that have been otherwise appropriated under federal law—for example, under the Gulf of Mexico Energy Security Act (GOMESA; 43 U.S.C. §1331 note) or the Mineral Leasing Act (30 U.S.C. §191).

Of the amounts deposited in the fund each year (up to \$1.9 billion annually, as described above), NPS is to receive a

70% share, FS 15%, FWS 5%, BLM 5%, and BIE 5% for its schools. The agencies must use the funding for “priority deferred maintenance projects.” At least 65% of each agency’s funds is for “non-transportation projects.” In general, the President is to submit lists of priority projects to Congress with annual budget justifications.

Appropriations acts may specify an “alternate allocation.” If Congress does not enact an alternate allocation by the enactment date of the full-year appropriations for Interior, Environment, and Related Agencies (or if Congress enacts an alternate allocation of less than the full amount), the President is to allocate amounts. It is not entirely clear if the President must allocate the funds in accordance with the priorities specified in the budget submission.

Whether deposits to the Legacy Restoration Fund will reach the \$1.9 billion cap in each year is uncertain. Given that the fund receives 50% of federal energy revenues deposited in the Treasury as miscellaneous receipts during the preceding fiscal year, these revenues would have to total \$3.8 billion in a given year for the cap to be reached. DOI revenue disbursement data show that Treasury miscellaneous receipts from natural resource extraction ranged annually from \$2.2 billion to \$8.2 billion for FY2010-FY2019. These revenues came primarily from offshore energy development, and especially from offshore oil and gas leasing. Future revenues would depend on factors including oil and gas prices, production levels, and federal leasing policies, among others. For example, deposits to the fund for FY2021 (reflecting FY2020 revenues) and potentially beyond could be affected by changes in oil prices and energy use patterns attributed to the Coronavirus Disease 2019 (COVID-19) pandemic.

Land and Water Conservation Fund

Under the LWCF Act, \$900 million is deposited annually into the LWCF. Nearly all of the revenue is derived from oil and gas leasing offshore. Prior to P.L. 116-152, the money had been available only if appropriated in subsequent law and thus was considered discretionary spending. The annual appropriations generally were less than \$900 million, resulting in an unappropriated balance of approximately \$22 billion through FY2019.

The LWCF Act sets out authorized purposes of the fund, relating to federal land acquisition and outdoor recreation grants to states. Appropriations also have been provided for other programs. The LWCF Act requires the President’s annual budget to identify requirements from the fund, sets out “federal purposes” for which the President is to allot appropriations “unless otherwise allotted in the appropriation Act making them available,” and provides that not less than 40% of total monies are to be used for each of federal purposes and “financial assistance to states.”

Congress typically has reviewed presidential budget requests for LWCF appropriations for agencies, accounts, and programs, and it has determined the total appropriation and the portion for each component.

The LWCF receives additional money (beyond the \$900 million in the LWCF Act) under GOMESA. These appropriations are mandatory spending and can be used only for outdoor recreation grants to states. States can receive a maximum of \$125 million annually in mandatory funding under GOMESA (except in FY2021 and FY2022 when the annual maximum is \$162.5 million). P.L. 116-152 made the \$900 million annual deposits into the fund under the LWCF Act mandatory spending (in addition to GOMESA mandatory spending). Thus, currently, a maximum exceeding \$1.0 billion in mandatory spending for LWCF programs generally is available each year.

The mandatory appropriations under the LWCF Act would be available “to carry out the purposes of the Fund,” including accounts and programs funded from the LWCF under P.L. 116-94. Division D of that law provided FY2020 appropriations for Interior, Environment, and Related Agencies. It contained funding from the LWCF for purposes including federal land acquisition, outdoor recreation grants to states, the Forest Legacy program (administered by FS), the Cooperative Endangered Species Conservation Fund (administered by FWS), the American Battlefield Protection Program (administered by NPS), and the DOI Appraisal and Valuation Services Office. P.L. 116-152 could be unclear as to whether it applies to the funding specifications in the explanatory material for P.L. 116-94.

To allocate the funds, P.L. 116-152 generally requires the President to submit annually to Congress “detailed account, program, and project allocations” for the full amount available. The law provides for alternate allocations by Congress under a procedure similar to that described above for the Legacy Restoration Fund.

In addition to making the LWCF mandatory spending, P.L. 116-152 repealed a provision of the LWCF Act that had limited FS land acquisitions west of the 100th meridian. Following a 2019 report by the Government Accountability Office (GAO-20-175R) that FS acquisitions were not in compliance with the 100th meridian provision, the FS began adhering to the provision. The repeal of the provision was

intended to allow greater flexibility in acquiring lands for the National Forest System. Advocates of retaining the 100th meridian provision sought to limit acquisitions in the West, where most federal lands are located, and foster acquisitions in the East.

Budgetary Implications of Great American Outdoors Act

P.L. 116-152 provides mandatory spending for activities that, in the past, have been funded with discretionary spending (i.e., through the annual appropriations process). As a result, such funding would no longer be considered within annual discretionary spending limits, such as the statutory limits (currently through FY2021) and the appropriations subcommittee allocations under the Congressional Budget Act (2 U.S.C. §633). The Congressional Budget Office (CBO) estimated the law would increase mandatory spending outlays by almost \$5.9 billion over six years (FY2020-FY2025) and almost \$17.3 billion over 11 years (FY2020-FY2030). (The CBO estimate is available at <https://www.cbo.gov/system/files/2020-07/HR1957directspending.pdf>.)

For Further Reading

On deferred maintenance, see CRS Report R43997, *Deferred Maintenance of Federal Land Management Agencies: FY2009-FY2018 Estimates and Issues*, by Carol Hardy Vincent; and CRS Report R44924, *National Park Service Deferred Maintenance: Frequently Asked Questions*, by Laura B. Comay. On the LWCF, see CRS Report RL33531, *Land and Water Conservation Fund: Overview, Funding History, and Issues*, by Carol Hardy Vincent. On the budget process, including discretionary and mandatory appropriations, see CRS Report R46240, *Introduction to the Federal Budget Process*, by James V. Saturno.

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