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CONSERVATION:

How states lost the battle for LWCF cash

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In 1976, the Land and Water Conservation Fund had just wrapped up what lawmakers from both parties agreed was a successful first decade.

Congress had approved nearly \$2 billion, much of it from offshore oil and gas revenue, to purchase new federal parklands and help states build ballparks, boat ramps, trails and other recreation facilities.

Then-Rep. Roy Taylor, a Democrat from North Carolina, called it "one of the most successful federal programs initiated by Congress."

In a show of bipartisanship, lawmakers voted overwhelmingly to triple the fund's authorized level from \$300 million to \$900 million a year and to expand the types of projects it could fund.

But in a curious move, they also voted to nix an existing provision that, unless appropriators decided otherwise, ensured 60 percent of LWCF money went to states and 40 percent to federal land acquisition. The state guarantee disappeared, but the federal share was kept intact.

That decision would come back to haunt states as congressional funding for state recreation grants dropped sharply in ensuing decades. Those wounds are still fresh as Congress debates how to reauthorize the widely popular, but recently expired, law.

"States were complacent," said Doug Eiken, executive director of the National Association of State Outdoor Recreation Liaison Officers, whose members oversee the distribution of stateside funds from LWCF. "We're trying to get back to more fairness and equity."

As interest groups jockey for a piece of the LWCF pie, a key question remains: Why did Congress decide to slash the 60 percent state guarantee in the first place?

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. A Ford administration official said he had "no objection" to the formula being codified, though he suggested Congress maintain flexibility if the fund's authorized level increased.

But lawmakers were concerned about having enough money to buy the era's large amounts of land ready to be set aside as federal acres if funding could be found.

The formula is one of a few key sticking points today as Congress debates its reauthorization.

While more than half of senators this year voted for a "clean" reauthorization -- leaving funding discretion largely in the hands of appropriators -- reform advocates want more money to be guaranteed to states, and possibly other activities like deferred maintenance and payments to counties.

"Over the years, intense lobbying from national environmental special interest groups has shifted federal land acquisition to become the lion's share of LWCF," Rep. Rob Bishop (R-Utah), LWCF's top critic, wrote in a May [op-ed](#) in the magazine of the National Recreation and Park Association, a key backer of the state grant program.

Bishop yesterday said he intends to introduce an LWCF reform package this week that "restores funding to the stateside program."

Bishop and others have also argued that federal land acquisition is fiscally reckless given the scope of needed infrastructure repairs at federal lands agencies. They point to the National Park Service's \$11.5 billion deferred maintenance backlog as well as the Forest Service's \$314 million in backlogged trail repairs.

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Amending the law

But in the mid-1970s, federal lands agencies faced a different backlog.

The backlog -- in federal land acquisition projects -- was estimated by Ford officials to exceed \$2.9 billion, according to a September 1975 [report](#) by the Senate Committee on Interior and Insular Affairs.

The National Park Service alone faced a backlog of lands authorized for purchase, but not yet acquired, that exceeded \$500 million, said a [report](#) the following April by the House committee of the same name.

Those lands faced the threats of development, inflation and rapidly rising real estate prices, records show. There was a sense that the federal government needed to act swiftly -- buy lands now to save money later.

"The public is unable to make use of these authorized but un-acquired areas and, in some cases, there may even be irreparable damage done by adverse use or development on lands pending acquisition," the House report said.

Yet few lawmakers, federal officials or activists openly opposed the 60-40 split, according to available records.

State needs for recreation grants over the next 15 years were estimated by the Bureau of Outdoor Recreation to be roughly \$45 billion, the Senate report said.

In one Senate [hearing](#) in August 1974, the Sierra Club's Linda Billings said, "We believe strongly that the proportions of federal and states allocations of the fund should remain at 40 percent for federal purposes and 60 percent for the states."

But she warned that the administration had shortchanged federal land acquisitions in recent years, threatening parks.

"Many areas which are in critical need of protection such as Big Thicket and Big Cypress have been held up because of a concern for the source of acquisition money," she said.

When the Senate passed its LWCF bill in October 1975, it made no changes to the 60-40 formula. The House's bill, which that chamber passed the following May, strengthened that split by making it mandatory.

Where did it go?

Yet the 60 percent disappeared when House and Senate bills were conferenced in September 1976. The 40 percent slice for federal acquisitions has remained to this day.

According to the [conference report](#), conferees were concerned over a "continuing backlog of unappropriated funds despite the critical needs for land acquisition in the national park system and elsewhere."

Appropriations for federal acquisition had been reduced "drastically," according to the report, which criticized the "inflexibility" of the 60-40 split. It also said states "may sometimes be unable to provide the amounts necessary to match their share of the appropriations from the fund."

But the conferees wrote that Congress should "generally" continue funding LWCF under the 60-40 split.

"My vague recollection is that we had such a big backlog of federally authorized projects that that was top priority," said former Sen. J. Bennett Johnston (D-La.), who served on the conference committee and now advises clients for the law firm Steptoe & Johnson LLP.

Ney Landrum, an 84-year-old retiree from Tallahassee, Fla., who was the state's liaison for LWCF grants from 1964 to 1989, said the amendment happened at a time when states were "totally unorganized" and lacked representation in Washington, D.C.

The state program also had a detractor in the late Rep. Wayne Aspinall (D-Colo.), who chaired the House committee when LWCF was passed in 1964. Aspinall was unhappy the states were using LWCF grants for recreation planning and development, rather than acquisition, Landrum said.

Aspinall met with the state liaison officers in the late '60s or early '70s and "laid it on the line that the program was designed to acquire land," Landrum said. "He sort of took a proprietary attitude toward it."

At any rate, appropriators were quick to abandon the old funding formula.

As a result of the 1976 amendment, states' share of LWCF funds dropped from an average of 70 percent in the early 1970s to less than half that in 1977. From 1987 to 2001, the state share never eclipsed 17 percent. Since 1997, states have received an average of about 12.5 percent of LWCF as more money was funneled to land acquisitions, private forest easements, endangered species and other purposes.

Lobbying push

Today, state and local parks advocates are lobbying mightily to get it back.

"Addressing close-to-home outdoor recreation needs was a core tenant of the original act over 50 years ago," said Kevin O'Hara, vice president of urban and government affairs at the National Recreation and Park Association. "That's why the state assistance program was created and why that premise remains as relevant today, if not more so."

O'Hara cited a 2012 report by NPS that found a \$18.5 billion backlog of unmet need for the state assistance program.

"We've seen state assistance squeezed to less than 15 percent of overall annual LWCF appropriations -- with the urban core receiving under 5 percent," he said. "All while four out of five Americans now live in our larger metropolitan areas."

Tom Wolfe, a former lobbyist for the National Association of State Park Directors who served as a congressional liaison for NPS during the end of the George W. Bush administration, said he was among the first to represent the interests of state park directors before Congress. He recalls being an "army of one" against environmental lobbying powerhouses, including the Nature Conservancy, which opposed restoring the state-side funding requirement.

Bishop, Wolfe said, has a "bigger picture in mind" for LWCF and is justified in stalling its reauthorization in the House.

"Congressman Bishop is getting an unfair hammering in this," Wolfe said. "Bishop is trying to solve a multitude of problems with this reauthorization."

The formula has quietly driven a wedge between LWCF advocates.

The LWCF Coalition, which carries major clout in the reauthorization debate, counts hundreds of members. But the [list](#) doesn't include the National Association of State Outdoor Recreation Liaison Officers, National Association of State Park Directors, or National Recreation and Park Association. Wolfe said he was "disinvited" from the coalition a few years back. Coalition affiliates claim the state parks people gave them an unfair ultimatum to accept the 60-40 split.

Lynn Scarlett, who was Bush's deputy Interior secretary and now works for the Nature Conservancy, said Congress abandoned the rigid funding formula to ensure flexibility to meet local conservation and recreation needs "the way communities see fit."

In recent years, Congress has expanded the uses of the fund to include conservation easements under the Forest Legacy program, as well as Endangered Species Act grants. Those programs -- which many define as "nonfederal" -- combined with state grants have made up half of LWCF's \$3.4 billion in appropriations over the past decade. Federal land acquisition has made up the rest.

"History did not stop in 1976," said Scarlett, who favors Congress keeping its funding flexibility. "The fact is, one size does not fit all."

That, in fact, echoes the position of James Watt, who was director of the Bureau of Outdoor Recreation in the '70s and would later become President Reagan's secretary of Interior.

"I think we need to allow discretion of Congress on that," Watt told the House committee at a 1975 hearing on LWCF. The bureau, which had overseen the state grants program, was later rechristened as Interior's Heritage Conservation and Recreation Service before being folded into NPS by Watt.

Advocates for a clean reauthorization also note that the state-side program beginning in 2018 is eligible to receive up to \$125 million in guaranteed annual funding from certain oil and gas leases under the Gulf of Mexico Energy Security Act, which is nearly triple what the program has gotten annually over the past five years. The Interior Department said it expects states will receive the full amount, subject to the price of oil.

"The beauty of the LWCF program is that it's already a flexible tool," said Alan Rowsome, senior director of government relations for lands at the Wilderness Society and co-chair of the LWCF Coalition. "Congress should move swiftly to reauthorize the Land and Water Conservation Fund without delay and resist the urge to change a popular program that isn't broken, doesn't need fixing, and will continue to work for communities across the country."

Tackle maintenance?

Another question in today's debate is whether LWCF should be used to address the skyrocketing cost of deferred maintenance projects at Interior, which are estimated to be as high as \$20 billion across the bureaus.

Reform advocates say crumbling park roads, rundown bathrooms and leaky water systems should take precedence over new land purchases. LWCF purists say such uses would flout the act's core purposes -- conservation and recreation.

It turns out a similar debate was had in the '70s, according to congressional records.

A burning issue then was whether to amend the law so states could use grants for indoor recreation facilities such as ice skating rinks or swimming pools, particularly if local weather conditions would otherwise limit their use. In the end, states were allowed to use up to 10 percent of grants for the "sheltered" facilities

were allowed to use up to 10 percent of grants for the "enhanced" facilities.

But the debate was fierce.

"I do not know what this expansion may lead to," then-Rep. Joe Skubitz (R-Kan.) wrote in a dissenting view in the House committee's report on LWCF. "If we open the Fund up just a crack for indoor pools and ice skating rinks, we may find ourselves considering covered tennis courts, basketball stadiums, and all sorts of other expensive indoor facilities next year. Where will it end?"

Moreover, today's claims by Republican critics that LWCF is a tool for federal "land grabs" is also nothing new.

In an October 1976 floor debate, then-Sen. Henry Bellmon (R-Okla.) questioned the wisdom of increasing LWCF's authorization to \$1 billion annually, as the Senate bill would have done.

"I wonder whether or not it is in the national interest for Congress to buy another 14 million acres of land, take it off the tax rolls of the city and local governments, take it out of production, and turn it into public-use areas," he said. "I do oppose a large-scale Federal land grab, which the \$1 billion per year would make possible."

The decades-old debate may only intensify as Congress hashes out how to reauthorize the program.

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