



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3388

Subject: Land and Water Conservation Fund Implementation by the U.S. Department of the Interior

Sec. 1 Purpose. This Order is intended to coordinate the implementation of the Department of the Interior's (Department) Bureaus' use of funds from the Land and Water Conservation Fund Act (54 U.S.C. 200301, *et seq.*), as amended by the Great American Outdoors Act (Pub. L. 116-152). This Order also clarifies Bureau roles and responsibilities to effectively manage outdoor recreation resources.

Sec. 2 Authority. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended; the Land and Water Conservation Fund Act (Pub. L. 88-578), as amended; the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Pub. L. 116-9); and the Great American Outdoors Act (Pub. L. 116-152).

Sec. 3 Background. The enactment of the Great American Outdoors Act is a landmark step in fostering cooperative stewardship and recreational opportunities for all Americans. President Trump's leadership led to the enactment of this legislation, and there is no higher priority within the Department for prudent and effective implementation of the legislation. This Order focuses on the implementation of the provisions in the legislation related to the Land and Water Conservation Fund (LWCF).

Established by the Land and Water Conservation Fund Act of 1965 (hereinafter, the Act), the LWCF was created "to assist in preserving, developing, and assuring accessibility to all citizens of the United States of America such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for... participation in ...recreation in order to strengthen the health and vitality of citizens of the United States" (Pub. L. 88-578, §1, 78 Stat. 897). The Act established a State Financial Assistance Program (hereinafter, State Program) and a Federal Program.

The State Program under the Act provides matching grants to States for acquisition and development of public outdoor recreation sites and facilities. The Secretary of the Interior (Secretary) has delegated the authority given under the State Program to the National Park Service. Subsequently, the National Park Service, in an effort to assist the implementation of the program, developed a Manual¹ (State Program Manual) to guide the States in creating effective recreation state plans.

The Federal Program under the Act provides for the acquisition of land, water, or an interest in land or water by the Federal Government to secure public access, as well as to conserve land for

¹ National Park Service, *Land and Water Conservation Fund State Assistance Manual*, Federal Financial Assistance Manual Vol. 69 (Effective Date: October 1, 2008).

Endangered and Threatened Species (16 U.S.C. 1534(a)), while also supporting voluntary conservation on private land (54 U.S.C. 200306). The Bureaus within the Department utilize different processes and criteria to evaluate and prioritize acquisitions.

In March 2019, Congress passed, and President Donald J. Trump signed into law, the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Pub. L. 116-9) (Dingell Act), which permanently authorized the LWCF, and provided further considerations that the Department must take into account when acquiring land.

Furthermore, on March 3, 2020, President Donald J. Trump called on Congress to pass legislation to permanently fund appropriations from the LWCF. Congress fulfilled that request by passing the Great American Outdoors Act, which President Trump signed into law on August 4, 2020.

The Trump Administration has made reopening access to Federal lands and recreation opportunities a top priority so that Americans can experience the physical and mental health benefits that only the outdoors can provide. To offer the outdoor recreation options that the American people deserve, it is critical that the LWCF programs are implemented effectively and reflect the legislation signed into law by President Trump.

The enactment of the Great American Outdoors Act (Pub. L. 116-152) amendments to the LWCF necessitate a review of the State Program Manual to make certain that States have the maximum flexibility to receive financial assistance, and to exercise discretion in their recreational projects under the State Program.

All Departmental guidance, manuals, and memoranda regarding the LWCF Federal Program must reflect the provisions of both the Dingell Act and the Great American Outdoors Act, Section 4 of this Order, and, as relevant, all Secretary's Orders regarding the use of Federal lands under the jurisdiction of the Department, including:

- a. Secretary's Order (SO) 3347, "Conservation Stewardship and Outdoor Recreation;"
- b. SO 3356, "Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories;"
- c. SO 3362, "Improving Habitat Quality in Western Big-Game Winter Range and Migration Corridors;"
- d. SO 3366, "Increasing Recreational Opportunities on Lands and Waters Managed by the U.S. Department of the Interior;"
- e. SO 3370, "Improving Conservation Stewardship of and Increasing Public Access to Urban National Wildlife Refuges;" and
- f. SO 3372, "Reducing Wildfire Risks on Department of the Interior Land Through Active Management."

Sec. 4 Policy.

a. State Program. The National Park Service Manual, titled the *Land and Water Conservation Fund State Assistance Manual*, shall be revised to provide for and prioritize the following, to the extent permitted by law:

(1) Existing State or local government-owned lands not currently used for recreation may be used as part of the non-Federal matching share for acquisition grants.

(2) State costs for compliance with applicable State and Federal laws may be credited as part of the non-Federal matching share, including retroactive costs incurred prior to approval of a State Comprehensive Outdoor Recreation Plan. Retroactive costs include but are not limited to those incurred for the purposes of State and Federal compliance, environmental review, planning, development, and appraisals.

(3) Property donated between a State and its subdivisions may be used as part of the non-Federal matching share.

(4) The availability of state-side assistance for State acquisition of Federal surplus property, consistent with the purposes of the LWCF.

(5) Prioritization of LWCF expenditures involving the acquisition of land or water, or interests therein, that, in addition to providing public outdoor recreation, also:

i. Are identified as a priority recovery action in an approved recovery plan for an Endangered Species Act (ESA)-listed species;

ii. Reduce or eliminate a threat related to the present or threatened destruction, modification, or curtailment of habitat for an ESA-listed species or a species proposed for listing under the ESA;

iii. Reduce or eliminate a threat identified in a 12-month petition finding or candidate review form as contributing to designation of a species as a candidate for listing under the ESA; or

iv. Are identified as a conservation strategy for one or more Species of Greatest Conservation Need in an established State Wildlife Action Plan.

(6) Create wetlands to provide habitat for fish, waterfowl and other wildlife, improve water quality, and reduce the impact of floods and storms to communities while also providing recreational opportunities such as fishing, hunting, photography, and wildlife observation.

(7) Fund increased safety in urban parks, to include facility-related security installations within or adjacent to public parks and recreation areas.

(8) Enhance physical connectivity between Federal and State-managed lands for recreational opportunities including hunting, hiking, fishing, boating, camping and wildlife observation.

(9) Develop recreational sites such as sports shooting facilities.

(10) Improve big-game winter range and migration corridor habitat on state lands in concert with planning efforts conducted through SO 3362.

(11) Invest in infrastructure techniques using plants, stone, sand fill, and other structural and organic materials to stabilize shorelines providing benefits including nutrient pollution remediation, fish and migratory bird habitat, and buffering of shorelines from waves and storms.

(12) Evaluate the current requirements for conversion of use to enhance the Secretary's discretion, so that state or local governments may attain the maximum benefit from previous grants.

b. Federal Program. The Department's Bureaus shall apply the following criteria, to the extent permitted by law, to inform LWCF expenditures for the acquisition of interests in land and water approved by the Secretary consistent with the account, program, and project allocations established by the President:

(1) Proposed fee acquisitions should prioritize acquisitions for the U.S. Fish and Wildlife Service and National Park Service, unless the acquisition establishes public access to isolated Federal property administered by another Bureau that is not otherwise reasonably accessible.

(2) All acquisitions, including less than fee interests in land and water, should achieve one of the following:

i. Improve public access;

ii. Expand recreational opportunities;

iii. Acquire inholdings from voluntary, willing sellers that protect resources for which a unit/station was established and/or promotes significant administrative efficiency in management of a unit/station;

iv. Reduce conflict over environmental or conservation compliance negatively impacting local communities and private landowners; or

v. Contribute to vegetation management directives for fire and wildlife habitat.

(3) Of proposed acquisitions of fee and less than fee interests in land, no less than 20 percent of the total proposed project funds shall be spent on urban communities and parks. For the purposes of the Order, urban is considered a jurisdiction of at least 50,000 people and named as or located geographically within one of the U.S. Census-designated 'urbanized areas.'

(4) As stated in Pub. L. 116-9, all acquisitions of fee and less than fee interests in land shall take into account:

- i. The significance of the acquisition;
- ii. The urgency of the acquisition;
- iii. Management efficiencies;
- iv. Management cost savings;
- v. Geographic distribution;
- vi. Threats to the integrity of the land; and,
- vii. The recreational value of the land.

(5) Easements, that protect resources for which a unit/station was established shall achieve one or more of the following:

- i. Promote active forest and rangeland management consistent with Executive Order 13855 and SO 3372;
- ii. Connect priority migration corridors as identified by each State in their submissions to the Secretary under SO 3362;
- iii. Expand recreational access and opportunities by acquiring parcels where access or egress is restricted or non-existent as required in Section 4105 of Pub. L. 116-9; or
- iv. Promote conservation, management and restoration of fish, wildlife and plant resources and their habitats;
- v. Use conservation easements, subject to a condition subsequent, to assist private landowners with preserving, maintaining, or enhancing habitat for listed species under section 5(a) of the ESA.

(6) All acquisitions of fee and less than fee interests in land must occur with voluntary, willing sellers.

(7) A written expression of support by both the affected Governor and local county or county government-equivalent (e.g. parish, borough) is required for the acquisition of land, water, or an interest in land or water under the Federal LWCF program.

(8) For the purposes of this Order, properties owned by Internal Revenue Code Section 501(c)(3) organizations are not eligible for acquisitions under a hardship or emergency situation.

(9) All proposed fee acquisitions must be within existing designated boundaries under the jurisdiction of the Secretary as of the signing of this order.

Sec. 5 Implementation. I direct the Assistant Secretaries for Fish and Wildlife and Parks and Land and Minerals Management, as appropriate, to do the following, unless prohibited by law or regulation:

a. Instruct the Director, Fish and Wildlife Service (FWS), the Director, National Park Service (NPS), and the Director, Bureau of Land Management (BLM) to:

(1) Carry out LWCF expenditures consistent with the criteria as established in Section 4 of this Order.

(2) Develop guidance for future LWCF expenditures consistent with the criteria established in Section 4 of this Order within 60 days of the effective date of this Order.

b. Instruct the Director, National Park Service (NPS) to:

(1) Review and revise as necessary the Land and Water Conservation Fund State Assistance Manual within 30 days of the effective date of this Order.

(2) Conduct a stateside LWCF program review, including reporting structure, and staffing and funding levels, to determine if they are sufficient for successful program execution.

c. Submit to the Chair of the Great American Outdoors Act Task Force, as established in SO 3383, within 45 days of the effective date of this Order, a report summarizing actions taken to ensure compliance with this Order.

Sec. 6 Effect of this Order. This Order is intended to improve the internal management of the Department. All actions herein may be delegated and may be performed by appropriate officials other than those named, unless specifically prohibited by statute or regulation. This Order and any resulting report or recommendations are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Expiration Date. This Order is effective immediately. It will remain in effect until its provisions are completed and memorialized in the Departmental Manual or through rulemaking, or until it is amended, superseded, or revoked. The termination of this Order will not nullify the implementation of the requirements and responsibilities effected herein.

A handwritten signature in blue ink, appearing to read "David Bernhardt". The signature is fluid and cursive, with a large loop at the beginning.

Secretary of the Interior

Date:

11/09/2020