Updated November 19, 2020

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

The Great American Outdoors Act (GAOA; 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.). 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.

The GAOA established the National Parks and Public Land Legacy Restoration Fund (LRF) with mandatory appropriations 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).

Whether deposits to the LRF will reach the $1.9 billion cap in each year is uncertain. The energy revenues deposited as miscellaneous receipts in the Treasury would have to total $3.8 billion in a given year to yield $1.9 billion for the fund. DOI revenue disbursement data show that, for FY2010-FY2019, comparable Treasury miscellaneous receipts ranged annually from $2.2 billion to $8.2 billion. These revenues came primarily from offshore oil and gas leasing. Future revenues are uncertain and would depend on many factors. For example, energy revenues for FY2020 (deposited to the LRF in FY2021) could be affected by the Coronavirus Disease 2019 (COVID-19) pandemic.

Of the amounts deposited in the fund each year, 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 are for "non-transportation projects." The GAOA directs the President to submit lists of priority DM projects to Congress with annual budget justifications and separately directs the Secretaries of the Interior and Agriculture, within 90 days of enactment, to submit lists of priority projects that are ready to implement with FY2021 funding. The law specifies that appropriations acts may provide an "alternate allocation" under the percentages defined for each agency. If Congress does not enact an alternate allocation by the date of enactment of full-year appropriations for Interior, Environment, and Related Agencies (or if Congress allocates less than the full amount), the President is to allocate amounts. It is unclear if the President must allocate the funds in accordance with the priorities specified in the budget submission.

FY2021 Allocation

On November 2, 2020, the Secretaries of the Interior and Agriculture submitted FY2021 DM project lists as required within 90 days of enactment. On November 10, 2020, the Senate Committee on Appropriations released a draft explanatory statement for FY2021 Interior appropriations, directing the Secretaries to "modify their lists to provide specific project information, including estimated costs by project, as soon as possible." Full-year appropriations for FY2021 for Interior, Environment, and Related Agencies have not been enacted as of November 18, 2020.

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 $22.1 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 and sets out "federal purposes" for which the President is to allot appropriations "unless otherwise allotted in the appropriation Act making them available." It further provides that not less than 40% of total monies are to be used for each of (1) "federal purposes" and (2) "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 under GOMESA, except the maximum is $162.5 million in FY2021 and FY2022. P.L. 116-152 made the $900 million annual deposits under the LWCF Act mandatory spending. Thus, a maximum exceeding $1.0 billion in mandatory spending for LWCF programs is available each year.

Under the GAOA, mandatory appropriations under the LWCF Act are 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 LWCF funding 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. It could be unclear as to whether the GAOA applies to the additional funding specifications in the explanatory material for P.L. 116-94.

To allocate the funds, the GAOA generally requires the President to submit annually to Congress "detailed account, program, and project allocations" for the full amount available; for FY2021, the deadline was 90 days after enactment. GAOA provided for alternate allocations by Congress under a procedure similar to that described above for the LRF.

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.

FY2021 Allocation

On November 9, 2020, the Secretary of the Interior issued S.O. 3388 with policies for DOI use of LWCF funds, including new criteria, to the extent consistent with law and regulation. For instance, federal land acquisitions would require the written support of the pertinent governor and county and would prioritize FWS and NPS projects. Also on that date, the Administration proposed an allocation of $900 million for FY2021: $240 million for federal land acquisition, with projects for FWS, NPS, and FS but not BLM; $495 million for outdoor recreation grants to states; and $165 million for other programs (e.g., Forest Legacy).

As noted, FY2021 full-year appropriations for Interior agencies have not been enacted. In a November 10, 2020, draft explanatory statement, the Senate Committee on Appropriations set out an alternate allocation of the $900 million: $370 million for federal land acquisition, with projects for all four agencies; $371 million for outdoor recreation grants to states; and $159 million for other programs. In earlier action, prior to enactment of the GAOA, a report (H.Rept. 116-448) of the House Committee on Appropriations included allocation "parameters" for the Administration: $450 million for federal land acquisition, to include line-item acquisitions for the four agencies; $295 million for outdoor recreation grants to states; and $155 million for other programs.

Budgetary Implications of the 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 6 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 DM, 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 outer continental shelf revenues during COVID-19, see CRS In Focus IF11649, *Federal Offshore Oil and Gas Revenues During the COVID-19 Pandemic*, 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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