

LWCF spending debate deepens in the fine print

- ROB CHANEY
- Nov 17, 2020 Updated Nov 18, 2020



Salish Point is a park on the southern banks of Flathead Lake in Polson where dust abatement was conducted with contributions from the Land and Water Conservation Fund. The Land and Water Conservation Fund has used offshore oil and gas lease revenue to fund projects aimed at improving public land and outdoor recreation infrastructure since 1964.

BEN ALLAN SMITH, Missoulian

ROB CHANEY

An administrative order controlling the \$900-million Land and Water Conservation Fund gives local governments both too much authority and too many regulations, critics are saying, raising concerns about the future of a program that's underwritten thousands of public outdoors projects nationwide.

What started with congressional frustration when the Department of Interior missed a Nov. 2 deadline to release its list of coming LWCF projects has grown even more complex after Interior Sec. David Bernhardt released guidance on how the money should be spent on Nov. 9. Bernhardt's [Secretarial Order 3388](#) appears to both overstep its congressional authority and the bipartisan nature of the Land and Water Conservation Fund, objectors said.

“(The National Recreation and Park Association) is disappointed with the Department of the Interior’s recent attempt to disrupt the bipartisan nature of the program,” NRPA President Kristine Stratton said in a Tuesday email. “The recently issued LWCF Secretarial Order includes provisions that Members of Congress from both parties have previously rejected. NRPA is deeply concerned with provisions of the order that lay out funding priorities for the state and local assistance fund of LWCF instead of allowing states to set the priorities for those funds.”

NRPA represents local parks and recreation departments, including Missoula’s. City Parks and Recreation Director Donna Gaukler said getting funding from LWCF is already an extremely difficult process, which nevertheless has provided the Missoula area with dozens of public facilities and thousands of acres of recreation lands, including the recent improvements to McCormick Park.

In part, the order states a “written expression of support by both the affected governor and local county ... is required for the acquisition of land, water or an interest in land or water under the federal LWCF program.” Failure to get that approval could essentially veto a project that otherwise had won congressional approval, a concern in Missoula.

“It’s very grass-roots,” Gaukler said of LWCF program applicants. “If you give veto power to any particular board of commissioners or a mayor, it becomes a much more political program than a program of the people.”

Mountain Pact Executive Director Anna Peterson criticized the order for letting state governors have veto power over federal projects proposed by grassroots supporters. That violated the spirit of LWCF's widespread support, which was part of the Great American Outdoors Act that passed the Senate with a 73-25 vote in August. Mountain Pact is a coalition of local governments, [including Missoula](#), that advocate for environmental and economic resilience.

“Congress has repeatedly voted down arbitrary restrictions like those in the Interior Department's new orders by passing the Dingell Act and the Great American Outdoors Act by overwhelming bipartisan margins,” Peterson wrote in an email. “Point blank: the majority of Americans and Congress want the full and legal implementation of one of the best pieces of conservation legislation in our lifetime. That means keeping existing LWCF frameworks in place, guaranteeing it the full and permanent \$900 million intended for it by law.”

LWCF uses offshore oil and gas royalties to fund a variety of conservation and recreation needs nationwide, including public access projects and municipal parks. The national parks bill generates funding similarly in earmarking a portion of revenue from energy development toward maintenance. The bill would generate more than \$1 billion per year over the next five years toward the \$12 billion estimated backlog.

LWCF has two main parts: A state program for acquiring and developing public outdoor recreation sites and facilities, and a federal program aimed at acquiring property for public access and endangered species protection.

Bernhardt's order states that passage of the Great American Outdoors Act “necessitate(s) 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.”

The requirement for a "written expression of support" could get interesting in Montana, where departing Democratic Gov. Steve Bullock had to win a state Supreme Court decision to overrule his Republican-dominated State Land Board to preserve his authority to buy conservation easements for wildlife habitat. The Republican-dominated Legislature passed a law attempting to strip the governor of that power, but Bullock vetoed it.

Republican Rep. Greg Gianforte supported the Great American Outdoors Act when it passed Congress. He is now the governor-elect of Montana, where he may have the Interior order's authority to block future federal LWCF acquisitions.

An Interior Department press release issued last Friday stated Bernhardt's order "Increases flexibility for how states and local communities spend and match LWCF grants," and "honors Interior's commitment to be a good neighbor by giving states and communities a voice in Federal land acquisition."

"We are committed to managing these resources in partnership with the states and others in the conservation community," Margaret Everson, Counselor to the Secretary and Chair of the Great American Outdoors Act Task Force, said in the press release. "During our deliberations on how best to implement GAOA we heard from a number of those partners, and the policy directives embodied in this SO reflect those conversations."

As reported in E&E News, Bernhardt's rule essentially inserts an amendment by Utah Republican Sen. Mike Lee which the Senate rejected. Bernhardt's rule also requires any LWCF spending to match "project allocations established by the President."

But none of the agencies that handle LWCF projects, the Bureau of Land Management, Forest Service, or Fish and Wildlife Service, met the Nov. 2 deadline set by Congress to submit those lists of projects. And subsequent lists provided more than a week later lacked any

specific details about what projects were approved or for how much money.

After the deadline was missed, more critics raised objections to Bernhardt's order.

The Coalition to Protect America's National Parks pointed out another issue with the Interior response. While the Great American Outdoors Act requires 40 percent of LWCF funds to be spent on federal land acquisitions for national parks, the Interior spending list diverted \$120 million of the \$300 million for 2021 national park spending to state-managed grant programs.

"This is a clear attempt to fudge the math, since including that \$120 million gets the federal land portion to exactly 40%," CPANP Chairman Phil Francis wrote in an email. "Without it, it's only 27%."

Both Republican Sen. Steve Daines and Democratic Sen. Jon Tester pushed for the Great American Outdoors Act, with Daines claiming credit for convincing President Donald Trump to support it after a White House meeting. Trump had in previous years tried to reduce or eliminate LWCF funding in his administrative budget proposals.

Tester called out Bernhardt for interfering with private property rights, creating unnecessary levels of bureaucracy and undercutting Bureau of Land Management LWCF access in ways that would discourage landowners from participating.

"I encourage you to reverse course on today's problematic order, and revisit the clear bipartisan consensus around the importance of LWCF," Tester wrote on Nov. 13. "Any changes to implementing this program should be made as a result of careful, collaborative public engagement, and in line with the intent of Congress. This order meets neither standard."

While Tester has demanded changes from Bernhardt and the Interior Department with public letters, Daines' office has had a more limited

response. In an emailed statement to reporters, Daines said “Unfortunately in developing the new LWCF framework, DOI did not rely on the transparency, collaboration, and partnerships that have made this critical conservation program so successful for decades. This must be corrected going forward to ensure Montana voices are heard.”

A spokeswoman for Daines said he was considering “corrective action” in consultation with unnamed stakeholders.

That didn’t satisfy several critics, some of whom called out Daines specifically for action.

“If Senator Daines wants to be the public lands champion he proclaimed to be during his campaign, then he absolutely shouldn't let the Trump administration and Secretary Bernhardt undermine the act on the way out the door,” Western Values Project Director Jayson O’Neill said in an email. “In addition to ignoring private landowner rights by giving governors' and local officials' dictatorial veto power, this order also handcuffs the Bureau of Land Management, which means two priority projects identified by the bureau that would enhance public access for Montanans were no longer a priority.”

National Wildlife Federation Vice President Tracy Stone-Manning, formerly Gov. Steve Bullock’s Department of Environmental Quality director, said the Interior order was an attempt to cripple LWCF.

“This is yet another example of how this administration has tried to thwart conservation at every turn,” Stone-Manning said in an email. “We look forward to working with a new Secretary of the Interior to fix this order so the conservation program can reach its full potential, as intended by the overwhelming bipartisan majority in Congress which voted for its permanent funding just a few months ago.”