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December 5, 2019
The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
United States Senate

Land and Water Conservation Fund Act: Forest Service Has Not Taken Steps to Ensure Compliance with Limitation on Land Acquisition

Dear Madam Chairman:

The Land and Water Conservation Fund (LWCF) is a U.S. Treasury fund used by four federal land management agencies for several purposes, including conserving natural resources and enhancing outdoor recreation opportunities on federal, state, and private lands. These agencies—the Forest Service in the Department of Agriculture and the Bureau of Land Management, Fish and Wildlife Service, and National Park Service in the Department of the Interior—use LWCF funding to support a variety of activities, such as land acquisition, building recreational facilities, and conserving wildlife habitat. The LWCF Act of 1965, as amended, authorizes the LWCF to accrue a minimum of \$900 million annually,¹ and nearly all of its funding comes from royalties and other fees that companies pay on oil and gas leasing on the Outer Continental Shelf.²

In our May 2019 report on the LWCF, we found that in fiscal years 2014 through 2018, Congress appropriated nearly \$1.9 billion from the LWCF.³ About half of this amount was directed to federal land acquisition across the four federal land management agencies and half was directed to five other programs managed by these agencies.⁴ We also found that in fiscal

¹54 U.S.C. § 200302(c)(1). The LWCF was permanently reauthorized on March 12, 2019. John D. Dingell, Jr. Conservation, Management, and Recreation Act, Pub. L. No. 116-9, § 3001(a), 133 Stat. 754 (2019).

²The Outer Continental Shelf is outside the territorial jurisdiction of all 50 states but within the jurisdiction and control of the U.S. federal government. It consists of submerged federal lands, generally extending seaward between 3 geographical miles and 200 nautical miles off the U.S. coastline.

³GAO, *Land and Water Conservation Fund: Variety of Programs Supported, but Improvements in Data Collection Needed at BLM*, [GAO-19-346](#) (Washington, D.C.: May 31, 2019).

⁴These five programs are (1) the State Grant program, which is administered by the National Park Service and provides grants to states to plan, acquire, and develop outdoor recreation facilities; (2) the Forest Legacy Program, which is administered by the Forest Service and assists states in protecting environmentally important forests; (3) the

years 2013 through 2017, the four federal land management agencies used LWCF appropriations to acquire more than 850,000 acres of land.⁵

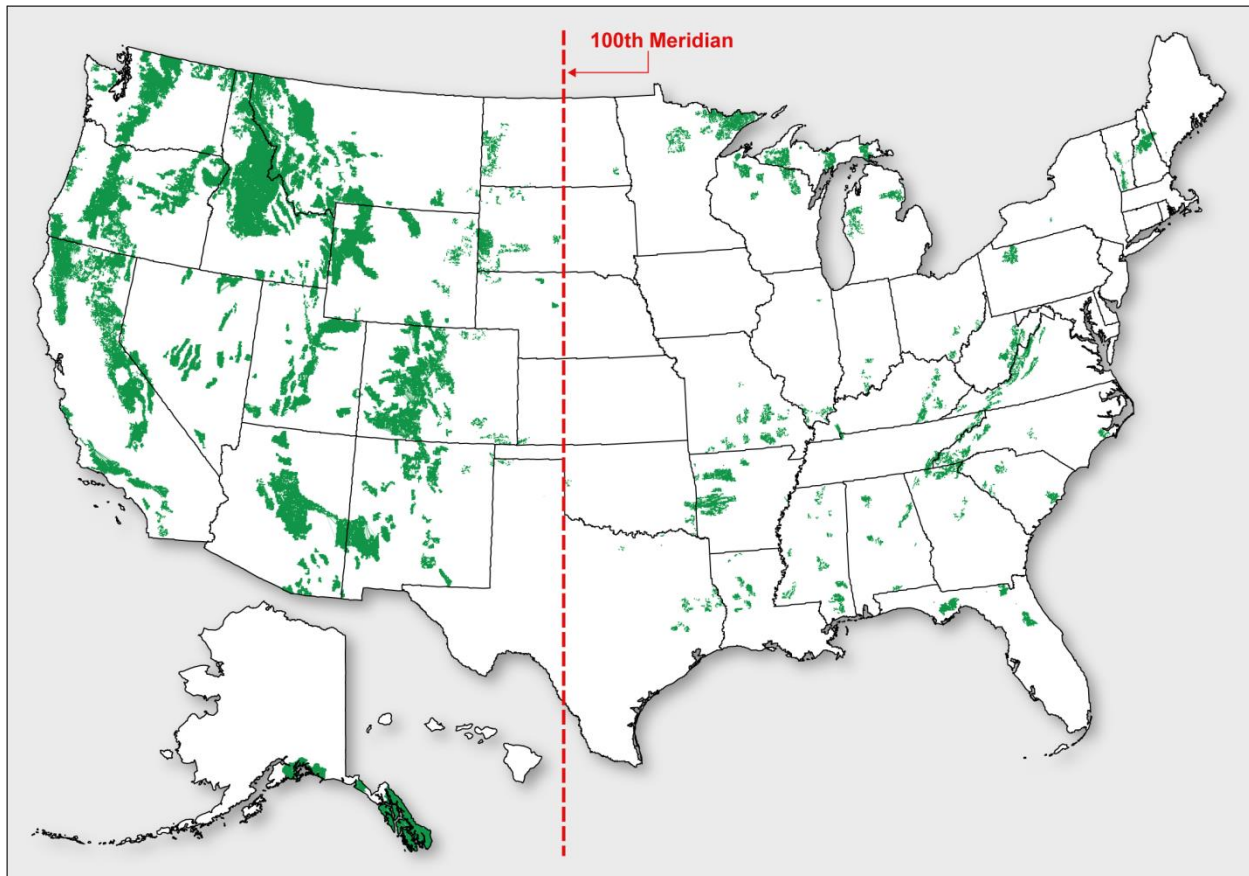
One provision in the LWCF Act, which applies only to the Forest Service, limits the amount of land the agency can acquire in the western United States using LWCF funds. Specifically, this provision states that “[e]xcept for areas specifically authorized by Act of Congress, not more than 15 percent of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian.”⁶ The 100th meridian is a line of longitude that goes through North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. As of September 30, 2018, the Forest Service managed about 193 million acres, and the majority of these lands were west of the 100th meridian, as shown in figure 1.

Cooperative Endangered Species Conservation Fund, which is administered by the Fish and Wildlife Service and assists states or territories in the development of programs for the conservation of endangered or threatened species; (4) the American Battlefield Protection Program, which is administered by the National Park Service and provides grants to states and local governments to acquire battlefield land from the Revolutionary War, War of 1812, or Civil War sites for their preservation and protection; and (5) the Highlands Conservation Act Grant Program, which is administered by the Fish and Wildlife Service and provides grants to certain entities for land conservation partnership projects in the Highlands states of Connecticut, New Jersey, New York, and Pennsylvania.

⁵Agencies can acquire some or all rights on the land, known as land interests. When we refer to land acquisition in this report, we include acquisitions of all land interests as well as acquisitions of some land interests, unless we are more specific with respect to the type of acquisition at issue. We reviewed agency appropriations data for fiscal years 2014 through 2018 because this was the most recent 5-year period for which the annual appropriations process had been completed at the time of our review. We examined land acquisition data for fiscal years 2013 through 2017 because it represented the most recent 5-year period for which these data were available at the time of our review.

⁶54 U.S.C. § 200306(a)(2)(B)(iii). For the purposes of this report, we refer to this provision as the 100th meridian provision. A version of this provision has been in place since the original LWCF Act was enacted in 1964. The original LWCF Act provided that not more than 15 per centum of the acreage added to the National Forest System pursuant to this section shall be west of the 100th meridian, but it did not include the exception for areas specifically authorized by an act of Congress, which was added in 1976. Land and Water Conservation Act of 1965, Pub. L. No. 88-578, § 6(a)(1), 78 Stat. 897, 903 (1965) (codified as amended at 54 U.S.C. § 200306(a)(2)(B)(iii)).

Figure 1: Forest Service Lands in the United States and the Location of the 100th Meridian



Sources: GAO analysis of U.S. Geological Survey's National Atlas website data; Map Resources (map). | GAO-20-175R

As noted, the 100th meridian provision does not apply to areas specifically authorized by an act of Congress. The statute does not specify what is meant by areas specifically authorized by Congress, but some of the legislative history related to the 1976 amendment of the LWCF Act, which added that phrase, suggests it may refer to congressionally designated areas.⁷ Congress applies different designations to certain lands managed by federal land management agencies for a variety of reasons, including the characteristics and opportunities the lands offer.⁸ The most common types of congressionally designated areas managed by the Forest Service are

⁷In 1976, the LWCF Act was amended to, among other things, add the language “[e]xcept for areas specifically authorized by Act of Congress” at the beginning of the 100th meridian provision. Pub. L. No. 94-422, § 101(4), 90 Stat. 1313, 1318 (1976). The Committee Report that accompanied the House version of the 1976 amendments stated that this change would allow less constrained acquisition of lands in congressionally designated wilderness areas, national recreation areas, units of the wild and scenic rivers system, and other such specifically identified national forest areas west of the 100th meridian. H.R. Rep. No. 94-1021, at 10 (1976).

⁸For more information on these designations, see Congressional Research Service, *Federal Land Designations: A Brief Guide* (Washington, D.C.: Oct. 11, 2018).

wilderness areas and wild and scenic rivers.⁹ As of September 30, 2018, the Forest Service administered 446 wilderness areas in 39 states and 128 wild and scenic rivers in 23 states.¹⁰ According to Forest Service officials, the congressionally designated areas the Forest Service manages are within the boundaries of national forests or grasslands managed by the agency. For example, the Forest Service manages eight wilderness areas within the Prescott National Forest in Arizona. Overall, the Forest Service manages about 193 million acres in 154 national forests and 20 national grasslands.¹¹ National Forest System lands are in 43 states, as well as Puerto Rico and the Virgin Islands.

You asked us to provide information on Forest Service land acquisitions with LWCF funds. This report (1) describes the location of the lands the Forest Service acquired with LWCF funds in fiscal years 2014 through 2018, and (2) examines the steps, if any, the Forest Service has taken to ensure compliance with the 100th meridian provision of the LWCF Act.

For the first objective, we analyzed land acquisition data from the Forest Service's Land Status Record System on the amount of land the Forest Service acquired using LWCF funds in fiscal years 2014 through 2018, the most recent 5-year period. The Land Status Record System is the official data system the Forest Service uses to track the lands it manages. We examined the location and acreage of all lands acquired by the Forest Service using LWCF funds in fiscal years 2014 through 2018. We also examined the acreage and location of lands acquired by the Forest Service during this time period after excluding lands located in congressionally designated areas, based in part on available Forest Service data. To determine the reliability of these data, we conducted electronic testing of the data, reviewed documents on the data system, and interviewed officials who were familiar with these data. We determined these data were sufficiently reliable for our purposes.

For the second objective, we examined relevant laws and legislative history and reviewed the Forest Service's guidance on the LWCF program. Specifically, we reviewed the annual letters

⁹Wilderness areas are defined by law, in part, as areas of undeveloped federal lands "where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." 16 U.S.C. § 1131(c). In general, commercial activities, motorized access, and human infrastructure are prohibited in wilderness areas. Wild river areas are free from impoundments (e.g., dams) and generally inaccessible except by trail, and scenic rivers are free from impoundments but are accessible in places by roads. See 16 U.S.C. § 1273(b).

¹⁰The Forest Service also administers 13 other types of nationally designated areas, including National Recreation Areas, National Game Refuges or Wildlife Preserves, and Special Management Areas. See Department of Agriculture, *Land Areas of the National Forest System* (Washington, D.C.: November 2018).

¹¹The Forest Service is headquartered in Washington, D.C., and has nine regional offices.

that Forest Service headquarters sent to its regional offices in 2017 through 2019; these letters solicited LWCF project nominations and served as guidance on doing so. In addition, to examine steps the agency has taken to ensure compliance with the 100th meridian provision, we interviewed Forest Service officials responsible for implementing the LWCF program as well as discussed the agency's interpretation of the provision with Forest Service and Department of Agriculture officials.

We conducted this performance audit from May 2019 to December 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Forest Service Acquired the Majority of Its Lands West of the 100th Meridian Using LWCF Funds

The Forest Service acquired a total of 153,228 acres using LWCF funds during fiscal years 2014 through 2018, and the majority of this land was west of the 100th meridian. Eighty percent of this total acreage (121,909 acres) was located west of the 100th meridian, and 20 percent (31,319 acres) was located east of the meridian, as shown in table 1.

Table 1: Total Forest Service Lands Acquired with Land and Water Conservation Fund, Fiscal Years 2014 through 2018

Fiscal year	Total acres acquired^a	Acres acquired west of 100th meridian^b	Acres acquired east of 100th meridian^b	Percentage of acres acquired west of 100th meridian^b	Percentage of acres acquired east of 100th meridian^b
2014	54,112	49,950	4,162	92	8
2015	19,966	13,277	6,689	67	34
2016	23,807	16,896	6,911	71	29
2017	25,791	18,052	7,739	70	30
2018	29,552	23,734	5,818	80	20
Totals	153,228	121,909	31,319	80	20

Source: GAO analysis of Forest Service data. | GAO-20-175R

Note: Percentages may not sum to 100 due to rounding.

^aTotals include acreage acquired through purchase, donation, and land exchange. Acres acquired by exchange reflect the net acreage under federal ownership following a land exchange. In a land exchange, an agency acquires privately owned land or land interests in exchange for federally owned land or other assets of equal value. The parcels involved in a land exchange can have different acreage.

^bThe 100th meridian is a line of longitude that goes through North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

Of the total acreage acquired by the Forest Service with LWCF funds during fiscal years 2014 through 2018, 29,455 acres were acquired within congressionally designated areas. After excluding the acreage acquired in congressionally designated areas, we found that 76 percent (93,498 acres) of the acreage the Forest Service acquired was located west of the 100th meridian and 24 percent (30,275 acres) was located east of the meridian, as shown in table 2.

Table 2: Total Forest Service Lands Acquired with Land and Water Conservation Fund outside of Congressionally Designated Areas, Fiscal Years 2014 through 2018

Fiscal year	Total acres acquired ^a	Acres acquired west of 100th meridian ^b	Acres acquired east of 100th meridian ^b	Percentage of acres acquired west of 100th meridian ^b	Percentage of acres acquired east of 100th meridian ^b
2014	52,682	48,520	4,162	92	8
2015	18,307	11,757	6,550	64	36
2016	17,000	10,169	6,831	60	40
2017	14,365	6,632	7,733	46	54
2018	21,419	16,420	4,999	77	23
Totals	123,773	93,498	30,275	76	24

Source: GAO analysis of Forest Service data. | GAO-20-175R

Note: This table includes all acres acquired except for those acquired in congressionally designated areas. These are areas where Congress has applied different designations to certain lands managed by the Bureau of Land Management, Fish and Wildlife Service, and National Park Service within the Department of the Interior and the Forest Service within the Department of Agriculture for a variety of reasons, including the characteristics and opportunities that the lands offer.

^aTotals include acreage acquired through purchase, donation, and land exchange. Acres acquired by exchange reflect the net acreage under federal ownership following a land exchange. In a land exchange, an agency acquires privately owned land or land interests in exchange for federally owned land or other assets of equal value. The parcels involved in a land exchange can have different acreage.

^bThe 100th meridian is a line of longitude that goes through North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas.

Forest Service Has Not Taken Steps to Ensure Compliance with the 100th Meridian Provision

The Forest Service acknowledges the 100th meridian provision in its process for identifying LWCF projects for funding.¹² Specifically, as part of this process, Forest Service headquarters sends annual letters to its regions asking them to nominate LWCF projects for funding. The Forest Service’s 2017, 2018, and 2019 letters¹³ we reviewed stated that the two regional offices in the eastern part of the United States (regions 8 and 9) can nominate more LWCF projects

¹²For more information on the process Forest Service uses to select LWCF projects, see [GAO-19-346](#).

¹³The letters solicited nominations for core projects in each region. Core projects are specific land acquisition projects that the Forest Service submits to Congress for review as part of the annual appropriations process. In fiscal years 2014 through 2018, we found that 86 percent of the funding that the Forest Service received for federal land acquisition was for these projects. For more information, see [GAO-19-346](#).

than the western regions because of the requirement that 85 percent of acres acquired outside of congressionally designated areas be east of the 100th meridian.¹⁴

While the Forest Service acknowledges the 100th meridian provision in its letters to the regions, the agency has not taken steps to ensure compliance with it. Officials told us that the agency has not issued guidance on how to comply with the provision, such as guidance on what areas are to be excluded from the requirement as “areas specifically authorized by Act of Congress” or on whether the agency needs to comply with the provision on an annual basis or over the life of the LWCF program. According to *Standards for Internal Control in the Federal Government*, agencies are to conduct their activities in compliance with applicable laws and regulations.¹⁵ This includes determining what controls the agency needs to design, implement, and operate for it to ensure compliance.

Forest Service officials told us that since Congress appropriates money from the LWCF for land acquisition projects, they believe that these areas are authorized by Congress and are not subject to the 100th meridian provision. As a result, under this interpretation, officials told us they believe the agency is in compliance with the 100th meridian provision since all lands are acquired using appropriated funds. Officials also said that Congress has continued to approve their proposed list of land acquisition projects each year during the appropriations process so they assumed that they were in compliance. Officials told us they have not sought clarification on the meaning of the provision from Department of Agriculture attorneys or Congress. A Department of Agriculture attorney also confirmed that the Department has not issued a legal opinion on how to interpret or comply with this provision. Without taking steps to ensure compliance with the 100th meridian provision, including developing an interpretation of the provision, the Forest Service is unable to demonstrate it is meeting this requirement of the LWCF Act.

Conclusions

The LWCF is an important source of funding for federal land acquisition. While the Forest Service is aware of the 100th meridian provision of the LWCF Act, the agency has not taken

¹⁴According to the letters we reviewed for 2017, 2018, and 2019, these regions can submit up to seven projects, while the other Forest Service regions can submit up to five projects. In response to the 2017 guidance, region 8 submitted seven projects, and region 9 submitted four projects. In response to the 2018 guidance, region 8 submitted seven projects, and region 9 submitted five projects. The 2019 process is ongoing and project proposals are due in December 2019.

¹⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

steps to ensure compliance with this provision and is unable to demonstrate it is meeting this requirement of the LWCF Act.

Recommendation for Executive Action

The Chief of the Forest Service should take steps to ensure compliance with the 100th meridian provision, such as developing an interpretation of the provision. (Recommendation 1)

Agency Comments

We provided a draft of this product to the Department of Agriculture's Forest Service for review and comment. In its written comments, reproduced in Enclosure I, the Forest Service concurred with our recommendation. The agency further stated that it believes it was complying with the 100th meridian provision because the lands it acquired were with appropriated funds and that those land acquisitions were authorized by Congress.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the appropriate congressional committees, the Secretary of Agriculture, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or fennella@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Elizabeth Erdmann (Assistant Director), Scott Heacock (Analyst in Charge), Jack Granberg, Rich Johnson, Ying Long, John Mingus, Tricia Moye, Anne Rhodes-Kline, and Sheryl Stein.

Sincerely yours,



Anne-Marie Fennell
Director, Natural Resources and Environment

Enclosure I: Comments from the Department of Agriculture



Forest
Service

Washington Office

1400 Independence Avenue, SW
Washington, D.C. 20250

File Code: 5400

Date: NOV 18 2019

Ms. Anne-Marie Fennell
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G. Street, NW
Washington, D.C. 20548

Dear Ms. Fennell:

The U.S. Department of Agriculture's Forest Service appreciates the opportunity to respond to the U.S. Government Accountability Office (GAO) audit GAO-20-175R draft report "Land and Water Conservation Fund Act: Forest Service Has Not Taken Steps to Ensure Compliance with Limitation on Land Acquisition." The Forest Service generally agrees with the draft report and its recommendation. However, the agency believes it was complying with the limitations, because lands are acquired with appropriated funds and those land acquisitions have been authorized by Congress.

Thank you again for the opportunity to review the draft report. If you have any questions, please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429, or by email at antoine.dixon@usda.gov.

Sincerely,



VICTORIA CHRISTIANSEN
Chief



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Text of Enclosure I: Comments from the Department of Agriculture

Ms. Anne-Marie Fennell

Director, Natural Resources and Environment

U.S. Government Accountability Office 441 G. Street, NW · Washington, D.C. 20548

Dear Ms. Fennell:

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Thank you again for the opportunity to review the draft report. If you have any questions, please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429, or by email at antoine.dixon@usda.gov

Sincerely,

Victoria Christiansen

Chief

(103556)