



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Availability of Administrative Funds for Land and Water Conservation Fund State Side Grants

This is a revised version of the report prepared for public release.



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OCT 14 2022

Memorandum

To: Charles F. Sams III
Director, National Park Service

From: Kathleen R. Sedney 
Assistant Inspector General for Audits, Inspections, and Evaluations

Subject: Management Advisory – *Availability of Administrative Funds for Land and Water Conservation Fund State Side Grants*
Report No. 2021-ER-026-A

We are currently evaluating grants issued by the National Park Service (NPS) Land and Water Conservation Fund (LWCF) State Side program, which provides funds to States and territories primarily to promote outdoor recreation. While conducting our work, we found that the NPS does not provide LWCF grants for the specific purpose of supporting program administration costs, such as salaries and expenses for State employees with responsibility for administering grants, monitoring projects, and visiting sites to confirm the property still serves LWCF purposes. Information we received from both the NPS and from grant recipients suggests that this limitation may not promote efficient program management. We also learned that the opinions from the Office of the Solicitor (SOL) on which the NPS has relied may be based on guidance that is itself open to different interpretations. To address these issues, the NPS should obtain updated guidance from the SOL on its programmatic authorities and whether it can permit use of grant funding for program administration costs should it choose to do so.

Background

Congress passed the LWCF Act of 1965 to safeguard natural areas, water resources, and cultural heritage and to provide recreation opportunities.¹ The LWCF, which is funded through Federal motorboat fuel tax and surplus property sales, oil and gas leases on the Outer Continental Shelf, and the Gulf of Mexico Energy Security Act of 2006, is divided into Federal and State funds. Federal funds are used to acquire lands, waters, and interests for recreation management objectives of Federal land management agencies. LWCF State Side funds provide grants to State and local governments to establish community green spaces; to provide public access to rivers, lakes, and other water resources; to protect historic and cultural sites; and to conserve natural landscapes for public use and enjoyment.

Congress authorized the LWCF's annual appropriations with fluctuating funding amounts. From fiscal years 1966 through 1977, annual funding for the LWCF increased from \$100 million to \$300 million. In 1977, an amendment to the Act increased the annual maximum

¹ <https://www.doi.gov/lwcf> (last visited Oct. 13, 2022).

funding level from \$300 million to \$900 million; since then, however, Congress has allocated the full amount only once, in fiscal year 1998. The Great American Outdoors Act (GAOA), which was enacted on August 4, 2020, includes language stating that the LWCF must receive the full \$900 million annually—a significant and rapid increase in funding compared to the operating levels for the past 50 years. Specifically, along with regular appropriations, funding for the LWCF State Side program increased roughly 500 percent from fiscal year 2015 to 2020 and increased again with the enactment of the GAOA.

The NPS State and Local Assistance Program Division administers the LWCF State Side program, and LWCF funds are available as “50/50 matching grants”² to all 50 States, 5 territories, and the District of Columbia each fiscal year according to the apportionment formula contained in the Act. From fiscal year 2017 through 2020, the program issued 1,228 grants, with a requirement that each recipient site be monitored in perpetuity to ensure it continues to fulfill LWCF requirements. Grant recipients must conduct inspections throughout the project period and continue to do so no less than every 5 years to confirm the sites still fulfill LWCF purposes. Grant recipients cannot currently apply for grants to offset the costs associated with these mandatory monitoring activities.

The NPS Should Take Action To Resolve Its Programmatic Authorities

The NPS does not allow grant recipients to apply for grants for LWCF administrative costs other than for developing the recipient’s comprehensive outdoor recreation plan, which constitutes a small percentage of grant funding. Grant recipients told us that the monitoring requirements associated with administering these grants can be a burden and that they would benefit from the ability to receive LWCF grants for the specific purpose of offsetting administrative costs. For example, one State official told us the State has less than one full-time employee assigned to oversee 905 LWCF grant sites. The influx of program funding provided by the GAOA will multiply the number of LWCF projects, thereby increasing the costs and difficulties associated with maintaining adequate staffing, providing training, and retaining employees and moreover potentially limiting the States’ abilities to effectively monitor projects.

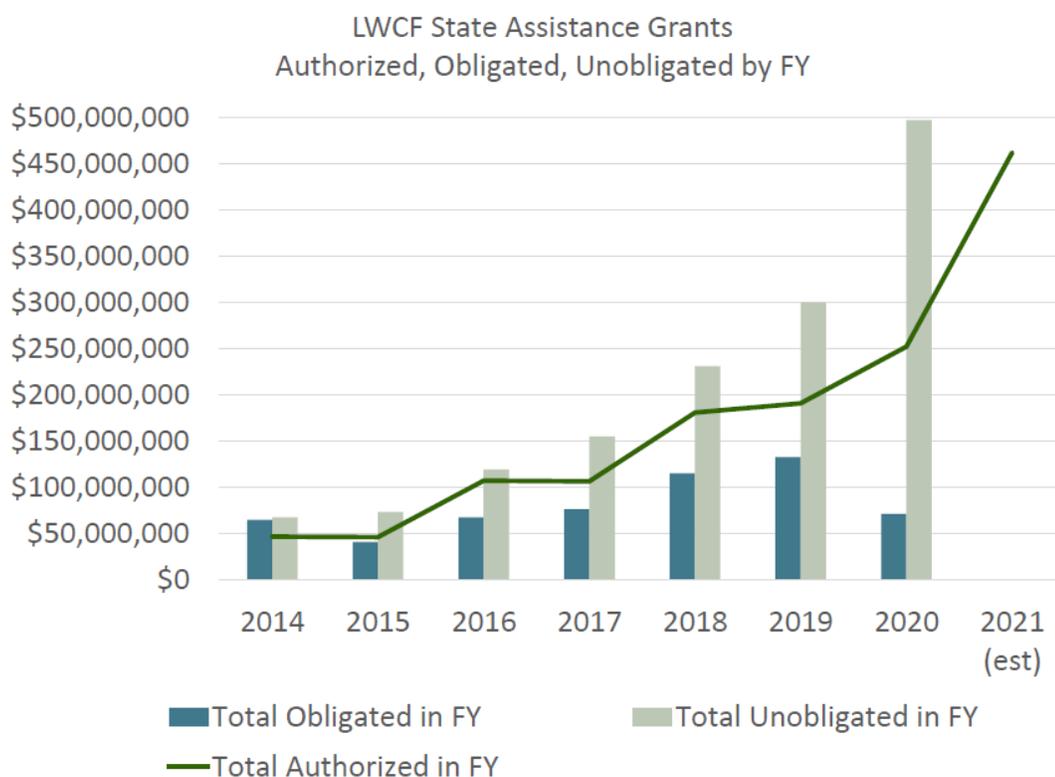
The NPS said it based its interpretation of its authority to provide administrative assistance on LWCF grants on SOL opinions and management decisions, some of which date to the inception of the program. The most recent SOL opinion, which was issued in 1974, considers the allowability of administrative funds for the State to develop its 5-year plan and the possibility of providing a single Statewide administrative grant. The opinion concludes that the State can use administrative costs to develop its 5-year plan but that it is impermissible to allow a single grant for each recipient’s overall administration. Through interviews with SOL attorneys and program officials, we learned that this interpretation of allowed uses of grant funds is potentially

² LWCF grant payments to any State shall cover not more than 50 percent of the cost of planning, acquisition, or development projects undertaken by the State. The remaining 50-percent share of the cost shall be borne by the State. LWCF grants to eligible territories may receive 100-percent assistance.

overly strict and that one could reasonably interpret the LWCF Act to allow for the provision of grants specifically dedicated to administrative funding if the NPS sought to provide them.³

We also found, from reviewing data from the DOI’s Financial and Business Management System (FBMS), that there is a large gap between authorized funding and actual obligations to grants, which may increase with additional funding (see Figure 1). Between fiscal years 2017 and 2020, State grant recipients expended an average of one-third of awarded funding. While there are many reasons for delays in expending funds, numerous grant recipients stated that one challenge in spending funds is maintaining the capacity to administer the program. For example, one State had approximately 1,400 LWCF sites, which must be inspected every 5 years. The States’ inability to offset administrative costs may have been one reason for the underutilization of funds, and the growing availability of funding without a corresponding growth in administrative capacity could increasingly limit the NPS’ and grant recipients’ ability to spend funds in a timely manner.

Figure 1: NPS Data Illustrates the Gap in Authorized, Obligated, and Unobligated Funding in Fiscal Years 2014 Through 2020



Source: *Secretarial Order 3388 Program Review – Final Report*, NPS State and Local Assistance Program, December 18, 2020.

³ This potential legal conclusion is further supported by a 2020 internal review of the program, conducted by NPS and FWS personnel. This document identifies two SOL attorneys as “advisors” and includes language stating, “The NPS currently only funds some of States’ administrative costs, but there is legal discretion to fund these costs more comprehensively.” *Secretarial Order 3388 Program Review – Final Report*, NPS State and Local Assistance Program, December 18, 2020, page 25.

On April 5, 2021, we provided the NPS with a Notice of Potential Finding and Recommendation (NPFR), which recommended the NPS consult with the SOL to clarify its authority to allow recipients to receive dedicated LWCF grants that can be used for administrative purposes. LWCF program staff informed us that they have instead been seeking legislative clarification or solutions since passage of the Act in 1965 and that they intend to continue to do so before formally asking for clarification from the SOL. We note that, to date, no legislative solution has been reached. In response to our NPFR, the NPS cited a report it plans to submit to Congress⁴ to provide appropriators with possible solutions for this issue. As of June 7, 2022, that report was still in review but was provided to us as a draft. The draft recommends that funds should be made available by the NPS on an annual basis to support direct and indirect costs associated with State Side program administration.

Despite this draft recommendation and those in the 2020 *Secretarial Order 3388 Program Review – Final Report*, the NPS informed us that it would not implement the recommendation in our April 2021 NPFR until December 31, 2022—more than 2 years after the passage of the GAOA. As of August 2022, the NPS has not obtained an SOL opinion as we recommended.⁵ We note, however, that in fiscal year 2021, Congress rescinded \$23 million in unobligated LWCF funds remaining from fiscal year 2017 and prior years. We are concerned that without clearly resolving this matter, the NPS will not be in the best position to make informed program decisions, including decisions that relate to monitoring the effectiveness of the LWCF program. Therefore, we are formally making two recommendations to encourage more immediate action.

We recommend that the National Park Service (NPS):

1. Seek a formal opinion from the U.S. Department of the Interior’s Office of the Solicitor clarifying and updating as appropriate the NPS’ authority to provide administrative assistance to Land and Water Conservation Fund recipients.
2. Take appropriate action based on the Office of the Solicitor’s opinion once it is received.

A summary of the NPS’ response to our draft report and our response can be found in Attachment 1, and the full text of the NPS’ response can be found in Attachment 2.

We will refer recommendations 1 and 2 to the Office of Policy, Management and Budget for implementation tracking and to report to us on their status. In addition, the information in this management advisory will be included in our semiannual report to Congress, and we will publish it on our website, including your written response, no later than 3 days from the date we issue it to you in final form.

Please contact me at 202–208–5745 if you have any questions.

⁴ This report was due in May 2021 pursuant to the Conference Report accompanying Division G of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

⁵ As discussed in more detail subsequently, the NPS stated in its response that it conveyed to the Office of Inspector General that it had already consulted with the SOL and was only awaiting a formal response. The interaction with the SOL to which the NPS refers, however, does not constitute the type of formal opinion that meets the intent of the recommendation.

Attachment 1: Summary of the National Park Service’s Response to the Draft Management Advisory and Office of Inspector General Comments

We provided a draft of this management advisory to the National Park Service (NPS) for review. The NPS concurred with our two recommendations and stated it had taken action to satisfy both. In addition, the NPS’ response proposed modifying certain language in the management advisory. We clarified some passages to address these comments, but we did not modify our overall analysis or our conclusions. Moreover, we do not consider the NPS’ response sufficient to consider the recommendations resolved and implemented. We provide additional detail below.

NPS Statement: “[T]he draft states that we said we would not request guidance from the Office of the Solicitor (SOL) until your final report was issued and that we would not take any action on your recommendations until December 31, 2022. This is inaccurate; we said that we agreed and would consult with SOL, and we also communicated with your staff after our formal response stating we had spoken to SOL and were awaiting a formal written opinion but had a preliminary response. The December 31, 2022, date was for a plan based on the opinion received from the SOL only.”

Office of Inspector General (OIG) Comment: The language in our draft report accurately depicts our understanding of the communications we had with the NPS. In particular, it was our understanding that the NPS would not take formal action to move forward on our recommendations until December 31, 2022. Based on the NPS’ response and follow-up communications, though, we acknowledge that the NPS is construing its communications with the SOL regarding a *separate* mandated report to Congress as responsive to our recommendations in this management advisory. Notwithstanding the closely related subjects of this management advisory and of the mandated report to Congress, we continue to recommend that the NPS seek and obtain a formal opinion from the SOL. That is, we do not believe that the communications between the NPS and the SOL regarding the mandated report to Congress fully address our recommendation. As of August 2022, the NPS has not obtained an SOL opinion as we have recommended.

NPS Statement: “In addition, we would like to clarify your statement that we do not allow grant recipients to use LWCF [Land and Water Conservation Fund] funds for direct administrative costs. . . . What is not allowed is for States to receive LWCF grants specifically and solely to support their program administration costs. Further, the LWCF Program did not rely on ‘guidance’ to make this determination, it relied on opinions from the SOL.”

OIG Comment: The original language in the draft management advisory accurately summarized the NPS’ approach. We agree, however, that this language can be clarified, and we accordingly modified the management advisory to state explicitly that recipients cannot receive grants for the specific and sole purpose of program administration costs. In addition, we have noted that the “historical guidance” to which we referred consisted of SOL opinions.

NPS Statement: “Another matter we would like to clarify in the background section is the use of the terms “awarded funding and actual expenditures” instead of “apportioned funding and actual obligations to grants.”

OIG Comment: We edited the draft language to reflect the information in the figure.

Recommendations

We recommend that the National Park Service (NPS):

1. Seek a formal opinion from the U.S. Department of the Interior’s Office of the Solicitor clarifying and updating as appropriate the NPS’ authority to provide administrative assistance to Land and Water Conservation Fund recipients.

NPS Response: The NPS stated that it concurred and expressed its belief that the recommendation has been “satisfied.” More specifically, the NPS stated in its response that, pursuant to congressional guidance, the NPS was “already executing a plan and engaging SOL in the Departmental review” of a draft report to Congress on how it intended to resolve this issue. According to the NPS response, “[t]his process gave SOL the opportunity to provide advice, clarification, and/or alternatives regarding its previous opinions as part of the response to Congress.” The NPS further stated that, in mid-December 2021, the NPS Comptroller “shared that the Solicitor’s concluding opinion concurred with what the NPS stated in the draft report to Congress: while there is likely authority to expand the coverage of costs beyond what is allowed currently, there is not authority to fully address the needs of the States, nor can authority be provided through an administratively simple method of funding or tracking the costs.” The NPS stated that this report has not yet been submitted to Congress but also stated that the fiscal year 2023 President’s Budget includes a proposal to allow up to 7 percent of the allocation of State Side grants to be used for administrative grants. The NPS expressed hope that Congress would “favorably consider this proposal.”

OIG Comment: We consider this recommendation resolved but not implemented based on the NPS concurrence. As described previously, although the subject matter of the mandated report to Congress overlaps with this management advisory, we do not believe that the SOL’s involvement with the mandated report as described to us is sufficient to consider this recommendation implemented. To our knowledge, the NPS has not received a formal SOL opinion on this matter as of August 2022, and it has not provided documentation with respect to its request for an SOL opinion. We will consider this recommendation resolved and implemented when the NPS provides documentation demonstrating it has requested a formal opinion from the SOL clarifying the NPS’ authority to provide administrative assistance to LWCF recipients.

2. Take appropriate action based on the Office of the Solicitor's opinion once it is received.

NPS Response: The NPS concurred with this recommendation, stating that it was “successful in getting a proposal included in the fiscal year 2023 President’s budget to allow States to use up to 7 percent of the allocation for State-side grants for administrative assistance.”

OIG Comment: We consider this recommendation resolved but not implemented for the reasons described previously. We will consider this recommendation resolved and implemented when the NPS provides documentation demonstrating it took appropriate action based on the SOL opinion.

Attachment 2: The National Park Service's Response to the Draft Management Advisory

The National Park Service's response to our draft management advisory follows on page 9.



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, NW
Washington, DC 20240

To: Assistant Inspector General for Audits, Inspection and Evaluations

From: Acting Assistant Director, Partnerships and Civic Engagement **REGINALD CHAPPLE**

Subject: National Park Service responses to: Office of Inspector Draft Management Advisory – Availability of Administrative Funds for Land and Water Conservation Fund State Side Grants (Report No, 2021-ER-026-A)

Digitally signed by
REGINALD CHAPPLE
Date: 2022.05.24
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Thank you for providing the National Park Service (NPS) an opportunity to review and comment on the subject Office of Inspector Draft Management Advisory "Availability of Administrative Funds for Land and Water Conservation Fund State Side Grants Report No. 2021-ER-026-A."

We would like to provide some clarifications and corrections. Most critically the draft states that we said we would not request guidance from the Office of the Solicitor (SOL) until your final report was issued and that we would not take any action on your recommendations until December 31, 2022. This is inaccurate; we said that we agreed and would consult with SOL, and we also communicated with your staff after our formal response stating we had spoken to SOL and were awaiting a formal written opinion but had a preliminary response. The December 31, 2022, date was for a plan based on the opinion received from the SOL only.

In addition, we would like to clarify your statement that we do not allow grant recipients to use LWCF funds for direct administrative costs. The more accurate way to describe the use of LCWF funds to recover administrative costs is that States can recover administrative costs through the use of Indirect Cost Rates or direct cost reimbursement, on a grant-by-grant basis. What is not allowed is for States to receive LWCF grants specifically and solely to support their program administration costs. Further, the LWCF Program did not rely on "guidance" to make this determination, it relied on opinions from the SOL.

Another matter we would like to clarify in the background section is the use of the terms "awarded funding and actual expenditures" instead of "apportioned funding and actual obligations to grants." This is because funds are apportioned, then obligated to grants for projects, then expended on costs incurred to implement the project. Below is our response to the recommendations, including the steps the NPS has taken or will be taking to address the concerns raised.

1. The National Park Service seek a formal opinion from the U.S. Department of the Interior's Office of the Solicitor clarifying the NPS' authority to provide administrative assistance to Land and Water Conservation Funds recipients.

2. The National Park Service take appropriate action based on the Office of the Solicitor's opinion once it is received.

NPS response to Recommendations 1 & 2. – The NPS previously concurred with these recommendations in the response to the Notice of Potential Findings. However, we believe the draft advisory is incorrect in its statement that NPS was not prepared to seek guidance from the Solicitor until the OIG issued its report. As a part of the FY 2021 Appropriations and Budget process Congress directed the NPS to engage partners and deliver a document with potential solutions to providing administrative funds to States for LWCF grants. The NPS was already executing a plan and engaging SOL in the Department's review of the NPS draft report to Congress. This process gave SOL the opportunity to provide advice, clarification, and/or alternatives regarding its previous opinions as part of the response to Congress. The LWCF program presented the recommendations collected from States as well as the LWCF program's recommendations so that all options regarding this matter could be deliberated.

Here is a brief timeline of the NPS actions taken on this topic. In September 2021, the NPS Comptroller asked SOL to re-examine NPS' authority to provide administrative funds to the States, ahead of the report's internal review. In mid-December, the Comptroller shared that the Solicitor's concluding opinion concurred with what the NPS stated in the draft report to Congress: while there is likely authority to expand the coverage of costs beyond what is allowed currently, there is not authority to fully address the needs of the States, nor can authority be provided through an administratively simple method of funding or tracking the costs.

The Solicitor-reviewed response to Congress was submitted for surnaming and review through the NPS Document Tracking System (DTS). The Department has yet to transmit NPS's administrative funds report to Congress, yet the NPS was successful in getting a proposal included in the FY 2023 President's Budget to allow up to 7% of the allocation for State-side grants to be used for administrative grants. We are hopeful that Congress will favorably consider this proposal in light of their interest in this issue. While we will not learn if we were successful until the FY 2023 budget is passed, NPS believes Recommendations 1 & 2 have been satisfied.

If you should have any questions or need additional information, please contact Caitlin Rogalski, Chief, Accountability Office at [REDACTED]@nps.gov.



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