

**TRUST IN FEDERAL PROGRAMS**

THE TRUST FUNDS THAT  
BUILT THE INTERSTATE HIGHWAY SYSTEM AND  
CONSERVED AMERICA'S LANDSCAPES

by  
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## **Abstract**

Influential politicians and participants in democratic government are always on the lookout for means of ensuring that their preferred programs or activities are durable. One mechanism of making a commitment that lasts through expected changes in the political climate is establishing a trust fund. The linkage of a revenue stream to a spending activity builds public trust because there is a legislative history and a structure that provides the necessary money to conduct the program. However, the public, and lawmakers themselves, should only expect as much trust from these programs as they are willing to give them at enactment and when reexamined. The level of trust afforded by Congress is dependent on the political sway of the program and its supporters. Because Congress is traditionally unwilling to make dramatic fiscal commitments, these programs do not have complete trust. Therefore, are trust funds durable, worthy, and valuable federal mechanisms, in that they are more effective than their defects?

To answer the question, this thesis examines the Highway Trust Fund and the Land and Water Conservation Fund, which were created in the years after World War II when Keynesian fiscal policy played a major role in government budgeting. Despite their tying of revenue to spending, these programs have legislative or political defects. These defects, which can be solved with serious consideration and difficult decision making, will be enumerated in describing their creation and undertaking over decades.

Trust funds are important tools for enabling federal action, because the political support afforded and commitment allowed by the public and Congress provides time and space for the federal government to perform complicated, modern, and national tasks. Trust was critical to these programs being created, replacing inadequate funding systems,

and is behind their fruitful operation over decades. It is also necessary for them to be successful in the future.

Thesis Reviewers: William F. Clinger and Yoon Ho Kim

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This paper is dedicated to my mother, Jan Chapin. She is no longer with us, but she is present in every accomplishment.

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## **Introduction**

Two months after a government shutdown suspended many federal activities, disrupted vacations to national parks, and angered the American people dumbfounded by the playpen bickering of the Congress, a bipartisan budget agreement covering two years was passed in December 2013. The measure, negotiated between Rep. Paul Ryan (R-WI) and Sen. Patty Murray (D-WA), powerful and ascendant members of their parties and chambers, seemed to deflate tensions and put things back to a semblance of normal on the budgetary front. An omnibus appropriations bill was passed in January 2014 and a one-year suspension of the debt ceiling was enacted clean of any legislative riders in February. However, Congress also went back and stripped a financing measure that cut pension adjustments to military retirees from the December agreement. The reduction had immediately earned the wrath of veterans' organizations, causing "congressional support for the provision...to crumble."<sup>1</sup>

Once Congress passes a law, it can subsequently go back and improve, change, or repeal provisions. With the Constitution, and its interpretation by the courts, as the ultimate guidepost, Congress has the right to return to any law and reassess it. Congress is the legislating body, and it can pass what is "necessary and proper" to carrying out its responsibilities. The force of potential and popular change is an essential element of democracy and the Constitution itself.<sup>2</sup>

Yet some popular efforts of government, by part of their nature, make it desirable to make different forms of political commitment into the future. These activities can be

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<sup>1</sup> John McKinnon and Siobhan Hughes, "How Veterans Groups Quashed Pension Cut," *Wall Street Journal*, February 15-16, 2014.

<sup>2</sup> The Constitution allows for amendment to all of its provisions except for the mandate for two senators per state and the protection of the importation and taxation of slaves before 1807.

complicated responses to economic forces like health care or social security, capital programs that take years to implement nationwide, or measures that cover specific portions of the population that need assistance or insurance. They require sustained or permanent involvement from Congress and supportive constituencies.<sup>3</sup> Additionally, it is recognized, despite the current and supposed future popularity or the need for the program, that it must be given added protection from budgetary or political raids. “The strategic task” of a political group, according to Terry Moe, therefore, “is not simply to get the policies and structures it wants in the current period, but also to design them in such a way that they have the capacity to survive and prosper in an uncertain political future.”<sup>4</sup>

There are various mechanisms available for this political insurance. One is a trust fund, which will be examined in this thesis. In the broadest sense, these funds are mechanisms in which Congress links certain revenue sources to specific programmatic activities. Others include entitlements, in which classes of people qualify for prescribed benefits, or mandatory programs, in which a law makes funding available without any further congressional appropriation. Social Security is an entitlement backed by a trust fund, and many agricultural programs passed in five-year farm bills are funded on a mandatory basis.

The concept of trust is crucial to this political activity. By connecting or raising a funding source for a spending action, Congress is inviting the public, and itself, to trust that it will deliberately commit to carrying out the objective stated in the law setting up

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<sup>3</sup> Eric M. Patashnik, “Unfolding Promises: Trust Funds and the Politics of Precommitment,” *Political Science Quarterly* 112, no. 3 (Autumn 1997): 434.

<sup>4</sup> Terry M. Moe, “The Politics of Structural Choice: Toward a Theory of Public Bureaucracy,” in *Organization Theory From Chester Bernard to the Present and Beyond*, ed. Oliver E. Williamson (New York: Oxford University Press, New York, 1990), 124.

the linkage. This trust, and its various structural components, is supposed to make it easier for the job to be done and more difficult to delay, redirect, or stop. However, these trust funds have different structures based on the political compromises needed at the time to pass the law, the nature of the objective, and the durability of the activity as it is carried out and solves problems.

Because of these compromises, trust funds do not have complete trust. They may run into problems years after they were enacted. Some inherently have more trust than others. Those with little trust get raided or do not last long. Others last for decades and have strong constituencies. These funds have the structure, strength, and stature to withstand budgetary pressures and political opponents. Even then, they may not have full expectation of trust from the public because of political unwillingness to commit further or because of structural imbalances in spending and revenue. With these problems, are trust funds durable, worthy, and valuable federal mechanisms? Do their imperfections outweigh the political benefits of trust?

Well-constructed trust funds are significant tools for carrying out federal programs and priorities. They provide certainty and clout in the implementation of vast modern enterprises. They are indicative of the power behind the program backers and the importance of the objective. Indeed, the level of trust afforded by Congress is dependent on the political sway of the program and its supporters.<sup>5</sup> While the public, and lawmakers themselves, should only expect as much trust from these programs as they are willing to give them at enactment and when reexamined, they are useful mechanisms. For many domestic priorities, trust funds have secured the means of accomplishing national goals. Trust was a key component of programmatic success.

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<sup>5</sup> Patashnik, "Unfolding Promises," 432, 434.



This thesis will examine two federal trust funds: the Highway Trust Fund and the Land and Water Conservation Fund. Their histories over the decades since the postwar era demonstrate both the importance and deficiencies of trust funds. An examination of these domestic programs shows that trust was essential to their creation, their success, and their continuation, despite the troubles that have accumulated.

Trust funds were a critical part of governance in the mid-twentieth century. Starting in the 1930s, the federal government massively expanded its role in American domestic and foreign affairs. Along with private enterprise and the resourcefulness of the American people, the ascendancy of the United States could not have occurred without bigger government. In terms of the budget, while most preferred flexibility, there were areas in the domestic realm where bipartisan agreement was available to create financial commitment. The explosion of American mobility after the war crossed party lines and reached all parts of the country. Both parties found that responses in transportation and conservation policy needed firm longterm statements. Trust funds were the answer. The first chapter will historically review the overwhelming nature of the growth of postwar mobility, setting the stage for the creation of these two programs.

The second and third chapters will discuss the origins, implementation, and current state of the Highway Trust Fund and the Land and Water Conservation Fund. The chapters will highlight the three central political arguments used to justify the creation of these programs: the improvement of programmatic functionality, the use of government activity to fuel the national economy, and the maintenance of congressional influence while still proffering longterm commitments to spending. Both programs have developed

structural problems that impact public and legislative trust in them. As this thesis regards trust funds as useful tools for the federal government to carry out functions deemed necessary by the public and its representatives, the identification of these problems will be followed with recommendations for repairing trust. Because legislation occurs in a world of politics, these suggestions are necessarily rooted in the same three principles that enabled their establishment.

The fourth chapter will examine the deficiencies, counterarguments, and consequences of trust funds. In general, trust makes programs more permanent, rewards one activity over alternatives, complicates the budgetary and appropriations process, and remains elusive because it cannot be satisfactorily achieved. Trust funds indeed have their limits and are still a focus of political contention. However, their benefits outweigh these issues.

An exploration of these trust funds required a diversity of research materials. Historical studies of the postwar period revealed the dynamic forces underway, notably mobility, optimism, and opportunity. After fifteen years of Depression and war, the American people were ready to finally revel in the fruits of their strenuous efforts to achieve victory. Concerning the creation and supervision of these trust funds, congressional documents were essential to uncovering the political, policy, and programmatic circumstances. These include committee reports from the House and Senate Public Works, Interior and Insular Affairs, and Appropriations Committees, the House Ways and Means Committee, and the Senate Finance Committee. The *Congressional Record* captured debate on the House and Senate floors, where representatives and senators asked each other questions as they sought to understand or

imperil the legislation or a certain amendment and articulated their praise or rejection of a bill. Both programs have rich legislative histories spanning decades from which to draw. Testimony and reports from the Congressional Budget Office and Government Accountability Office also provided details on program structure, trust fund mechanisms, budgetary matters, policy alternatives, and fund insolvency. Finally, political science texts provided enlightenment on the political nature of trust funds, budgetary politics, congressional earmarks, and public and congressional expectation.

The Highway Trust Fund (HTF) and the Land and Water Conservation Fund (LWCF) were selected for this thesis for several reasons, mostly relating to their similarities. It would be more difficult to make significant and solid conclusions from very different programs. While there are other federal trust funds that are more well-known and are much larger in size and scope, notably Social Security and Medicare, a study of these entitlement programs would require significant expertise and could each consume a similar sized thesis. While some of this discussion will spill over into the three chapters, it is worth exploring these similarities upfront.

First, both programs were created in the prosperous and exuberant years after World War II.<sup>6</sup> The period was marked by a belief in basic national advancement greatly derived from the hard earned victories over the Depression and the Axis. In 1960 Americans were enamored with the two young, telegenic, and politically savvy war veterans, John F. Kennedy and Richard Nixon, who were running for the presidency.<sup>7</sup> For those who still faced discrimination, including blacks, Jews, gays, and women, the social

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<sup>6</sup> The HTF was created in 1956 and LWCF in 1964.

<sup>7</sup> Christopher Matthews, *Kennedy & Nixon: The Rivalry That Shaped Postwar America* (New York: Touchstone, 1996).

advances of the war would not be forgotten, and the means would be through organization and persistence, the same skills that defined success against the Germans and Japanese. The victories they eventually won, many during the Great Society, however, did not keep everything a shining palace of dreams. “Beneath its gleaming surfaces, a spore had been growing, a mass of violent energies, coiled and waited to spring,” reflected Sam Tanenhaus.<sup>8</sup> But the mark had been made on the rest of the century.

Dwight Eisenhower served as an exceptional reminder of the lessons of the war. His military leadership in Europe and inherent moderation made vicious attacks against him more difficult and afforded him a certain level of political flexibility that yielded balance. To one historian, President Eisenhower believed the government “could serve as an arbiter of this cooperative commonwealth, acting to bring the special interests together and restraining their excesses.” Envisioning the aftermath of betraying several recent and trust-based programs, he once wrote to his more conservative brother, “should any political party attempt to abolish Social Security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history.”<sup>9</sup>

In total, trust was a major feature of the era. Trust in problem-solving, trust in the future, and trust in the merit of victory. Reflecting on the 50<sup>th</sup> anniversary of President Kennedy’s assassination, Robert P. George of Princeton told the *New York Times* that Americans had such a positive view of themselves and their situation at the time because

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<sup>8</sup> Sam Tanenhaus, “In Kennedy’s Death, a Turning Point for a Nation Already Torn,” *New York Times*, November 22, 2013.

<sup>9</sup> James T. Patterson, *Grand Expectations: The United States, 1945-1974* (New York: Oxford University Press, 1996), 272.

national institutions were seen as “fundamentally good and trustworthy – government, the military, religious institutions. People even trusted big corporations.”<sup>10</sup> On wide swathes of policy, both parties believed they could contribute constructive means for the country, even if they regularly disagreed on the details.

Second, the programs were in response to the expansion of postwar mobility. The desire for the outdoors put Americans into cars to see them; the access to interstates made it easier to visit a national park on vacation. Cars and vacations became much more affordable and widely available than in the past. Congress was well aware of this propulsion. In 1957 a Senate committee wrote, “Improved transportation facilities – highways, streamliners, and airplanes – have made it possible for people to reach distant attractions much more readily, and to enjoy the spiritual, cultural, and physical benefits on the outdoors.” Cars were, and would be, the main means of getting there. “The construction of the 41,000-mile national superhighway system authorized by Congress last year can further add to the rate of the upswing.”<sup>11</sup>

Third, both clearly feature the mechanism of specific revenue sources linked to specific spending programs with strong political rationales. The connection of the gas tax to highway construction cements the concept of a user fee for transportation investment and the usage of offshore gas revenue allows land conservation to mitigate resource diminishment.

Fourth, they are domestic programs that promote national goals through individual projects that collectively implement the policy and fix problems. The HTF sponsors a wide variety of federal surface transportation programs that construct,

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<sup>10</sup> Tanenhaus, “In Kennedy’s Death.”

<sup>11</sup> Senate Interior and Insular Affairs Committee, *For the Establishment of a National Outdoor Recreation Resources Review Commission*, 85<sup>th</sup> Congress, 1<sup>st</sup> Session, June 19, 1957, S. Rep. 471, 2-3.

maintain, rebuild, improve, and make safe highway and mass transit infrastructure. LWCF supports land conservation efforts at the federal and state levels through grants and payments for the acquisition of land for the protection of recreational, historic, water, habitat, and forest resources.

As a result of these characteristics, the programs can be easily understood by politicians and the public at a national and local level. For example, a national bridge program can systematically upgrade bridges as identified by agencies, engineers, and users; prevent terrifying calamities like the collapse of the Interstate 35W bridge over the Mississippi River in Minneapolis in 2007 that killed 13 and injured 145 people; and pay for the construction of a replacement bridge in a locality that had been complaining about its age, congestion, and safety while creating jobs and improving economic efficiency. Meanwhile, a federal grant program to protect working forestlands can meet national and local goals for watershed and habitat protection; combat forest fragmentation that results from development; provide conservation-minded economic incentives for the timber, tourism, and outdoor recreation industries; and protect the attractive scenic character of rural areas. As all of these bridge and forest activities can occur everywhere, they have the built-in advantage of broad national and statewide constituencies that influence and persuade Congress, agencies, and the White House. They can also be generally categorized as distributive programs as described by Theodore Lowi.<sup>12</sup>

Fifth, the programs are marked by incremental advancement. New Deal efforts or the war sparked the federal involvement that enabled Congress to act afterwards in the 1950s and 1960s. They received adjustments in the 1970s, 1980s, and 1990s, through

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<sup>12</sup> Theodore Lowi, "American Business, Public Policy, Case-Studies, and Political Theory," *World Politics* 16, no. 4 (July 1964), 690.

reauthorizations and portfolio expansions. Any action taken now for these programs is based on general political principles, but also the individual histories of the two programs.

Lastly, they both have trust deficits that must be fixed in 2014 or 2015. Important to their selection, however, the problems arise from two different issues. Transportation spending largely remains a popular federal activity and spending is seen as essential, but the HTF's revenue source, the gas tax, at its current level, is no longer adequate to meet fiscal needs. There is significant political aversion to raising it. Meanwhile LWCF has a funding source, offshore energy development, that contributes billions annually to the Treasury, but Congress does not actually appropriate the money that the trust fund is supposed to reserve for land conservation.

The trust deficits involve significant sums of money and have budgetary, political, and project related consequences. Because of the inadequate sums raised from the gas tax to meet desired spending levels, Congress has transferred nearly \$53 billion from the general fund to the HTF since 2008.<sup>13</sup> Transportation Secretary Anthony Foxx has estimated that the fund could be bankrupt by August 2014. The current transportation authorization, MAP-21 of 2012, expires on September 30, 2014.<sup>14</sup> Meanwhile, LWCF has an authorization ceiling of \$900 million per year that would be derived from offshore development. However, Congress actually appropriates much less than that each year. In FY 2014, LWCF's appropriation was \$306 million, only one-third of the authorized amount. In its FY 2013 budget proposal, the Obama administration noted that while

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<sup>13</sup> Kim P. Cawley, "Status of the Highway Trust Fund," Testimony before House Highways and Transit Subcommittee, July 23, 2013 (Washington, DC: Congressional Budget Office), 1.

<sup>14</sup> Daniel Bush, "DOT Secretary Promises National Blueprint Modeled After Predecessor's," *E&E News PM*, January 15, 2014.

\$15.8 billion had been spent via LWCF since its inception, \$17.7 billion has gone unspent under the trust fund mechanism.<sup>15</sup> Clearly, both trust funds have serious trust issues. As the primary means of federal provision for transportation and land conservation, the impact of these trust funds on the economy and the American people is significant.

Trust cannot be overlooked when examining these programs and their impact on postwar America. When asked in 1935 about the payroll taxes in his Social Security bill, Franklin Roosevelt agreed that the economics were not perfect. They would hit younger workers and transfer the funds to an older, retired generation. However, he asserted those taxes “are politics all the way through. We put those payroll contributions there so as to give the contributors a legal, moral, and political right to collect their pensions and their unemployment benefits. With those taxes in there, no damn politician can ever scrap my social security program.”<sup>16</sup> President Roosevelt was fully aware of the power trust would have, not only with the Depression generation, but also with future generations that would pay into the system.

While it should be expected, trust in them is not absolute. As products of the postwar era, these programs must adapt to a different one. However, if Americans want to see their government function and proceed with vital activities, trust must remain as a viable instrument.

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<sup>15</sup> U.S. Department of the Interior, *Fiscal Year 2013: The Interior Budget in Brief* (Washington, DC: U.S. Department of the Interior, February 2012), DH-12.

<sup>16</sup> William Leuchtenberg, *Franklin D. Roosevelt and the New Deal* (New York: Harper Colophon Books, 1963), 133.



## **Chapter 1: The Postwar Era**

After trust, the second most important aspect of the Highway Trust Fund (HTF) and Land and Water Conservation Fund (LWCF) is the postwar context in which they were created. The federal government was then seen by many as a critical agent of action, surpassing the nineteenth century notion that the states or localities were more important in daily public life. Washington brought national defense, social security, progressive regulation, and economic stimulation, among many other things. Trust funds were a natural historic consequence of a time in which people generally trusted government, its capabilities, and the importance of its product. It is essential to begin with a study of the postwar era, notably its prosperity, growth, and mobility.

For those who had made it through the frustrating hollows of the Great Depression, which ravaged the national and family economic fortunes for a decade, and the global conflagration of World War II, in which 16.4 million Americans served in the armed forces and 405,000 did not return,<sup>1</sup> the years that followed were a revelry of progress and opportunity, though they were not as easy as the familiar depictions recall. Regarding the degree of change, William Manchester wrote, “No sooner had the Depression survivor comprehended the new prosperity than he became obsolescent.”<sup>2</sup> The time of sacrifice, being without materially or being away in armed service, became an era of earning, building, and innovating. If there was a blockage, whether McCarthy, discrimination, socioeconomics, or urban congestion, Americans not only imagined a

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<sup>1</sup> Patterson, *Grand Expectations*, 13, 4.

<sup>2</sup> William Manchester, *The Glory and the Dream: A Narrative History of America, 1932-1972* (New York: Bantam Books, 1974), 774.

world without that barrier, but also began work to remove it. The halo of Victory made all things possible, even if they were not yet present.

The American economy blossomed once the dark thunderstorm was over. In his study of the period, James Patterson wrote that “Economic growth was indeed the most decisive force in the shaping of attitudes and expectations in the postwar era.” Like a car’s speedometer as it enters the expressway from an onramp, “The prosperity of the period broadened gradually in the late 1940s, accelerated in the 1950s, and soared to unimaginable heights in the 1960s.”<sup>3</sup> William Chafe provides some impressive statistics: gross national product increased 250 percent and advertising rose 400 percent between 1945 and 1960; between 1950 and 1960, out of 13 million new homes built, 11 million were in the suburbs; and in the mid-1950s “almost as many cars were being junked each year as were being manufactured.”<sup>4</sup> And while many at the time perceived that individuals, families, and private organizations or corporations were in the driver’s seat of this advance, “government spending greatly assisted this expansion.”<sup>5</sup>

While the postwar period had the usual political tantrums, scandals, and defeats, it was marked by a belief in basic national advancement. For many in leadership at the time, there “lay a larger vision of what the United States should be: a cooperative society in which major groups such as corporations, labor unions, and farmers would set aside their special interests to promote domestic harmony and economic stability.”<sup>6</sup> While conservative Republicans urged reductions in federal activity and spending after being beaten politically and philosophically for twenty years by Democrats and the New Deal,

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<sup>3</sup>Patterson, *Grand Expectations*, 61.

<sup>4</sup> William H. Chafe, *The Unfinished Journey: America Since World War II* (New York: Oxford University Press, 1995), 112-119.

<sup>5</sup> Patterson, *Grand Expectations*, 64.

<sup>6</sup> Patterson, *Grand Expectations*, 272.

President Eisenhower preferred to govern with a more pragmatic approach.<sup>7</sup> He ran “the government in a businesslike fashion” letting loose some authority to the states or the private sector, “but retain[ed] the new overall responsibility of the federal government for issues of social welfare and security.”<sup>8</sup>

National economic prosperity contributed to the famous baby boom: 76.4 million children were born between 1946 and 1964. This new generation of Americans both wanted and received the ability to play outside, visit places in the car, and go on a family vacation. “Never in American history,” writes J. Ronald Oakley, “had a generation of children been so much the center of attention and so catered to as this generation born in the prosperous, child-centered years of the fifties.”<sup>9</sup> A vacation, newly affordable to the postwar (and especially white) middle class, was a symbol of prosperity similar to the desirable kitchen and household appliances, cars, and backyard amenities up for bids on exciting network television game shows like “The Price is Right.” For many parents it was part of ensuring that their children had it better than they did in their youth fighting the Depression and war. Many would have been pleased to read a 1962 federal report that claimed, “The children of today do more kinds of things outdoors and acquire experience and skills in things like swimming and camping that their parents never had.”<sup>10</sup>

Transportation policy would be one of those sectors directed by government action. Politicians of both parties concerned themselves with using highway construction to ease traffic, boost growth, and empower the American lifestyle. What they needed was a public mechanism to promote functionality and effectiveness. Though served with the

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<sup>7</sup> Stephen E. Ambrose, *Eisenhower: Soldier and President* (New York: Simon and Schuster, 1990), 545.

<sup>8</sup> Chafe, *Unfinished Journey*, 138.

<sup>9</sup> J. Ronald Oakley, *God's Country: America in the Fifties* (New York: Dembner Books, 1986), 123.

<sup>10</sup> Outdoor Recreation Resources Review Commission, *Outdoor Recreation for America* (Washington, DC: Government Printing Office, January 1962), 29.

usual platter of politics, Washington would be the center of action. Detroit, the car manufacturing hub, would be second.

As Jason Scott Smith, Jordan Schwartz, and Nick Taylor explain, the use of financing public works on a large scale for national economic goals was a product of the New Deal. The purpose was to redefine the government's relationship towards the citizenry in a time of extreme hardship. In a 1932 speech, Franklin Roosevelt stated, "As I see it, the task of government in its relation to business is to assist the development of an economic declaration of rights, an economic constitutional order...It is the minimum requirement of a more permanently safe order of things."<sup>11</sup> Smith wrote, "while construction changed the landscape and made a physical argument for [their] contribution to communities, New Dealers, inspired in part by economist John Maynard Keynes, developed the intellectual scaffolding to justify the federal government's investment in public works."<sup>12</sup> Schwartz described the measures as "a massive governmental recapitalization for purposes of economic development."<sup>13</sup> To Taylor, the New Deal's relief legacy was its "fundamental wisdom of treating people as a resource and not as a commodity."<sup>14</sup>

The pervasiveness of the American car culture made supporting public works obvious.<sup>15</sup> At the 1939 World's Fair in New York, visitors were captivated by the

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<sup>11</sup> *Great Speeches: Franklin Delano Roosevelt*, ed. John Grafton (Mineola, NY: Dover Publications, Inc., 1999), 25.

<sup>12</sup> Jason Scott Smith, *Building New Deal Liberalism: The Political Economy of Public Works, 1933-1956* (New York: Cambridge University Press, 2006), 136.

<sup>13</sup> Jordan A. Schwartz, *The New Dealers: Power Politics in the Age of Roosevelt* (New York: Alfred A. Knopf, 1993), xi.

<sup>14</sup> Nick Taylor, *American-Made: The Enduring Legacy of the WPA When FDR Put the Nation to Work* (New York: Bantam Books, 2008), 530.

<sup>15</sup> According to one author, "It would be difficult to exaggerate the importance of the automobile in the 1950s. It had become an integral part of American life by 1930...and the importance of it had steadily increased ever since then." Oakley, *God's Country*, 245.

enormous exhibitions contributed by car manufacturers showing metropolitan areas linked by modern expressways, mirroring the newly built bridges and parkways nearby. “In its seductive Futurama, General Motors had created a terrible temptation combining speed, mobility, and freedom that Americans would find irresistible.”<sup>16</sup> If they had read *The Great Gatsby*, the visitors may have recalled the scene in which “Gatsby’s splendid car” soars over the East River entering Manhattan: “Over the great bridge, with the sunlight through the girders making a constant flicker upon the moving cars, with the city rising up across the river in white heaps and sugar lumps all built with a wish out of non-olfactory money. The city seen from the Queensboro Bridge is always the city seen for the first time, in its wild promise of all the mystery and the beauty in the world.”<sup>17</sup>

The war only increased the desire for mobility once victory was achieved. It spawned movement for military training or stationing, new jobs, marriage, or the chance to escape discrimination. The Census Bureau, noted William Chafe, found by March 1945 that more than 15.3 million Americans, or more than one in ten, were living in a county different from the one they resided in December 1941.<sup>18</sup> Reflecting on the car’s deurbanizing effect on the American lifestyle, a 1944 government report stated, “The automobile has made partial escape from this undesirable state of affairs easy and pleasant for at least some of the population. Suburban home developments have been made attractive largely by the possibilities of quick and individual daily transportation thus afforded.”<sup>19</sup> From 1946 to 1956, automobile registration skyrocketed from 34

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<sup>16</sup> Tom Lewis, *Divided Highways: Building the Interstate System, Transforming American Life* (New York: Viking, 1997), 33-44.

<sup>17</sup> F. Scott Fitzgerald, *The Great Gatsby* (New York: Charles Scribner’s Sons, 1925), 69.

<sup>18</sup> Chafe, *The Unfinished Journey*, 10. The population of the United States in 1945 was 139.9 million. Patterson, *Grand Expectations*, 10.

<sup>19</sup> *Interregional Highways*, 78<sup>th</sup> Congress, 2<sup>nd</sup> Session, January 12, 1944, H. Doc. 379 (Washington, DC: Government Printing Office), 53-54.

million to 62 million.<sup>20</sup> “By the early fifties,” wrote Oakley, “the automobile was directly or indirectly responsible for one sixth of the GNP, providing jobs for millions” in manufacturing, petroleum, construction, services, and tourism.<sup>21</sup> According to another government report, the car “is an intimate and seemingly indispensable part of our daily life. The bread winner uses an automobile to get to work; the housewife to shop; children ride in a car or bus to school, and the entire family relies on the automobile for many social and recreational activities.”<sup>22</sup>

Local politicians encouraged and then devoured the largess that Washington started to deliver during the New Deal. Robert Moses, New York’s prodigious mid-century builder, to biographer Robert Caro, “was America’s, and probably the world’s, most vocal, effective, and prestigious apologist for the automobile.” In this mobilization, of which Moses “was the spearhead, the cutting edge, of this Panzer division of public works,” he was backed soundly by manufacturers, dealers, contractors, state officials, and legislators. Furthermore, “for forty years, in every fight, Robert Moses could count on having on his side the weight of public opinion.”<sup>23</sup> Moses was not alone in relying on manufacturers. As President Eisenhower’s “appointees reflected his admiration for the American business community,” three cabinet secretaries were General Motors executives.<sup>24</sup> Robert McNamara came to John F. Kennedy’s cabinet from Ford.

In addition to easing suburbanization, new roads leading away from central cities offered a quick route to a vacation. The proliferation of exit ramps provided prime spots

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<sup>20</sup> House Public Works Committee, *Federal Highway and Highway Revenue Acts of 1956*, 84<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 21, 1956, H. Rep. 2022, 6.

<sup>21</sup> Oakley, *God’s Country*, 245.

<sup>22</sup> *National Highway Program*, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, February 22, 1955, H. Doc. 93 (Washington, DC: Government Printing Office), 3.

<sup>23</sup> Robert A. Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Alfred A. Knopf, 1974), 926-927, 17.

<sup>24</sup> Manchester, *The Glory and the Dream*, 648.

for the establishment and expansion of national chains like McDonald's, Holiday Inn, and the Kampgrounds of America (KOA). At fast food restaurants, "the prime customers were *families*, young couples, a little unsure of themselves, often with children in tow. They were more comfortable at McDonald's as they might not have been at a more traditional restaurant."<sup>25</sup> KOA "revolutionized camping by creating a corporate chain that franchised campgrounds to individual owners..., offered campers a standardized camping experience..., [and] a reservations system."<sup>26</sup> Standardization across the country offered cheaper construction and business expansion, but also reliability for the consumer. "Major [motel] chains set standards for prices, services, and respectability that the traveling public could depend on."<sup>27</sup> Though the number of travel amenities went up, the cost remained affordable and certainly became justifiable.

All became available because of the car. John Rae wrote in 1971, "the vacation trip is still predominantly a highway phenomenon; most of this vast volume of recreational movement is a product of the convenience and low cost of highway travel by private automobile."<sup>28</sup> At national parks the tourists would see the outstanding views from the comfort of their cars, not via the tramping and horseback riding that enchanted and reinvigorated Theodore Roosevelt. "Americans in the twentieth century," wrote David Louter, "would encounter primarily through autos; they would interpret the park landscape from a road and through the windshield."<sup>29</sup>

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<sup>25</sup> David Halberstam, *The Fifties* (New York: Fawcett Columbine, 1993), 163. Italics in original.

<sup>26</sup> Susan Sessions Rugh, *Are We There Yet? The Golden Age of American Family Vacations* (Lawrence: University Press of Kansas, 2008), 130.

<sup>27</sup> Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985), 254.

<sup>28</sup> John B. Rae, *The Road and the Car in American Life* (Cambridge, MA: The MIT Press, 1971), 139.

<sup>29</sup> David Louter, "Glaciers and Gasoline: The Making of a Windshield Wilderness," in *Seeing and Being Seen: Tourism in the American West*, ed. David M. Wrobel and Patrick T. Long (Lawrence: University Press of Kansas, 2001), 250.

Beyond the car, a trip was a chance to promote the family unit to itself. Taking the children to a forest campground, beach, Washington, or a Civil War battlefield, was perfect for healthy outdoor activity or parent-taught education. “The idea of family togetherness in the baby boom justified spending money on a vacation.” The car afforded an extension of home wherever the family’s destination turned out to be. “Americans took domesticity on the road in the family car,” wrote Susan Sessions Rugh, “with a modern faith in consumer technology that allowed them to quell their fears and explore America.” Rugh argued that the trips were characterized by four traits: the car as the means of travel, the togetherness of the family on the trip, the status of the vacation proving membership in the middle class, and the citizenship of visiting democratic destinations like the nation’s capital or a national park.<sup>30</sup>

Trips away from home, it should be noted, did not appear suddenly from the wonders of victory and prosperity. Nineteenth century travel was a mixture of elites departing to second homes for the summer and young men on the lookout for work, adventure, nature, or a time away from home before assuming the mantle of full adulthood. For twelve-year old Thomas J. Jackson and his older brother Warren in 1836, “the lure of the mighty Ohio [River] cast a spell that sent imaginations soaring.”<sup>31</sup> “Touring was not,” wrote Cindy Aron, “in the first half of the nineteenth century, necessarily easy or always safe.” Indeed, as the biographer of the eventual Civil War general better known as Stonewall noted, Warren died a few years later from malaria contracted along the river. But over time, particularly with railroads, tourism became,

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<sup>30</sup> Rugh, *Are We There Yet?*, 2, 5, 12-13.

<sup>31</sup> James I. Robertson, Jr., *Stonewall Jackson: The Man, The Soldier, The Legend*, Macmillan Publishing USA, New York, 1997, 16.



according to Aron, “increasingly an activity available to people of somewhat more moderate, if still decidedly comfortable, social standing.”<sup>32</sup>

The chance for a trip away from home expanded for many during the Depression. Facing the onslaught of New Deal labor laws, companies became more willing to “consider instituting personnel and management programs,” like paid vacations, pensions, and insurance policies “that would co-opt union demands.” Furthermore, “various New Deal initiatives helped to expand the vacationing infrastructure and to stimulate tourism.” These included the Civilian Conservation Corps, dam construction and electrification projects that created reservoirs in the South, Southwest, and Northwest, and the expansion of the National Park Service (NPS) into many historical sites like Civil War battlefields managed by the War Department prior to 1933.<sup>33</sup>

The NPS realized it was unable to manage the subsequent influx of visitors and their cars. “By 1955,” writes Ethan Carr, “public anger over the conditions in national parks had reached a crescendo” and “an entire journalistic genre had emerged” to comment on the failings and overcrowding. The agency, with the support of President Eisenhower and Congress, embarked on a ten-year campaign to improve park development and infrastructure in response to the skyrocketing visitation numbers. Called Mission 66, indicating the year that would mark the NPS’ fiftieth anniversary, the program “accomplished much of what” its designers intended: “the reinvention of the

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<sup>32</sup> Cindy S. Aron, *Working at Play: A History of Vacations in the United States* (New York: Oxford University Press, 1999), 136-137. However, Victorian views on modesty and decadence remained influential, as “the discussion that attended the expansion of summer resorts warned of the dangers that lurked at such places. The idleness of resort life could bring intemperance, dissipation, and moral ruin.” 140.

<sup>33</sup> Aron, *Working at Play*, 248, 246.

national park system...to meet the exigencies of postwar American society.”<sup>34</sup> However, the increased money, which is equally as important as an expanded mandate in Washington, did not coincide with new legislation, as occurred during the New Deal.

Concurrent with Mission 66, Congress sought to reevaluate conservation policy on a larger scale. A House committee reported in 1958 that “while there has been a phenomenal and continuing increase in the use and need of outdoor recreation resources and opportunities, we have experienced a steady and alarming decrease in the quantity and quality of these resources and opportunities.” Degradation, depletion, or unavailability of these resources to the people would continue “unless measures are taken soon to preserve and improve those which remain.” The panel recognized the “more frequent need for relaxation to counteract the increasing stresses and strains imposed by the complexities of modern-day living.”<sup>35</sup>

While doing so, Congress pondered some remarkable statistics. In 1926, visitation to national forests was 6 million; it was 18 million by 1946, and had increased to nearly 53 million in 1956. At the roughly 180 national park sites at the time, visitation had risen from 22 million in 1946 to 55 million ten years later. The Army Corps of Engineers reported that its visitor numbers at reservoirs had soared from 16 million in 1950 to 71 million in 1956. Meanwhile at the local level state parks saw 92 million visits in 1946 and 201 million in 1956. The U.S. Fish and Wildlife Service found in 1955 that one out of every three American households contained someone who hunted, fished, or both.<sup>36</sup>

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<sup>34</sup> Ethan Carr, *Mission 66: Modernism and the National Park Dilemma* (Amherst: University of Massachusetts Press, 2007), 54, 12.

<sup>35</sup> House Interior and Insular Affairs Committee, *For the Establishment of a National Outdoor Recreation Resources Review Commission*, 85<sup>th</sup> Congress, 2<sup>nd</sup> Session, February 25, 1958, H. Rep. 1386, 2-3.

<sup>36</sup> *For the Establishment of a National Outdoor Recreation Resources Review Commission*, H. Rep. 85-1386, 3.

If the visitation numbers did not stun, Congress found that the economic possibilities of recreation were just as potent. The U.S. Fish and Wildlife Service reported in 1955 that 25 million Americans spent \$3 billion on hunting and fishing activities. The recreational boating industry contributed another \$1.25 billion in spending in 1956.<sup>37</sup> By 1962, a federal commission found that the “millions and millions of people seeking the outdoors generate an estimated \$20 billion a year market for goods and services.” It also stated that \$11 billion was spent by visitors to national and state parks and forests, and that New York, New Jersey, Florida, and Pennsylvania each had tourist economies over \$1 billion in 1957.<sup>38</sup>

As has been seen, by the 1950s the country was bursting for outdoor recreation. In 1958 the federal government launched an investigation into what the recreational needs would be for the nation for the rest of the century. The Outdoor Recreation Resources Review Commission report was released in January 1962 and provided numerous recommendations for federal action, including focusing on land acquisition. In general the commission found that while “Americans have long been concerned with the values of the outdoors...one of the main currents of modern life has been the movement away from the outdoors.” Americans were more urban than ever and “crowded highways” separated them from the opportunities. “The prospect for the future,” wrote the commission, “is that this quest will be even more difficult.”

But the effort would be entirely worthwhile. Something essential in the American spirit was found in the great spaces available for enjoyment and relief:

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<sup>37</sup> *For the Establishment of a National Outdoor Recreation Resources Review Commission*, H. Rep. 85-1386, 3.

<sup>38</sup> *Outdoor Recreation for America*, 4, 78.

*Outdoor recreation also has cultural values that are essential to the health of the Nation. It is a part of the educational process that strengthens men's minds as well as their bodies; that broadens their understanding of the laws of nature; that sharpens their appreciation of its manifold beauties; and that fortifies man's most precious possession – the spirit which gives life its meaning. These are the qualities which in the long run make a nation and its people truly great and which find strong nourishment in outdoor recreation.*

“All in all,” the commission wrote, “being in the outdoors is a good, wholesome, healthful use of leisure time that can help create a better life.”<sup>39</sup>

In the years after the war, optimistic Americans used their newfound and broader prosperity to improve the national transportation and recreation land networks, among many other advances. The federal government became the agent of this dramatic expansion of mobility and leisure, and did so directly through the creation of the Highway Trust Fund and Land and Water Conservation Fund. Popularity for these programs was natural, but was massively enhanced by industry, which saw enormous gains in upfront participation. It began in the New Deal, when Franklin Roosevelt “had come to see public works as a central function of the federal government – indeed, an essential function, and one likely to carry his presidential legacy tangibly into history.”<sup>40</sup> But the pace accelerated to new heights once the country saw the war and Depression in the rearview mirror. Without this unprecedented push, accepted politically by both the older generation, represented by President Eisenhower, and the younger generation, personified by President Kennedy and hitting its stride under Lyndon Johnson, these programs may not have been created or at least would have looked much differently. In many ways the American people have never looked back.

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<sup>39</sup> *Outdoor Recreation for America*, 1, 127, 23-24.

<sup>40</sup> Michael Hiltzik, *Colossus: The Turbulent, Thrilling Saga of the Building of Hoover Dam* (New York: Free Press, 2010), 374.

## **Chapter 2: Highway Trust Fund**

Cutting across the United States are ribbons of concrete and asphalt that carry millions of motorists and truckers driving at high speed from city to city, home to work or school, seaport or border crossing to warehouse, normal routines to vacation respites, and on and on. The most notable of these roads form part of the 43,000-mile interstate highway system, expressways marked by a number within a red, white, and blue shield. Its construction is regularly viewed as one of the greatest domestic achievements in American history. In his memoirs, Dwight Eisenhower declared, “more than any single action by the government since the end of the war, this one would change the face of America.”<sup>1</sup>

The federal government has invested in road construction since 1916 when Congress passed the first federal-aid highway act. However, it was not until 1956 that a special funding mechanism was established to provide for the massive undertaking of linking cities, states, and borders with each other by expressway. For nearly 60 years, the Highway Trust Fund (HTF) has been the principle federal means of financing surface transportation infrastructure. It is fueled by the collection user fees, including the 18.3 cent per gallon imposition that motorists pay at the gas station pump. Those specific taxes are then directly spent on highway and transit programs.

Since 2008 the HTF has been unable to fully finance highway programs the way it had for its first fifty years. It no longer collects enough revenue from taxing sources to cover the expenditures authorized in highway bills. Because the HTF cannot operate with a deficit, Congress has infused it with over \$53 billion from the Treasury’s general fund.

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<sup>1</sup> Dwight D. Eisenhower, *Mandate for Change* (Garden City, NY: Doubleday and Company, Inc., 1963), 548-549.

The imbalance is the greatest challenge confronting Congress in relation to surface transportation. Facing these trust problems, is the Highway Trust Fund a durable, worthy, and valuable federal mechanism?

Despite its problems, the HTF is a critical federal program. By instituting trust into transportation spending, Americans grasped the importance and the results of spending and built a massive national system. In the future, even if through different mechanisms of collection, trust must remain prevalent in transportation. The maintenance, expansion, viability, and retrofitting of highway and transit networks requires sustained federal involvement. Dedication of revenue ensures a base of funding and invites the public, through their user contributions at the pump, a toll, or fare box, to have a stake in their mobility and the smooth flow of the national economy.

As for the problems facing the HTF, this paper will argue that the revenue side must be addressed in any comprehensive solution. Americans have been directly paying for their national highway infrastructure through the federal gas tax since 1956. Many other facilities (bridges, tunnels, and turnpikes) charge tolls for their use. Freeways have never been free. These mechanisms of highway finance are venerable government institutions. Furthermore, the continued insertion of billions of dollars from the general fund diminishes the user fee-for-service principle that is the nature of this and most other government trust funds.

While Congress and the Obama administration enacted the two-year MAP-21 law in 2012, the problem is getting worse. Either revenues must be raised, highway program funding reduced, or a combination of both. Neither of these two broad options are

politically feasible; there is resistance to tax increases and spending cuts when need is so significant.

Given the funding crisis, government commissions or think tanks have written reports to engage policy makers and the public in the discussion over the future of the HTF. The National Surface Transportation Policy Revenue Study Commission and the National Surface Transportation Infrastructure Financing Commission were authorized by Congress in 2005. The Brookings Institution, Bipartisan Policy Center, and the Carnegie Endowment for International Peace have also contributed to this debate. The reports uniformly relay distress at the current funding situation concerning aging infrastructure, reduced economic competitiveness, demographic change, and underinvestment. The Financing Commission warned that “If the federal government fails to act now, and to act dramatically, we will only compound these problems for future administrations and Congresses and for the next generation of Americans.” The Carnegie report stated, “The fiscal dysfunction of the transportation system compromises the United States’ productivity and its ability to compete globally.” The Brookings report said, “that left unchecked these challenges,” of infrastructure quality, modal choice, climate change, energy dependence, and crunching of household income, “threaten not only the quality of life in our country but also the competitiveness of our nation.”<sup>2</sup>

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<sup>2</sup> National Surface Transportation Policy and Revenue Study Commission, *Transportation for Tomorrow*, Final Report (Washington, DC: December 2007); National Surface Transportation Infrastructure Financing Commission, *Paying Our Way: A New Framework for Transportation Finance*, Final Report, (Washington, DC: February 2009), 4; Robert Puentes, *A Bridge to Somewhere: Rethinking American Transportation Policy for the 21<sup>st</sup> Century* (Washington, DC: Brookings, Metropolitan Policy Program, 2008), 11; National Transportation Policy Project, *Performance Driven: A New Vision for U.S. Transportation Policy* (Washington, DC: Bipartisan Policy Center, June 9, 2009); Bill Bradley, Tom Ridge, and David Walker, *Road to Recovery: Transforming America’s Transportation* (Washington, DC: Carnegie Endowment for International Peace, July 11, 2011), 14.

As has been asserted, trust funds are created for three general purposes: a means of improving programmatic functionality, spurring the national economy through investment and job creation, and protecting congressional interests, including oversight, spending powers, and the prowess of individual members. As these three principles created the HTF, the current problem will be solved through the same means. While steering clear of important arguments about programs on the spending side, it will be shown that the certain and imminent bankruptcy of the HTF makes legislative action essential. There will not be a functioning mechanism of highway finance if it is not fixed and necessary revenues provided. Second, the need for infrastructure investment in the United States will only increase. It is an essential, positive, natural, and ever expanding burden for economically dynamic nations. As the Commerce Department noted in 1955, “There is no foreseeable period in the future when there will be no highway needs.”<sup>3</sup> For the average voter that investment can be translated to more jobs, capacity, transit, and safety, as well as to improved efficiency, trading corridors, market connectivity, and intermodality for specialists. Lastly, lawmakers and administration figures must be personally invested in the issue. They will need to assert their political strength through policy prescription, compromise, vote-counting skills, and distribution, including through earmarks.

The direct involvement of the government to inject growth into the economy became essential after the 1930s, but so was taking political credit for it. Roads and bridges are some of most easily identifiable political contributions that a legislator can

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<sup>3</sup> *Needs of the Highway Systems, 1955-84*, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, March 28, 1955, H. Doc. 120 (Washington, DC: Government Printing Office), 13.



make to his or her constituents.<sup>4</sup> Since the 1980s road bills have been full of line items for specific projects or programs. Congress named the interstate system itself after President Eisenhower in 1990.<sup>5</sup>

Within the larger discussion in political science about pork barrel and distributive politics, authors have focused on the special case of highway bills, which are fascinating combinations of visible spending and complicated policy. Diana Evans concluded that “distributive benefits can be used by legislative leaders, particularly committee leaders, to build coalitions to pass legislation with a broad national policy impact.” In this case, the committee leadership inserted more than 100 special projects into the 1987 highway bill to spice the plate of members on the fence. These earmarks, she argued, can be used “as currency to purchase the votes of additional legislators for the leaders’ policy preferences.” Once a bill leaves the committee with general policy compromises already hammered out, “committee leadership will use individual district benefits as side payments” to gain necessary votes on the floor, “leaving the substance of the bill otherwise intact.”<sup>6</sup> Frances Lee has examined the differences between House and Senate consideration of the highway bill. “The best credit-claiming opportunities for House members,” she wrote, “come in the form of special projects and earmarks,” because “the earmark’s presence gives a House member a clearer, more visible parochial stake than an amount of dollars allocated to his state’s government.” As for the Senate, where each state has two votes, regardless of their population, “coalition builders will thus find that

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<sup>4</sup> Frances E. Lee, “Geographic Politics in the U.S. House of Representatives: Coalition Building and Distribution of Benefits,” *American Journal of Political Science* 47, no. 4 (October 2003): 716.

<sup>5</sup> *An Act to redesignate The National System of Interstate and Defense Highways as The Dwight D. Eisenhower System of Interstate and Defense Highways*, Public Law 101-427, October 15, 1990.

<sup>6</sup> Diana Evans, “Policy and Pork: The Use of Pork Barrel Projects to Build Policy Coalitions in the House of Representatives,” *American Journal of Political Science* 38, no. 4 (November 1994): 895, 898.

small state senators' demands" when it comes to formula distribution of road funds "can be accommodated at much lower cost to the coalition."<sup>7</sup> Earmarks can influence and offset these patterns and decisions.

If these means are not followed, the postwar and bipartisan policy of unified user fee funding will have undergone a radical shift. While new means should be investigated, transportation finance must not become an unpredictable, unsustainable, privatized, and muddled patchwork of revenues that does not solve national problems. The worst outcome would be to do nothing, leaving the HTF bankrupt and seriously disrupting the surface transportation system, an essential national economic pillar.

### **Federal Involvement in Highway Policy 1916-1954**

The federal government has a history of supporting an era's primary form of transportation. In the late nineteenth century, railroads received the most federal attention. Congress authorized financial assistance and land grants from the public domain, particularly for nationally significant capital intensive projects. It helped that high placed sponsors frequently and amenably lubricated Gilded Age political processes. Under Theodore Roosevelt, the federal government backed the construction of the Panama Canal, for a variety of military, trade, and hemispheric reasons. By 1916 railroad land grants totaled 196 million acres and Panama Canal appropriations had added up to \$383 million.<sup>8</sup>

With all the attention on transcontinental railroads and isthmian canals, roads suffered. Several political channels emerged to propel action. Calling the contemporary

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<sup>7</sup> Lee, "Geographic Politics in the U.S. House," 716; Frances E. Lee, "Senate Representation and Coalition Building in Distributive Politics," *American Political Science Review* 94, no. 1 (March 2000): 61.

<sup>8</sup> Senate Post Offices and Post Roads Committee, *Federal Aid in the Construction of Post Roads*, 64<sup>th</sup> Congress, 1<sup>st</sup> Session, March 10, 1916, S. Rep. 250, 11.

state of affairs “deplorable,” a Senate panel asserted in 1916 that the state of public roads “is little more advanced than it was prior to the Civil War.”<sup>9</sup> Automobile innovation and use also brought attention to the road network, or lack thereof, as the bill came two years after Henry Ford began introducing assembly line manufacturing, “perhaps the most revolutionary development in industrial history,” at his plants in Detroit.<sup>10</sup> As they equated “inefficiency with immorality,” Bruce Seely wrote Progressives “considered poor roads both wasteful and unjust to rural Americans” and argued for government action.<sup>11</sup> With the lack of legislative precedent, the Senate committee asserted that grants and coordination on roads “is, fundamentally and practically, a question important enough and intricate enough to engage the attention and active participation of the Federal Government.” Only nine years earlier had the Supreme Court definitively “recognize[d] the power of Congress to construct interstate highways.”<sup>12</sup>

The 1916 legislation marked several important precedents for federal highway policy. Congress directed the Agriculture Department to cooperate with the states on road construction funding. The states would handle the apportionments and actually build and maintain the roads, consistent with federalism.<sup>13</sup> The bill covered five years, providing a solid program window, and appropriated \$75 million. Additional provisions stipulated federal assent over project spending specified what roads were eligible, in this case “rural

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<sup>9</sup> *Federal Aid in the Construction of Post Roads*, S. Rep. 64-250, 6. Such a claim covering fifty-five years would not have sounded hyperbolic to the bill’s chief sponsor, Sen. John Bankhead, a septuagenarian Democrat who was a veteran of an Alabama regiment. Biographical Directory of the United States Congress.

<sup>10</sup> Steven Watts, *The People’s Tycoon: Henry Ford and the American Century* (New York: Vintage Books, 2006), 141.

<sup>11</sup> Bruce E. Seely, *Building the American Highway System: Engineers as Policy Makers* (Philadelphia: Temple University Press, 1987), 25.

<sup>12</sup> *Federal Aid in the Construction of Post Roads*, S. Rep. 64-250, 9; *Wilson v. Shaw*, 204 U.S. 24 (1907), 35.

<sup>13</sup> *Federal Aid in the Construction of Post Roads*, S. Rep. 64-250, 14-15.

post roads,” and decreed that all roads “shall be free from tolls of all kinds.”<sup>14</sup> In a 1921 follow-up bill, a new provision stipulated that the federal government “shall give preference to such projects as will expedite the completion of an adequate and connected system of highways, interstate in character.”<sup>15</sup>

Despite this action, New Deal measures to combat the Depression were the true vanguard of federal public works spending. Though some efforts were geared to well-evaluated capital projects and others were conduits for immediate unemployment relief,<sup>16</sup> economic stimulation was the prime objective of this proactive government activity, not necessarily longterm planning or systematic improvements. In his inaugural address in March 1933, Roosevelt stated, “Our greatest primary task is to put people to work.” If anyone asked how it could be done given the staggering unemployment rate, he answered, “It can be accomplished in part by direct recruiting by the Government itself, treating the task as we would treat the emergency of a war, but at the same time, through this employment, accomplishing greatly needed projects to stimulate and reorganize the use of our natural resources.”<sup>17</sup> In a 1938 speech, administration official Jerome Frank outlined the new emphasis on government participation. “Such projects call for many billions of dollars of legitimate government investment over a period of many years, yielding us lasting physical improvements of the highest economic and social value, and unquestionably supplying us with that needed stimulus to private initiative which spells

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<sup>14</sup> *An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes*, Public Law 64-156, July 11, 1916, Sec. 1 and 2.

<sup>15</sup> *Federal Highway Act of 1921*, Public Law 67-87, November 9, 1921, Sec. 6.

<sup>16</sup> The Public Works Administration, run by Interior Secretary Harold Ickes and authorized in 1933, focused on large projects. The Works Progress Administration, run by presidential advisor Harry Hopkins and authorized in 1935, aimed to put the most number of people to work. Leuchtenburg, *Franklin D. Roosevelt and the New Deal*, 125.

<sup>17</sup> *Great Speeches: Franklin Delano Roosevelt*, ed. Grafton, 31.

national prosperity.”<sup>18</sup> National infrastructure spending would thereafter be linked with national economic promotion.

It was not until World War II that the Roosevelt administration and Congress were able to provide more planning and structure to highway spending. In 1941, the president charged a commission to investigate the need for interstate highways. Released in 1944, the report followed the principle “that it would hold national needs paramount over the needs of sections and localities” and proposed a large system of “routes which best and most directly join region with region and major city with major city.” The report included numerous maps outlining the extent of the system and its relation to economic and population centers and urged Congress to “insure a prompt beginning of construction on the system at the end of the war” by spending \$750 million annually.<sup>19</sup> Armed with the report and anticipating postwar economic, employment, and transportation needs, Congress passed by the end of the same year a new highway bill. Importantly, the law authorized a 40,000-mile National System of Interstate Highways “located as to connect by routes, as direct as practicable, the principle metropolitan areas, cities, and industrial centers, to serve the national defense, and to connect at suitable border points with routes of continental importance” in Canada and Mexico. However, the bill fell short of the report’s recommendations by only providing \$500 million annually, none of which went for the construction of this new system, and expecting the states to provide equivalent matching funds.<sup>20</sup>

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<sup>18</sup> Smith, *Building New Deal Liberalism*, 119.

<sup>19</sup> *Interregional Highways*, H. Doc. 78-379, 3, 5, 133.

<sup>20</sup> *Federal-Aid Highway Act of 1944*, Public Law 78-521, December 20, 1944, Sec. 7, 2, and 5. Senate Post Offices and Post Roads Committee, *Post-War Federal-Aid Highway Act of 1944*, 78<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 22, 1944, S. Rep. 1056, 1-2.

This lack of funding mechanism for this national system naturally complicated its construction. After New Deal emergency relief funds dried up and the war intervened, states began to plot their own highway courses. The first triumph of highway construction was the section of the Pennsylvania Turnpike completed in 1940 between Harrisburg and Pittsburgh. Though it received federal stabilizing funds because of the Depression, the highway was a product of the state issuing bonds to be repaid from the collection of tolls from drivers. In 1941 Maine authorized its own turnpike, which did not need federal support. At the conclusion of the war and with the available examples in the Northeast, other states followed suit in constructing turnpikes, including New Hampshire, New Jersey, Colorado, Oklahoma, Ohio, New York, Massachusetts, Illinois, West Virginia, and Kansas.<sup>21</sup>

While motorists were impressed by the turnpikes, as they previously had been by 1930s art deco bridges and parkways, the national system authorized in 1944 did not take shape in a coordinated fashion through these toll roads. The turnpikes were contrary to the 1916 principle of toll-free federal-aid highways. And as traffic skyrocketed – by its second year in 1953, traffic on the New Jersey Turnpike reached 22 million, the projected level for 1975<sup>22</sup> – these roads could neither handle capacity nor solve national transportation issues. By not funding the 1944 system, Congress was only postponing a full reckoning with traffic, construction, and finance.

### **The Federal Highway Act of 1956**

Congress did not provide funds for the construction of the 1944 system until 1952, and the annual sum was only \$25 million. Two years later the amount was raised to

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<sup>21</sup> *Progress and Feasibility of Toll Roads and Their Relation to the Federal-Aid Program*, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, April 14, 1955, H. Doc. 189 (Washington, DC: Government Printing Office), 4-10.

<sup>22</sup> *Progress and Feasibility of Toll Roads*, H. Doc. 84-189, 8.

\$175 million.<sup>23</sup> It became apparent a new program would be needed to fund the system. As a Senate panel put it in 1955, “to provide an adequate system will require vast increases in highway expenditures. We believe the public is aware of this need and is desirous of immediate action to meet it.”<sup>24</sup>

Postwar economic growth, inflation, and mobility were outstripping the existing overburdened road funding regime. The war had created a massive gap in highway investment leaving plans on the shelves and not under construction. Americans’ love for the car had enormous economic consequences. For instance, “If the trip cannot be made by car,” wrote John Rae, “in all likelihood it will not be made at all.”<sup>25</sup> As put by a House committee in 1956, “the whole economy of the United States is directly dependent upon motor vehicle transportation.”<sup>26</sup>

Capacity was repeatedly cited as a rationale for federal action. A 1955 Commerce Department report found “that public funds applicable to highway construction, especially on the more important routes, have not been sufficient to prevent their increasing obsolescence.” A House committee wrote in 1956 that “we are failing to keep our highway systems adequate to meet our needs and the backlog of deficiencies required to be overcome has been and is constantly piling up at an alarming degree.” A Senate panel agreed with its counterpart on the need for something new, stating, “the highway

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<sup>23</sup> *Federal-Aid Highway Act of 1952*, Public Law 82-413, June 25, 1952, Sec. 2; *Federal-Aid Highway Act of 1954*, Public Law 83-350, May 6, 1954, Sec. 2.

<sup>24</sup> Senate Public Works Committee, *Federal-Aid Highway Act of 1955*, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, May 13, 1955, S. Rep. 350, 2.

<sup>25</sup> Rae, *The Road and the Car in American Life*, 143.

<sup>26</sup> *Federal Highway and Highway Revenue Acts of 1956*, H. Rep. 84-2022, 2.

problem is still exceedingly acute, and that initiation of an accelerated long-range highway program in the immediate future is essential.”<sup>27</sup>

Having identified the problem and the need for more spending, Congress and the Eisenhower administration began to float potential solutions. The proposals may have had the same goals, add capacity and spur economic growth, but their forms would be crucial. With the federal government ready to ramp up its involvement in interstate construction in 1955 and 1956, the chosen manner of implementation would necessarily define highway policy for decades.

The debate was launched when a presidential commission headed by General Lucius Clay, an Army associate of Eisenhower and, tellingly, a member of the board of directors at General Motors,<sup>28</sup> sent a report to Congress in February 1955. The commission estimated that a 10-year interstate construction program would cost \$25 billion, with states adding \$2 billion or 7.5 percent. This \$25 billion would be raised through the issuances of bonds from a congressionally established corporation, led by a board of directors composed of cabinet secretaries and Senate-confirmed citizens. The bonds would be purchased by private investors, be available for trading by banks, and be backed by the assurance of the Treasury. In terms of bond repayment, the commission concluded the government “should not enter into toll-road construction nor provide funds for deficit financing of otherwise non-self-supporting projects.” Instead they would be derived from anticipated increases in gasoline taxes.<sup>29</sup>

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<sup>27</sup> *Progress and Feasibility of Toll Roads*, H. Doc. 84-189, 3; *Federal Highway and Highway Revenue Acts of 1956*, H. Rep. 84-2022, 2; Senate Public Works Committee, *Federal-Aid Highway Act of 1956*, 84<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 1956, S. Rep. 1965, 1.

<sup>28</sup> Jackson, *Crabgrass Frontier*, 249.

<sup>29</sup> *National Highway Program*, H. Doc. 84-93, xiii, 21, 14, 26.



The Clay Commission's needs analysis was met with approval on Capitol Hill and from outside organizations, but not the funding mechanism.<sup>30</sup> All leading Democrats and some Republicans were troubled by the idea of giving the corporation power over construction, dedicated revenues, the annual allocation of funding amounts to the states, and bond servicing functions.<sup>31</sup> Three months after the report's issuance, the Senate Public Works Committee presented a bill authorizing increased spending, but rejecting the corporate plan. Opposing the reduction of their oversight powers, the panel argued, "The framework of existing law provides ample opportunity for periodic congressional review and preserves essential congressional control over the allocation and expenditure of Federal funds," and "The special corporate system of financing...is not conducive to sound fiscal management." Affording the corporation with these functions "would place the Congress in a fiscal straightjacket and, in practical effect, prohibit the Congress from exercising its constitutional responsibilities."<sup>32</sup>

Congress is always reticent to delegate its prerogatives to the executive branch. Institutionally, no branch of government wants to hand over authority unless it is practical or necessary under the circumstances. Members of Congress are also loath to relax or undermine their ability to conduct oversight and contribute to the legislative process. Members are also aware of how visible certain federal programs are to their constituents. Obviously then, as they still are now, transportation improvements to

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<sup>30</sup> John M. Martin, Jr., "Proposed Federal Highway Legislation in 1955: A Case Study in the Legislative Process," *Georgetown Law Journal* 44 (1956): 239.

<sup>31</sup> The Democrats included Sen. Harry Byrd (D-VA), chairman of the Finance Committee, Sen. Dennis Chavez (D-NM), chairman of the Public Works Committee, and Sen. Albert Gore, Sr. (D-TN), the chairman of the roads subcommittee. Republicans included Sen. Francis Case (R-SD), ranking member of the roads subcommittee.

<sup>32</sup> *Federal-Aid Highway Act of 1955*, S. Rep. 84-350, 8, 19.

highways, bridges, and traffic problems were popular activities for Members to showcase their legislative prowess with voters.

All attempts to pass amended versions of the administration's plan or those generated by congressional Democrats in 1955 failed. While everyone wanted new highways, "members of competing groups entertained strong preferences about finance and administration, opinions rooted in local commerce and professional advantage and traditions of their own industry."<sup>33</sup> As one reporter later wrote, perhaps purposely letting his readers in on the Capitol's political games, "party leaders on both sides blamed unidentified lobbyists who fought the measure because, they contended, the taxes to pay for the Government's share would have harmed truckers, the petroleum and tire industries."<sup>34</sup> As each side's initial proposals had crashed, there was still room for bipartisan consensus, especially as traffic and demand for action continued to grow.

Discussions continued and quickly became productive. The corporation idea was discarded in favor of Congress retaining control of budgets and spending. The linking of increased revenues from gas taxes to spending was accepted, which followed the nearly universal preference to avoid increasing general budgetary obligations that would add debt. In his message accompanying the Clay report in 1955, while noting "that it is sounder to finance this program by special bond issues," President Eisenhower found that above all "a sound Federal highway program, I believe, can and should stand on its own feet, with highway users providing the total dollars necessary for improvement and new construction."<sup>35</sup> By this point the various interests – builders, manufacturers, oil

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<sup>33</sup> Mark H. Rose and Raymond A. Mohl, *Interstate: Highway Politics and Policy Since 1939* (Knoxville: University of Tennessee Press, 2012), 83.

<sup>34</sup> Joseph C. Ingraham, "U.S. Drivers Begin Footing New Highway Bill," *New York Times*, July 1, 1956.

<sup>35</sup> *National Highway Program*, H. Doc. 84-93, vi.

companies, motorists, truckers, farmers, unions, and states – found that the expected bonanza of federal spending would greatly outweigh any particular problem.

The highway program's benefit to the economy was so obviously large it seemed to not even be an issue. After the bill's signing on June 29, 1956, a *New York Times* correspondent wrote that the Commerce Secretary "predicted that the undertaking would give the nation's economy a big boost" as well as save lives and ease traffic. Meanwhile the Associated General Contractors, representing highway building firms, estimated up to 150,000 construction jobs would be created as well as an equal number of support jobs in services, manufacturing, supply, and transportation industries.<sup>36</sup> In the end participants "were optimistic about the natural congeniality of highway construction and economic growth."<sup>37</sup> A huge success in advance of his reelection campaign, the president's press secretary said he "was highly pleased."<sup>38</sup>

The two defining provisions of the law were the massive increase in interstate highway spending and the creation of the Highway Trust Fund. The law was explicit and ambitious in its goals: "It is the intent of the Congress that the Interstate System be completed as nearly as practicable over a thirteen year period and that the entire System in all the States be brought to simultaneous completion." It also declared that it "be within the national interest to accelerate the construction [of highways], since many of such highways, or portions thereof, are in fact inadequate to meet the needs of local and interstate commerce, the national and civil defense." The previous authorization of \$175 million in interstate funds from the 1954 law was expanded by \$1 billion for FY 1957, a

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<sup>36</sup> John D. Morris, "Eisenhower Signs Road Bill; Weeks Allocates 1.1 Billion," *New York Times*, June 30, 1956.

<sup>37</sup> Rose and Mohl, *Interstate*, 93.

<sup>38</sup> Lewis, *Divided Highways*, 121; Morris, "Eisenhower Signs Road Bill."

571 percent increase. A total of \$23.825 billion was authorized over the next twelve fiscal years to meet the total amount of \$25 billion recommended by the Clay Commission. The federal share of construction funding was also increased to 90 percent from the 60 percent allowed in 1954. Another provision allowed for existing or future toll facilities such as bridges, tunnels, and turnpikes to be included into the interstate system.<sup>39</sup>

By establishing the HTF, Congress specifically set aside revenues from gasoline taxes and directly sent them for highway construction purposes, “as provided by appropriation Acts,” making it a user fee. In order to utilize the highways, drivers would pay taxes instituted in order to increase capacity, options, and safety. Additional funds could be appropriated from the general fund “as repayable advances” to insure these revenues would meet the incurred obligations as authorized. Surpluses could be invested in government held or backed bonds to gain interest. Another provision ordered the Treasury Secretary to complete annual reports to Congress on the current and future “financial condition and the results of the operations of the Trust Fund.” Congress also asserted that the HTF would have some guarantees: “It is hereby declared to the policy of the Congress that if it hereafter appears that the total receipts of the Trust Fund...will be less than the total expenditures from such fund...the Congress shall enact legislation in order to bring about a balance of total receipts and total expenditures.”<sup>40</sup>

Press reports noted the impending increase of the gas tax, but were generally favorable to the new law. Its backers would have been pleased by the concluding summary of the *New York Times* article explaining the legislation: “offsetting the average \$8 a year cost to motorists [through gas tax increases] will be operating savings that will

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<sup>39</sup> *The Federal-Aid Highway Act and Highway Revenue Act of 1956*, Public Law 84-627, June 29, 1956, Sec. 108, 116, 113.

<sup>40</sup> *The Federal-Aid Highway Act and Highway Revenue Act of 1956*, Sec. 209.

result from better highways, safer roads with increased capacity..., and the direct economic gain simply from longtime construction employment.” To explain the scale and cost of the system, which also was used as a comparison in 1916 to begin federal involvement, the article ended, “In the next decade highway spending will be at least the equivalent of the cost of building 200 Panama Canals.”<sup>41</sup>

### **The Highway Trust Fund Today**

For a half a century, the Highway Trust Fund served as the funding source for the construction of the Interstate Highway System. In the 1970s and 1980s, it was also expanded to cover mass transit expenditures, particularly as cities and their residents politically turned on massive highway projects that upended neighborhoods. The 1983 reauthorization created a set aside within the HTF for mass transit programs and also raised the gas tax by five cents to a total of nine cents a gallon.<sup>42</sup> The House Ways and Means Committee was “convinced that substantial improvements are needed to the nation’s highways, bridges, and mass transit systems, and that additional revenues from highway user excise taxes should be raised for the Highway Trust Fund sufficient to finance additional expenditures for this purpose” and wrote that action was needed to stop the triggering of spending reductions because of the likelihood of a deficit to the HTF.<sup>43</sup>

The ISTEA (“ice tea”) law of 1991 marked a major change in policy. Congress declared the completion of the interstate system and redefined national priorities to reflect intermodalism, the concept of different networks working together. The “unified,

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<sup>41</sup> Ingraham, “U.S. Drivers Begin Footing New Highway Bill.”

<sup>42</sup> *Surface Transportation Assistance Act of 1982*, Public Law 97-424, January 6, 1983, Sec. 531, 511.

<sup>43</sup> House Ways and Means Committee, *Highway Revenue Act of 1982*, 97<sup>th</sup> Congress, 2<sup>nd</sup> Session, December 6, 1982, H. Rep. 945, 6; House Ways and Means Committee, *Highway Revenue Act of 1982*, 97<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 18, 1982, H. Rep. 838, 8.

interconnected” system of the future “must be operated and maintained with insistent attention to the concepts of innovation, competition, energy efficiency, productivity, growth, and accountability.” Funded by the HTF, the intermodal system “must be the centerpiece of a national investment commitment to create the new wealth of the Nation for the 21<sup>st</sup> century.”<sup>44</sup> While embracing intermodalism and spending flexibility, ISTEA confirmed the mid-century connection that federal transportation policy was critical to national economic health. Speaking at a signing ceremony at a road construction site in Texas, George H. W. Bush said, “A good transportation network will support jobs that wouldn’t exist otherwise. That’s the biggest benefit of this law.”<sup>45</sup>

ISTEA and its two successors, TEA-21 of 1998 and SAFETEA-LU of 2005,<sup>46</sup> marked a period of accomplishment, but also a slow unraveling of federal highway policy. Washington basked in the success of finally completing the interstate system, the largesse still available in the HTF, the easing of the disparities between the states that sent in more tax revenue than they received in grants and those in the reverse (donors versus donees), and the continued bipartisanship that highway bills received relative to other big pieces of legislation. Yet underlying problems lurked. Washington has struggled to define a new grand strategy for transportation.<sup>47</sup> Should it be more intermodalism, infrastructure maintenance, new road building to relieve traffic and expand trade corridors, or shifting of spending power to the states? In the absence of a larger strategy, Congress has settled for providing for all four objectives and more.

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<sup>44</sup> *Intermodal Surface Transportation Efficiency Act of 1991*, Public Law 102-240, December 18, 1991, Sec. 2.

<sup>45</sup> Wines, Michael, “Bush Signs Transit Bill In Texas And Touts Jobs,” *New York Times*, December 19, 1991.

<sup>46</sup> *Transportation Equity Act for the 21<sup>st</sup> Century*, Public Law 105-178, June 9, 1998; *Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users*, Public Law 109-59, August 10, 2005.

<sup>47</sup> Brookings, “A Bridge to Somewhere,” 6.

With multiple objectives to spend on, new coalitions of interests helped to advance legislation on Capitol Hill. While traditional national players like builders, business, labor, and users remained involved, advocates found new opportunities in arguing for individual programs or projects. For example, the proponents of building Interstate 69 from Indiana to Texas argued for the creation of border crossing improvement and national highway corridors programs as tools to fund relevant projects during the crafting of TEA-21. As Carolina Mederos, a lobbyist hired during the mid-1990s to promote the north-south highway after the enactment of the North American Free Trade Agreement (NAFTA), told Matt Dellinger, “You know, I’d rather have all of this money for ourselves, but we’re never going to get a national program unless we have a big enough group of folks who are for it.”<sup>48</sup>

Earmarks proliferated during this era. After the passage of SAFETEA-LU, the *New York Times* published a graph of highway bill earmarks: the 1987 law had 152; ISTEA, 538; TEA-21, 1,850; and SAFETEA-LU, 6,371.<sup>49</sup> Frances Lee found that 86 percent of House members received earmarks in TEA-21.<sup>50</sup> According to one study, both political parties got earmarks, because “by giving the minority *some* pork, the majority inoculates itself against charges of wasteful spending. But by granting the minority a *smaller* share of the federal pork pie, the majority party boosts the electoral fortunes of its own members and its collective reputation and prospects.”<sup>51</sup> Though earmarks had a certain smell to them, John Ellwood and Eric Patashnik wrote, “the object of government

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<sup>48</sup> Matt Dellinger, *Interstate 69: The Unfinished History of the Last Great American Highway* (New York: Scribner, 2010), 48.

<sup>49</sup> Bill Marsh, “Fresh Pork, Coming to a District Near You,” *New York Times*, August 7, 2005.

<sup>50</sup> Lee, “Geographic Politics in the U.S. House,” 718.

<sup>51</sup> Steven J. Balla, Eric D. Lawrence, Forrest Maltzman, and Lee Sigelman, “Partisanship, Blame Avoidance, and the Distribution of Legislative Pork,” *American Journal of Political Science* 46, no. 3 (July 2002): 518.

is...not to suppress the imperfections of human nature, which would be futile, but rather to harness the pursuit of self-interest to public ends.”<sup>52</sup> As the political scientists have noted, earmarks had a legislative purpose.

Whether called boondoggles, pork barrel, or logrolling, the dangers of earmarking have always been present. In 1916, the Senate panel forwarding the first federal road bill preferred that states contribute matching funds, “so that there may be no insidious paternalism established.” The committee went further: “An unconditional payment out of the Federal Treasury would open the door to the most pernicious and dangerous ‘pork barrel’ legislation possible to devise, as its appeal would be so universal and its demand so insistent that representatives in the Federal Congress would find it so exceedingly difficult to square their sense of duty with their sense of political expediency.”<sup>53</sup> Almost ninety years later, most Americans seethed when they learned of “The Bridge to Nowhere,” a \$223 million earmark packed into SAFETEA-LU by Rep. Don Young (R-AK), the chairman of the transportation committee. The bridge was to reach an Alaskan island inhabited by 50 people next to an airport. It was indeed one of those projects, as the *New York Times* editorialized, that “comes along with such a grotesquely negative cost-benefit ratio that even the most cynical citizen snaps awake.”<sup>54</sup>

Seven years after the same editorial pronounced that “if individual legislators cannot exercise discipline, the public has a right to expect Congress to impose it,” earmarks were banned. MAP-21 passed without a single one. As explained by House transportation committee chairman Rep. John Mica (R-FL), passing this bill, “wasn't easy

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<sup>52</sup> John W. Ellwood and Eric M. Patashnik, “In praise of pork,” *Public Interest*, Issue 110 (Winter 1993): 21.

<sup>53</sup> *Federal Aid in the Construction of Rural Post Roads*, S. Rep. 64-250, 16.

<sup>54</sup> Editorial, “Pork, Sweet and Sour,” *New York Times*, April 16, 2004.



to do because my previous chairmen...they had a little thing called earmarks. In fact, the last bill had 6,300 earmarks. And you see, my hands are behind my back. I don't have them tied, but I didn't have the ability to pass out earmarks and the other little goodies in this bill.”<sup>55</sup>

Additionally, transportation’s traditional bipartisanship is dissipating. The budget is always a source of political brawling, but has recently stymied the capacity to legislate on a host of normal federal functions. Poisoned relationships, committees, and chambers are much less able to pass naturally comprehensive, costly, and multiyear pieces of legislation required to satisfy national needs. After the Senate passed its version of MAP-21 in 2012, the Republican House did not go to conference with a similar broad bill. Its committee version was laden with so many controversial items that enough Republicans joined the Democrats to prevent the bill from reaching the floor.<sup>56</sup> Previously, in a remarkable demonstration of individual stubbornness and institutional dysfunction, federal surface transportation programs shutdown for several days in March 2010 because of a filibuster by Sen. Jim Bunning (R-KY).<sup>57</sup>

However, the most important consequence of not formulating an overarching goal is the HTF’s impending bankruptcy. The problem has been anticipated since SAFETEA-LU. Congress has wired to the HTF from the Treasury’s general fund a total of \$53 billion since 2008. Another consequence was that MAP-21 only covered two years – shorter than the three years it took to produce the bill – instead of the five-year span of

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<sup>55</sup> *Congressional Record*, House of Representatives, 112<sup>th</sup> Congress, 2<sup>nd</sup> Session, June 30, 2012, H4617.

<sup>56</sup> Jason Plautz, “House Punts Controversial Energy-Infrastructure Plan to After Recess,” *Greenwire*, February 15, 2012. The House bill was HR 7, the American Energy and Infrastructure Jobs Act, of the 112<sup>th</sup> Congress.

<sup>57</sup> Josh Voorhies, “Road Projects Grind to Halt As Senate Fails to Extend Highway Bill,” *Greenwire*, March 1, 2010.

laws since 1991. This was necessary to maintain spending levels with inflation without revenue increases or unpopular offsets. A five-year bill without any new HTF revenue would have required a 30 percent cut in annual spending, something the House attempted without ever finding the votes to pass it.<sup>58</sup>

There are multiple reasons why the Highway Trust Fund is nearing bankruptcy. Most crucially, in terms of revenue, the gas tax has not been raised since 1993 when Congress passed major budget and deficit reduction legislation at the start of the Clinton administration. Though Congress directed more of the gas tax to the HTF in TEA-21, as opposed to deficit reduction that was legislated in 1993, it has refused to raise the tax as it had in 1982, 1987, 1990, and 1993.<sup>59</sup> The political climate during consideration of SAFETEA-LU and MAP-21 was not at all conducive for a tax increase, and was generally opposed by both Democrats and Republicans.<sup>60</sup>

Second, the tax rate is firmly set and not subject to automatic inflationary adjustments, and its purchasing power has diminished accordingly. The Congressional Budget Office (CBO) reported in July 2013 that if the tax had been indexed to inflation in 1993, the tax rate would be 29 cents per gallon, about ten cents higher than the current 18.3 cents rate. Drivers may be pleased given the increase in gas prices over that same time, but as a result “excise taxes on motor fuels dedicated to the HTF are worth about 38 percent less than they were 20 years ago.”<sup>61</sup> Resisting inflation has saved drivers at the pump and remains politically popular, but has caused significant damage to the HTF’s

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<sup>58</sup> Jason Plautz, “Mica to Pitch 6-Year Reauthorization With 30% Funding Cut,” *E&E Daily*, July 7, 2011.

<sup>59</sup> An historical chart of the federal gas and diesel fuel tax rate is found on page 100 of NSTIFC, “Paying Our Way.”

<sup>60</sup> Josh Voorhees, “Search for Road, Transit Funding Speeds Up,” *E&E Daily*, April 12, 2010.

<sup>61</sup> Kim P. Cawley, “Status of the Highway Trust Fund,” Testimony before the House Subcommittee on Highways and Transit, July 23, 2013 (Washington, DC: Congressional Budget Office), 5.

solvency. According to the Institute on Taxation and Economic Policy, “the extremely poor design of the gas tax has left it unprepared to deal with the medium- and long-term effects of even normal growth in construction costs.”<sup>62</sup>

Third, the driving and car-purchasing habits of the American people are changing. Due to the HTF’s structure, “the relationship, then, between the federal transportation program, the amount of driving, and the amount of gas consumed (and the amount of gas tax paid) is inextricable.”<sup>63</sup> The 2008 recession has caused Americans to drive less, with the average American driving 6 percent fewer miles in 2011 than 2004. Younger Americans increasingly prefer to live in places that do not require cars and have alternative modes. A recent survey found that 16 to 34-year-olds between 2001 and 2009 decreased annual car miles by 23 percent, took 24 percent more bike trips, walked to destinations 16 percent more, and rode 40 percent more passenger-miles on public transit.<sup>64</sup> Furthermore, fuel efficiency on cars has improved as the government presses for better mileage per gallon ratios and as consumers drive the market towards cars with less sticker shock at the pump week after week. The CBO estimated that 2011 proposed increases in federal fuel efficiency requirements would cause HTF revenues to drop by \$57 billion – or 13 percent – by 2022 and 21 percent by 2040.<sup>65</sup>

MAP-21, the current authorization for highway programs, expires on September 30, 2014, the end of the federal fiscal year. Without new patches from the general fund, the CBO has reported that the HTF will need an infusion of \$15 billion in FY 2015 to

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<sup>62</sup> Institute on Taxation and Economic Policy, “A Federal Gas Tax for the Future,” September 2013.

<sup>63</sup> Robert Puentes and Adie Tomer, “The Road...Less Traveled: An Analysis of Vehicle Miles Traveled Trends in the U.S.” (Washington, DC: Brookings, Metropolitan Policy Program, December 2008), 4.

<sup>64</sup> Benjamin Davis, Tony Dutzik, and Phineas Baxandall, “Transportation and the New Generation Why Young People Are Driving Less and What It Means for Transportation Policy” (Washington, DC: Frontier Group and U.S. PIRG Education Fund, April 2012), 2.

<sup>65</sup> Congressional Budget Office, “How Would Proposed Fuel Economy Standards Affect the Highway Trust Fund?” (Washington, DC: Congressional Budget Office, May 2012), 1.

cover existing and future obligations, and that such a deficit could be eliminated by raising the gas tax by 10 cents per gallon immediately.<sup>66</sup> That increase would only cover the projected deficit for that year, not future years, and would only leave spending authorizations at an inflation pegged rate, not one that is increased due to transportation demands or needs.

### **Fixing the Highway Trust Fund**

With the notable exception of the Tea Party wing of the Republican Party, there is broad consensus in Congress that a serious reexamination of the HTF is needed and that infrastructure spending is critical.<sup>67</sup> As asked by Sen. James Inhofe (R-OK), then the ranking member of the Environment and Public Works Committee, upon introducing MAP-21 to the Senate, “What is wrong with doing what the people at home want?”<sup>68</sup> MAP-21 included some notable bipartisan policy reforms, including program consolidation, project streamlining, and funding prioritization, but did not fix the revenue gap in the trust fund. What are the available solutions?

Having noted the conservative dissatisfaction with transportation legislation, it is worth discussing their solution. In general, spending is too high, states should have more authority, and regulations should be discarded. In 2011, Sen. Jim DeMint (R-SC) introduced a bill “to return to the individual States maximum discretionary authority and fiscal responsibility for all elements of the national surface transportation systems that are not within the direct purview of the Federal Government.” If Washington’s main job was

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<sup>66</sup> Cawley, “Status of the Highway Trust Fund,” 1.

<sup>67</sup> While every Democrat in Congress voted for the MAP-21 conference report, 52 House Republicans and 19 Senate Republicans voted against it. The House vote on HR 4348 was Roll Call 451 on June 29, 2012 and the Senate vote was Roll Call 172 on June 29, 2012.

<sup>68</sup> *Congressional Record*, Senate, 112<sup>th</sup> Congress 2<sup>nd</sup> Session, February 9, 2012, S404.

to build the interstate system, it has “attained” that goal and should therefore turn the business to the states.<sup>69</sup>

Meanwhile, the options for funding a renewed federal highway program are diverse. As noted by the Financing Commission, “there is no easy ‘silver bullet’ solution to the problem of insufficient funding.”<sup>70</sup> Long term solutions may not be able to be legislated or implemented in one single bill, particularly given Congress’ recent dysfunction and hyperpartisanship.

First, is an increase in the gas tax, the original federal financing tool. As noted, the tax is not pegged to inflation and has not been raised since 1993. The Financing Commission recommended a 10 cent increase and inflation indexing, “view[ing] the need for this increase as urgent and critical to begin to stem the degradation of the Highway Trust Fund and make positive strides forward.”<sup>71</sup> The Bowles-Simpson presidential deficit reduction commission argued in 2010 for a 15 cent increase in the tax and “limit[ing] spending from trust funds to the level of dedicated revenues from the previous year.”<sup>72</sup> In congressional testimony, the Chamber of Commerce, among other interests, has repeatedly urged the raising of revenue, saying “it is going to take money to fix it – it is that plain and simple.”<sup>73</sup> Politicians have also publicly stated interest in at least investigating tax increases, notably Rep. James Oberstar (D-MN), the chairman of the House Transportation and Infrastructure Committee from 2007 to 2011, and Sen. Mike Enzi (R-WY), who upon introducing and then quickly withdrawing an inflation-pegging

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<sup>69</sup> S. 1164, Transportation Empowerment Act, 112<sup>th</sup> Congress, introduced June 9, 2011, Sec. 2.

<sup>70</sup> NSTIFC, “Paying Our Way,” 6.

<sup>71</sup> NSTIFC, “Paying Our Way,” 11.

<sup>72</sup> National Commission on Fiscal Responsibility and Reform, “The Moment of Truth,” December 2010, 25.

<sup>73</sup> Janet Kavinsky, “State of the Highway Trust Fund: Long Term Solutions for Solvency,” Testimony before House Budget Committee, April 24, 2013 (Washington, DC: U.S. Chamber of Commerce), 12.

amendment to the Senate Finance Committee's portion of MAP-21, told his colleagues, "I want you to be thinking about it because we have to have some way that is directly related to fuel that will pay for what we are going to use it on, which is the highways and bridges."<sup>74</sup>

Second, is changing the manner of the gas tax, or at least portions of it or new revenues sought from it, from a set cents-per-gallon rate to a percentage rate at different points of production. This would allow the tax to be pegged to inflation and retain the existing manner of tax collection into the HTF, which, according to the Chamber of Commerce, is "the simplest, most transparent and effective way of providing systemic revenue for federal highway and public transportation programs."<sup>75</sup> This proposal is advocated by the Carnegie Endowment, which noted its benefits to "fuel price stabilization and transportation solvency."<sup>76</sup>

In 2013, Maryland and Virginia passed state transportation revenue bills that adopted these types of measures. In addition to taxes from other sources, Virginia raised \$880 million in new annual funding, by largely substituting the cents-per-gallon tax for a percentage tax. After working with Democrats and against anti-tax members of his own party, Republican Gov. Bob McDonnell noted, "we have worked together across party lines to find common ground and pass the first sustainable long-term transportation funding plan in 27 years."<sup>77</sup> Maryland's bill was a hybrid of the two approaches, raising

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<sup>74</sup> Josh Voorhees, "Oberstar Proposes Future Gas Tax Hike," *E&E News PM*, March 26, 2010; Sen. Mike Enzi, "Executive Business Meeting to Consider the Highway Investment, Job Creation, and Economic Growth Act of 2012," February 7, 2012, Senate Finance Committee transcript, 123.

<sup>75</sup> Kavinoky, "State of the Highway Trust Fund," 14.

<sup>76</sup> Carnegie Endowment, "Road to Recovery," 99-100.

<sup>77</sup> Frederick Kunkle and Laura Vozella, "Virginia Lawmakers Approve Sweeping Transportation Plan," *Washington Post*, February 24, 2013. The *Post* editorialized that "no economic challenge in the commonwealth was more critical than its failure, year after year, to provide the resources for a modern 21<sup>st</sup>-century infrastructure." Editorial, "Mr. Cuccinelli's Misdirection," *Washington Post*, November 2, 2013.

the tax and instituting a percentage rate. Gov. Martin O'Malley, a Democrat, stated upon signing the bill, "we have guaranteed a sustainable transportation funding source that will support more than 57,200 jobs, create a safer, more efficient transportation network, and spur economic development."<sup>78</sup>

Third, are new types of revenue that replace gas tax collections with new means of accessing user fees. Most discussed is a vehicle miles traveled (VMT) levy. Instead of a rate based on gallons purchased, a VMT system would assess taxes on miles driven. This would target habitual drivers, combat revenue declines from the increased fuel efficiency of cars, allow for congestion or time of day fee structures, and cross all types of fuel.<sup>79</sup> The Financing Commission found the VMT to be "the most viable approach to efficiently fund federal investment in surface transportation in the medium to long run."<sup>80</sup> Analysts have begun to study implementation of VMT systems and a pilot program is underway in Oregon.<sup>81</sup>

Fourth, is allowing more tolling. This would be achieved either through Congress permitting states to charge tolls on federal-aid highways or through expanding public-private partnerships (PPPs), which allow tolls to repay private construction investment. Mary Peters, a Transportation Secretary for George W. Bush, has been a major proponent of these solutions. During her term, wrote Matt Dellinger, she "wanted to explore more ways to make funding flexible and wean departments of transportation off their reliance

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<sup>78</sup> Michael Dresser, "Md. Senate Approves Increase in Gas Tax," *Baltimore Sun*, March 30, 2013; Gov. O'Malley in press release, "Governor O'Malley, Senate President Miller, House Speaker Busch Sign Transportation Act," May 16, 2013, <http://www.governor.maryland.gov/blog/?p=8731>

<sup>79</sup> NSTPRSC, "Transportation for Tomorrow," Vol. 1, 52; NSTIFC, "Paying Our Way," 136-138.

<sup>80</sup> NSTIFC, "Paying Our Way," 7.

<sup>81</sup> James Whitty, "Report on Impacts of Road Usage Charges in Rural, Urban And Mixed Counties," (Salem: Oregon Department of Transportation, January 2013); James Whitty, "Oregon's Mileage Fee Concept and Road User Fee Pilot Program," Final Report (Salem: Oregon Department of Transportation, November 2007). Both accessed at [http://www.oregon.gov/ODOT/HWY/RUFPP/Pages/ruftf\\_reports.aspx](http://www.oregon.gov/ODOT/HWY/RUFPP/Pages/ruftf_reports.aspx)

on the gas tax.” In a newspaper commentary, Peters wrote “direct pricing of road use, similar to how people pay for other utilities, holds far more promise in addressing congestion than do traditional gas taxes.”<sup>82</sup> The Financing Commission also supported easing federal rules on tolls, writing “If Congress lessened federal restrictions and increased federal incentives to encourage tolling, the contribution of tolling and pricing revenues to total national highway funding could be much higher.”<sup>83</sup> The CBO reported that while PPPs funded 1 percent of the \$3 trillion spent on projects from 1989 to 2011, one estimate found that they were responsible for “between 30 percent and 40 percent of all new miles of urban limited-access highways built between 1996 and 2006.”<sup>84</sup>

If, as it has been argued here, that the HTF will be reformed for the reasons it was created, programmatic functionality, national economic growth, and congressional interest, there are several solutions that have the best chance of success.

First, in general Congress must provide drivers, states, and interests with a solid highway policy that works. The HTF should be preserved. It is the only well-understood, sustainable, and efficient trust-based mechanism for collecting taxes and disbursing spending. Dellinger is correct to write that “gas-taxed-based road financing has become ingrained in our basic understanding of how highways are built.”<sup>85</sup> In the short term this means raising the gas tax, by the 10-15 cents recommended in various blue-ribbon commissions and indexing it to inflation, or by instituting a percentage fee as legislated in Virginia and Maryland. Sen. Barbara Boxer (D-CA), chairwoman of the Environment

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<sup>82</sup> Dellinger, *Interstate 69*, 206; Mary Peters, “The Folly of Higher Gas Taxes,” *Washington Post*, August 25, 2007.

<sup>83</sup> NSTIFC, “Paying Our Way,” 133.

<sup>84</sup> Congressional Budget Office, “Using Public-Private Partnerships to Carry Out Highway Projects,” (Washington, DC: Congressional Budget Office, January 2012), viii.

<sup>85</sup> Dellinger, *Interstate 69*, 203.



and Public Works Committee, was supportive of such possible actions at a hearing in September 2013.<sup>86</sup> Returning to longer term bills and reducing the number of and time covered by extensions would help provide assurances to builders and states.

Second, Washington must remain involved in transportation finance to ensure national economic growth. Infrastructure spending should be a badge of honor and a means to provide economic opportunity and mobility to the American people. While burnishing his conservative credentials, Sen. James Inhofe (R-OK), was right to encourage investment among his colleagues, saying “I think what a lot of Republicans have lost sight of is there are a few areas where we’re supposed to spend, and this is one of them.”<sup>87</sup> While federal investment provides only one-fourth of the \$160 billion spent nationwide on roads,<sup>88</sup> proposals to devolve federal involvement to the states should be rejected. Washington cannot abandon its decades-old responsibilities.

There is much for the federal government to do. The Financing Commission rated the underinvestment at \$400 billion between 2010 and 2015 and \$2.3 trillion from 2010 to 2035.<sup>89</sup> Between its reports for 2006 and 2012, the World Economic Forum dropped the United States in its international ranking of overall infrastructure competitiveness from 12<sup>th</sup> to 25<sup>th</sup> and in roads from 7<sup>th</sup> to 20<sup>th</sup> place.<sup>90</sup> As post-NAFTA bilateral trade between the U.S. and Mexico has quadrupled from \$84.4 billion in 1993 to \$305.5 billion in 2009,

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<sup>86</sup> Eugene Mulero, “Key Senator Optimistic About Resolving Infrastructure Spending Crisis,” *E&E Daily*, September 26, 2013.

<sup>87</sup> Jason Plautz, “Arch-Conservative Inhofe Eager to Lead the Way On Costly Reauthorization,” *E&E Daily*, June 29, 2011.

<sup>88</sup> Joseph Kile, “The Highway Trust Fund and Paying for Highways,” Testimony before Senate Finance Committee, May 17, 2011 (Washington, DC: Congressional Budget Office), 1. However, Washington covers on average 45% of costs for capital projects. Jason Plautz and Paul Quinlan, “DeMint Bills Aim to Streamline Transportation, Fix Army Corps,” *E&E Daily*, June 14, 2011.

<sup>89</sup> NSTIFC, “Paying Our Way,” 4.

<sup>90</sup> World Economic Forum, *The Global Competitiveness Report 2012-2013*, ed. Klaus Schaub (Geneva: World Economic Forum, 2012), 361.

more North American planning is needed.<sup>91</sup> “It was only recently,” wrote Susan Bradbury, “that [the NAFTA] countries gave any consideration to the possibility of synergetic benefits that a unified or coordinated transportation system could offer.”<sup>92</sup>

Metropolitan areas are probably the most important priority for federal focus. They are where the American people live, work, shop, and innovate and where the most opportunities for intermodal choice exist. To the Carnegie Endowment, “higher levels of federal transportation investment are merited in urban areas where more than two-thirds of the country’s population now lives and there are economic, environmental, and social benefits that can be gained.” According to Brookings, “the 100 largest metro areas generate 75 percent of the nation’s gross domestic product, reinforcing their critical role as engines of the U.S. and global economy.” Lastly, the CBO told Congress that “the economic benefits of highway spending may be greater in areas with more traffic congestion or in areas of greater anticipated population growth and economic activity.”<sup>93</sup> Congress should enable states to place electronic tolls on metropolitan federal-aid expressways, but only if these revenues are returned in trust to that metro region for capacity, maintenance, improvement, intermodal choice, and public transit.

Third, to ensure programmatic sustainability, Congress should also explore alternative methods. This includes expanding innovative loan and financing programs like TIFIA and examining a national infrastructure bank.<sup>94</sup> VMT should continue to be

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<sup>91</sup> Andrew Selee, Christopher Wilson, and Katie Putnam, “The United States and Mexico: More Than Neighbors,” (Washington, DC: Woodrow Wilson International Center for Scholars, May 2010), 29.

<sup>92</sup> Susan Bradbury, “Planning Transportation Corridors in Post-NAFTA North America,” *Journal of the American Planning Association* 68, no. 2 (Spring 2002): 139.

<sup>93</sup> Carnegie Endowment, “Road to Recovery,” 10; Brookings, “A Bridge to Somewhere,” 14; Kile, “The Highway Trust Fund and Paying for Highways,” 16.

<sup>94</sup> TIFIA (Transportation Infrastructure Finance and Innovation Act) provides federal loans and credit assistance for highway, transit, and rail projects. On infrastructure bank proposals see Eugene Mulero, “Bipartisan Bill Provides \$50B for Crumbling Transportation Projects,” *E&E Daily*, June 28, 2013.

experimented with at the state level. As the CBO reports that “no country has yet developed a comprehensive system for directly charging all vehicles for all uses of roads,” more study and public awareness, especially concerning privacy and collection are needed.<sup>95</sup> Given their economic vitality, metropolitan areas also are ripe for PPPs. As “the notion of public-private partnerships and the awesome amount of money such arrangements could provide [are] not part of the policy vocabulary of most Americans,” these partnerships and their impacts (tolls) should be fully explained to the public.<sup>96</sup> Additionally, as the action decreases transparency and trust and is “politically unpopular”<sup>97</sup> and short-sighted, public turnpikes should never be sold or leased for immediate financial gain, as occurred in Indiana and Chicago. While these partnerships can benefit from state experimentation, they must be implemented federally to solve national needs.

This paper has largely focused on the revenue side of the HTF. But how will Congress enact comprehensive reforms with revenue increases in a charged political environment? As each representative and senator has a vote, they need a positive means of participating in the outcome. To facilitate passage of a bill, Congress should review its ban on earmarks. It may seem particularly bold to suggest Congress resuscitate something that caused such embarrassment by the end of the Bush administration. Earmarks have been rejected and derided in expert reports, with one stating, “Earmarks are not subject to standard planning requirements; nor are they required to show that their

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<sup>95</sup> Congressional Budget Office, “Alternative Approaches to Funding Highways,” (Washington, DC: Congressional Budget Office, March 2011), 15.

<sup>96</sup> Dellinger, *Interstate 69*, 240.

<sup>97</sup> Kenneth C. Orski, “Highway Tolling Has Entered the Mainstream,” *Public Works Management and Policy* 12, No. 4 (April 2008): 549.

benefits outweigh their costs.”<sup>98</sup> However, as Evans, Lee, and others have stated, earmarks serve legislative purposes. While ultimately dismissing them, the Bipartisan Policy Center wrote, “If earmarks are necessary to win support for a broader program that otherwise succeeds in directing funds to investments with strong national benefits, then earmarks may be a price worth paying.”<sup>99</sup> In an editorial blasting certain egregious examples, the *New York Times* still noted correctly, many earmarks “are perfectly worthy items that simply haven’t made it up to the top of any priorities list. Constituents expect their representatives to move them forward.”<sup>100</sup> After the scandals of the 2000s, any politician or congressional committee who participates will face deserved scrutiny, yet will regain direct influence over a small portion of spending. The Financing Commission suggested limiting earmarks to a specific and small percentage of spending within a transparent and objective-based system.<sup>101</sup>

### **Conclusion**

Federal transportation policy is reaching a turning point. Current funding mechanisms are not solvent and the need for more investment is ever increasing. Much of the infrastructure built in the twentieth century needs refurbishment, repair, or even replacement. While agreement on transportation’s importance to the national economy is still found, the two political parties have greater space between them on solutions. In a new century, is a brand new transportation funding policy needed to meet these pressing burdens and challenges?

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<sup>98</sup> Carnegie Endowment, “Road to Recovery,” 38. Brookings, “A Bridge to Somewhere” and Frankel, Emil H., “Return of Transportation Earmarks Wouldn’t Solve Gridlock,” Bipartisan Policy Center blog, October 25, 2013.

<sup>99</sup> Bipartisan Policy Center, “Performance Driven,” 31.

<sup>100</sup> Editorial, “Pork Sweet and Sour,” *New York Times*, April 16, 2004.

<sup>101</sup> NSTIFC, “Paying Our Way,” 221.

The means of financing infrastructure in the twenty-first century can still be accomplished through established programs and the principle of trust. The capital and planning intensive nature of transportation requires sound funding structures to permit project implementation over the course of years. The linkage of revenue to transportation spending gives the American people an assurance that the fees, fares, taxes, and tolls that they pay will go towards the improvement of the systems they rely on in their daily lives.

Congress created the Highway Trust Fund in 1956 to improve the functionality of highway spending through the collection of a user fee, stimulate national economic growth via job creation, trade, and mobility, and secure congressional interests and powers, through program oversight, reauthorizations, and decision-making. As President Eisenhower wrote to Congress upon the submittal of his plans, “The two reports, however, should generate recognition of the urgency that presses upon us; approval of a general program that will give us a modern safe highway system; realization of the rewards for prompt and comprehensive action.”<sup>102</sup> These means will be the manner in which the HTF is sustained in the future by legislation.

The federal highway program has problems on the spending and programmatic side, but the most debilitating problem is its revenue gap. MAP-21 proved that Congress can achieve some consensus on program consolidation and reform; it also demonstrated that it has not solved the revenue problem. Trust funds are valuable means of governance, through their rules, reliability, and return on investment. Preserving the Highway Trust Fund must be the next necessary action.

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<sup>102</sup> *National Highway Program*, H. Doc. 84-93, vi.

### **Chapter 3: The Land and Water Conservation Fund**

If the nineteenth century was marked by a policy of the federal government distributing public land to homesteaders, railroads, and other applicants, the twentieth century saw the policy reverse into one of reserving them into national parks, forests, wildlife refuges, and monuments. The transition began in earnest in the 1890s, when several national parks, the first Civil War battlefields, and the precursors to the national forests were created. For most Americans, the face of this movement towards conservation, both politically and philosophically, is Theodore Roosevelt. As president from 1901 to 1909, he set a number of precedents vigorously protecting outstanding lands for future generations. According to Douglas Brinkley, “Roosevelt had saved more than 234 million acres of American wilderness. History still hasn’t caught up with the long-term magnitude of his achievement.”<sup>1</sup> As most of this land was already under federal ownership in the West, the new laws or presidential proclamations changed how they were managed or determined the unit name under which they were protected. With the exception of Civil War battlefields in the South and Mid-Atlantic, the government did not focus on acquiring new land.

As the twentieth century proceeded, new efforts were made to protect a variety of resources across the country, including historical sites, eastern forests, recreation lands, and species habitat. New Deal programs like the Civilian Conservation Corps promoted not only work relief, but also physical connection to the outdoors. By the end of World War II, American families were itching to jump into their car and explore the nation’s wonders.

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<sup>1</sup> Douglas Brinkley, *The Wilderness Warrior: Theodore Roosevelt and the Crusade for America* (New York: Harper Collins, 2009), 815.

In the early 1960s, John F. Kennedy and Interior Secretary Stewart Udall, challenged the country and Congress to carry on the conservation spirit of Theodore and Franklin Roosevelt. In the introduction to a 1963 book authored by Udall, President Kennedy wrote, “We must develop new instruments of foresight and protection and nurture in order to recover the relationship between man and nature and to make sure that the national estate we pass on to our multiplying descendants is green and flourishing.”<sup>2</sup> One of those initiatives, passed in 1964 after the president’s assassination, was the Land and Water Conservation Fund (LWCF).

LWCF was created to provide predictable funding for national recreational needs via land conservation. However, it has a deficiency of trust because Congress regularly does not provide the amount of money each year in the appropriations process that is authorized and supplied to it. With this deficit of spending, is LWCF a durable, worthy, and valuable federal mechanism?

LWCF is a vital federal program. By connecting land conservation to the production of federal offshore resources, Americans not only gain the benefits of energy production, but also an essential and permanent environmental offset. This trust ensures that funds will be available now and in the future to conserve land deemed important by federal agencies, Congress, and the American people. Especially through the national parks, Americans have a strong connection to their public lands. The country, which originated the idea of national parks in 1872 with the creation of Yellowstone, is a better place to live with the land protected. As development of pristine land is generally

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<sup>2</sup> Introduction by John F. Kennedy to Stewart L. Udall, *The Quiet Crisis* (New York: Hold, Rinehart and Winston, 1963), xiii.

permanent, there is often only one chance to protect it. The trust afforded to LWCF increases the possibility for money to be available when that time arises.

Given the shortfalls that decrease trust, LWCF should become a mandatory program. Such a change would guarantee full and dedicated funding for LWCF every year it is authorized. It is small service to establish a sound funding structure and not live up to it for decades. The total amounts generated by offshore development are much greater than the portion set aside on LWCF. With LWCF's legislative history and the general popularity of park-related programs, Congress should actually spend the money authorized for this venerable trust mechanism.

Over the years LWCF has become the premier federal land conservation program. It funds the acquisition programs of the Bureau of Land Management, Fish and Wildlife Service, and National Park Service in the Interior Department and the Forest Service in the Agriculture Department. While the Interior Secretary is usually the lead spokesperson for LWCF, there is no single program director given the multiple agencies involved. It also provides formula grants to the states distributed by the National Park Service for their own park needs, including acquisition, development, and planning. In 1968, Congress decided to primarily fund LWCF through revenues generated from offshore oil and gas development. The underlying principle was that the depletion of one non-renewable natural resource should pay for the expansion of another non-renewable natural resource, our public lands.

Congress plays a critical role in LWCF's management. While the four agencies make their own planning decisions and project rankings for LWCF each year, sometimes creating a dispersion of priorities or systems, the two Interior Appropriations



Subcommittees and the two authorizing panels, the Senate Energy and Natural Resources Committee and the House Natural Resources Committee, have unified congressional oversight over LWCF spending and structure. Annually \$900 million is made available from offshore receipts for LWCF's conservation purposes. However, under the 1964 law, LWCF is subject to the annual appropriations process. Congress determines the actual amount to spend each year, and it is not guaranteed that all \$900 million will be allocated. The balance between what is authorized and what is actually spent is recorded by the government. Only once, in 1998, has LWCF been fully funded at \$900 million. As a result, about \$17.7 billion has been collected into LWCF, but never spent.<sup>3</sup>

Like other trust funds, LWCF was created for three general purposes: improving programmatic functionality, spurring the national economy through investment and job creation, and protecting congressional interests, including oversight, spending powers, and the prowess of individual members. The federal government desired to provide access to public lands, protect critical landscapes and resources, and improve management in the face of massive postwar visitation increases. Recreation is a significant economic generator in every state, and has been measured in jobs figures, consumer spending, and state and local tax revenue in one form or another since the government started surveying hunters and anglers in 1955. However, a change will only occur if congressional prerogatives are maintained to a reasonable degree, with some oversight over the direction of the dollars. The road to making LWCF a mandatory program will pass through the same means that created it.

### **Postwar Recreation Needs**

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<sup>3</sup> The Interior Department reported in 2012 that of the \$33.5 billion that has been collected since the 1960s, only \$15.8 billion has been spent on conservation. U.S. Department of the Interior, *Fiscal Year 2013: The Interior Budget in Brief* (Washington, DC: U.S. Department of the Interior, February 2012), DH-12.

As a result of postwar population increase, more leisure time, better transportation, and higher incomes, the American people visited public lands in an unprecedented numbers. Even if they were satisfied by the sights, Americans made it clear to Congress that something needed to be done to fix crowding and to provide more accessible recreation lands. Concerning these complaints, one author wrote, “it is ironic that visitors who went to the national parks to ‘escape civilization’ seemed surprised to encounter inconveniences in the wilderness,” ranging from cafeteria lines, primitive toilets, noise, to full campgrounds.<sup>4</sup> Agencies had a difficult time responding to the crunch. For example the National Park Service had to weigh its dual mandate “to conserve the scenery and the natural and historic objects and the wildlife therein” on one hand and “to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations” with the other.<sup>5</sup>

What could be done to improve these recreational visits that significantly contributed to the national and local economies? In 1958, Congress created the Outdoor Recreation Resources Review Commission (ORRRC) to review longterm needs. It concluded that, “The problem is not one of number of acres but of *effective* acres – acres of land and water available to the public and usable for specific types of recreation.” Unfortunately, most of the best recreation land, mostly public, but also private, was located in the West and Alaska, while many Americans lived east of the Mississippi River. Certain places lacked adequate protection to meet the recreational demand. “While most water bodies are publicly owned, the adjacent land frequently is not. This creates problems of public access which must be solved.” Oceanic and Great Lakes coastlines

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<sup>4</sup> Rugh, *Are We There Yet?*, 132-133.

<sup>5</sup> *An Act to establish a National Park Service*, Public Law 64-235, August 16, 1916, Sec. 1.

were also critical areas, especially with their proximity to some of the nation's largest cities. "Less than 2 percent of the total shoreline is in public ownership for recreation," which "is not adequate, and acquisition will be needed." While significant hunting lands were available, the "loss of habitat for migratory waterfowl and wildland game is a serious problem."<sup>6</sup>

With the ardent support of conservationists, many ORRRC recommendations became law. Congress sanctioned the creation of a Bureau of Outdoor Recreation in 1963, passed the Wilderness Act in 1964, and approved the National Wild and Scenic Rivers System in 1968.<sup>7</sup> "Considering the legislation that followed in the 1960s," wrote Ethan Carr, "the ORRRC must be seen as one of the most effective congressional commissions ever convened."<sup>8</sup>

The states were well served by ORRRC's policy solutions. While "all levels of government share an interest in and responsibility for meeting the outdoor recreation needs of the Nation," ORRRC saw the states as the best provider. "The State governments have dominant public responsibility and should play the pivotal role. Accordingly, it is extremely important to stimulate State activity." The panel concluded a grant program should be established to assist the states with planning, land acquisition, facilities and capital development, and equitable distribution of recreation.<sup>9</sup> By the time the LWCF bill reached Congress, 49 states approved of the bill, with personal

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<sup>6</sup> *Outdoor Recreation for America*, 49, 70, 72. Italics in original.

<sup>7</sup> *An Act to Promote the Coordination and Development of Effective Programs Relating to Outdoor Recreation*, Public Law 88-29, May 28, 1963. "Outdoor Recreation for America," 121-122; *The Wilderness Act*, Public Law 88-577, September 3, 1964. "Outdoor Recreation for America," 131-132; *The Wild and Scenic Rivers Act*, Public Law 90-542, October 2, 1968. "Outdoor Recreation for America," 177-178.

<sup>8</sup> Carr, *Mission* 66, 304.

<sup>9</sup> *Outdoor Recreation for America*, 169-170, 139.

endorsements from 43 governors.<sup>10</sup> Congress concurred with this strategy. A House panel reported that the program would benefit citizen health and welfare, react to the increasing mobility of the American people, and state grants would relieve Washington “from increasing pressure to acquire and develop, on its own, areas of less than national significance.”<sup>11</sup>

The Kennedy administration made a significant adjustment to the ORRRC report. In its 1962 conservation message to Congress, the administration added a federal land acquisition program to complement the state grant program. It was important to act now, the message argued, “for with each passing year prime area for outdoor recreation and fish and wildlife are preempted for suburban growth, industrial development, or other uses.” Such “a sound financial investment” would build upon the “parks, forests and wildlife refuges which were acquired decades ago by the great conservationists.” Furthermore, the administration answered how such a program would function, writing, “Expansion of our permanent recreational land base can best be achieved by investments in our future in the form of modest user payments from those who now enjoy our superb outdoor areas and from recreation and land related receipts.”<sup>12</sup>

The driving figure behind this proposal was Interior Secretary Stewart Udall, who spearheaded much of the decade’s environmental accomplishments. An energetic and youthful figure, like the president, he was formerly a Democratic congressman from Arizona. In 1963, Udall wrote *The Quiet Crisis*, a bestselling book analyzing the history

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<sup>10</sup> Senate Interior and Insular Affairs Committee, *Land and Water Conservation Fund Act*, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 10, 1964, S. Rep. 1364, 1.

<sup>11</sup> House Interior and Insular Affairs Committee, *Land and Water Conservation Fund Act*, 88<sup>th</sup> Congress, 1<sup>st</sup> Session, November 14, 1963, H. Rep. 900, 9.

<sup>12</sup> *Message from the President of the United States relative to Our Conservation Program*, 87<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 1, 1962, H. Doc. 348, 4.

of America's relationship with its environment and concluded "our massive ability to overpower the natural world has also multiplied immeasurably our capacity to diminish the quality of the total environment." His response, and that of the president, was a "preservation-of-environment program" that "concerns wilderness and wildlife and parklands and the whole spectrum of outdoor resources."<sup>13</sup>

When it came time to legislate, Congress agreed with the Kennedy administration in finding the ORRRC lacking on federal lands, agencies, and needs. The commission had noted the importance of federal lands, but criticized federal agencies like the National Park Service and Forest Service for prioritizing resource protection over recreation, writing "few of them were prepared to meet the surge in recreation demand that began shortly after the close of World War II." It also recommended the transfer of federal units in high population areas to the states, arguing that "There is no reason why Federal agencies with national responsibilities should provide for essentially local needs."<sup>14</sup> Lastly, as noted, the commission did not propose a federal acquisition program. A House committee in 1963 and a Senate committee in 1964 announced in identical report language that they, unlike ORRRC, would be concerned with federal lands in the writing of legislation, stating "While the bill thus recognizes the pivotal role of the States, it does not ignore the part many of the Federal agencies also play in the outdoor recreation field."<sup>15</sup>

The reaction of Congress is critical to the creation of LWCF as a trust fund. The commission offered several palatable solutions that indeed made it into law, but it did not

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<sup>13</sup> Udall, *The Quiet Crisis*, 176, 180.

<sup>14</sup> *Outdoor Recreation for America*, 127-128.

<sup>15</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 11; *Land and Water Conservation Fund Act*, S. Rep. 88-1364, 7.

entirely recognize congressional mannerisms. First, Congress' constitutional authorities on appropriations and federal land management were not properly inserted into the proposals. Congress is willing to make grants to the states for a variety of purposes, but it is not often willing to hand over full power and responsibility simultaneously with the money. The states could solve some of the problem, but not all of it. Federal agencies, tools with which Congress exercises direction and oversight, also had major roles to play. The House and Senate committees both wrote that the accumulation of visitation at federal units demonstrated "the importance to the American people of the recreation function of these [federal] agencies."<sup>16</sup>

Second, ORRRC misjudged parochial congressional interests during its review of national matters. Federal units in metropolitan areas, exactly like those in rural areas, have a congressman – or several, given the population density – and two senators assuredly concerned with their function and durability. Turning them over to the state or locality, as recommended, would remove important roles of these members in decision making and funding. It is not surprising that this would irk a number of congressional delegations from urban states, the places where people were increasingly living. In fact, Congress wanted more of these metropolitan units, not less. The two congressional panels wrote, "There is increasing demand, reflected in the introduction of numerous bills dealing with specific cases, for the creation of recreation areas of national significance within easy distance of the large centers of population."<sup>17</sup>

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<sup>16</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 11; *Land and Water Conservation Fund Act*, S. Rep. 88-1364, 7.

<sup>17</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 11-12; *Land and Water Conservation Fund Act*, S. Rep. 88-1364, 7-8. For example, in 1961 and 1962, Congress passed bills creating Cape Cod National Seashore near Boston and Point Reyes National Seashore near San Francisco, fulfilling an ORRRC goal of protecting coastlines.

## LWCF: The Program

With the leadership of Secretary Udall, who remained in office under Lyndon Johnson, a national land acquisition program made its way through Congress. Not only would acquisition enable the federal land management agencies to complete or consolidate their units by filling the private inholdings that dotted many parks, refuges, and forests, but also would provide the lands necessary to actually create new units located in metropolitan areas or in places with unconserved resources. The acquisition program, themed towards meeting recreation and conservation needs, balanced other development and construction programs.

At its beginning, LWCF was marked by two important features. First, it recognized the immediate national need for systematic land conservation. It included federal agencies beyond the NPS, which saw itself as the leader in park planning and prominence,<sup>18</sup> and encouraged the states to spend at their own conservation sites through matching grants. The approach was broad and muscular. If the public demanded new recreation spaces, it should be delivered. In order to protect the best places and those closest to population centers, it must be done now. In his book Secretary Udall wrote, “Unless we are to betray our heritage consciously, we must make an all-out effort now to acquire the public lands which present and future generations need. Only prompt action will save prime park, forest, and shore line and other recreation lands before they are pre-empted for other uses or priced beyond the public purse.”<sup>19</sup> In a letter to Congress that was attached to a legislative proposal for LWCF, President Kennedy concluded, “Actions

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<sup>18</sup> Carr, *Mission 66*, 304-305.

<sup>19</sup> Udall, *The Quiet Crisis*, 180-181.

deferred are all too often opportunities lost, particularly in safeguarding our natural resources.”<sup>20</sup>

Second, it was a trust fund with specific revenues and spending outcomes to make land acquisition and recreational funding more predictable. Once again in unison, House and Senate committees wrote that “the existence of such a single fund...is necessary for the program to move forward in an orderly manner.”<sup>21</sup> Rep. Wayne Aspinall (D-CO), chairman of the House interior committee, told his colleagues that “neither the Federal agencies nor the States can plan a long-range program for outdoor recreation development...unless they are sure of a reasonably certain and stable source from which appropriations can and will be made.”<sup>22</sup> A few years later, Chairman Aspinall’s committee wrote that LWCF “is not the sort of program that can be effective if it is subject to being turned on and off like a water tap.”<sup>23</sup>

The fund was supplied from several sources. At first in 1964, the revenues were derived from motorboat fuel taxes that previously went to the Highway Trust Fund, surplus federal property sales, and user and admission fees at federal units. There was controversy on these sources. Road enthusiasts like Rep. George Fallon (D-MD) disapproved of the raid on the HTF,<sup>24</sup> and many members from districts with reservoirs

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<sup>20</sup> Letter from John F. Kennedy to Speaker John McCormack dated February 14, 1963 in *Land and Water Conservation Fund Act*, H. Rep. 88-900, 29-31.

<sup>21</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 14-15; *Land and Water Conservation Fund Act*, S. Rep. 88-1364, 10.

<sup>22</sup> *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 22, 1964, 16522.

<sup>23</sup> House Interior and Insular Affairs Committee, *Amending Title I of the Land and Water Conservation Fund Act of 1965*, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 24, 1968, H. Rep. 1313, 5-6.

<sup>24</sup> *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 23, 1964, 16852-16854.



and large federal land acreages opposed new fees on sites that had never seen them before.<sup>25</sup>

By 1968, Congress was no longer satisfied with the succor of these sources. Chairman Aspinall remarked that they had “not worked as well as we had hoped it would.”<sup>26</sup> Furthermore, agencies faced the challenge of rising land prices. President Johnson wrote to Congress in 1967 that annual increases of 10% were eating into the effectiveness of LWCF and that action was necessary to prevent land cost from becoming prohibitive.<sup>27</sup> The fees were supplemented by the larger pool of revenues that gushed from oil and gas development in the Outer Continental Shelf (OCS).<sup>28</sup> The user fee principle shifted to that of resource retention. In the words of a Senate committee, the use of offshore receipts, “is based on the fully tenable proposition that the revenues from one natural resource which belongs to all of the people of the United States – in this instance a depleting resource – should be reinvested in outdoor recreation areas and developments which become a part of the permanent estate of the Nation for the use, benefit, and enjoyment of all its citizens of this and future generations.”<sup>29</sup>

Congress was pleased to arrange a fund to solve the recreational crisis and improve the outdoor economy, but it also wanted to maintain its own prerogative. Regardless of the funding source or the ceiling for annual spending, Congress has insisted on controlling LWCF. First, it added an expiration date to the fund in 1964 nominally “to

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<sup>25</sup> Rep. Ed Edmondson (D-OK), a vocal opponent of fees, at one point displayed a map during a debate on the House floor showing all of the Army Corps reservoirs that were then free of charge to enter.

*Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 22, 1964, 16518.

<sup>26</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14624.

<sup>27</sup> *Message from the President of the United States regarding Air Pollution*, 90<sup>th</sup> Congress, 1<sup>st</sup> Session, January 30, 1967, H. Doc. 47, 11.

<sup>28</sup> *An Act to Amend Title I of the Land and Water Conservation Fund Act of 1965*, Public Law 90-401, July 15, 1968, Sec. 2.

<sup>29</sup> Senate Interior and Insular Affairs Committee, *Land and Water Conservation Act Fund Amendments*, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 29, 1968, S. Rep. 1071, 3, 2.

avoid the possibility that it might outlast its usefulness,” but really to ensure future review.<sup>30</sup> Second, and most importantly, Congress refused to take the program out of the annual appropriations process. The program’s supporters frequently reminded their colleagues that funds would only be available upon the review of the appropriations committees. Rep. Tip O’Neill (D-MA) said, “not one cent of the money in the fund could be spent until appropriated by Congress through the usual procedures.” Rep. George Gooding (R-PA) stated he had “no fear that the land acquisition program would get out of hand” because it “will come under too much scrutiny by the legislative committees and bodies for anything like that to happen.”<sup>31</sup> Upon adding OCS revenues in 1968, Sen. Frank Moss (D-UT) stated, “we are not derogating from the appropriations process. We are simply trying to provide a wider planning base with which to go ahead with the acquisition of these properties.”<sup>32</sup>

Upon maintaining their power, appropriators allowed themselves the chance to wave their conservation credentials. After clarifying some points during debate in 1968, Rep. Julia Hansen (D-WA), the chairwoman of the House Interior Appropriations Subcommittee, declared “that many of today’s conservation costs are the results of yesterday’s recklessness and careless abandon. If we do not wish the latter part of this century to be a monument to our lack of vision, we must approach our natural resources with caution, care, and conservation.”<sup>33</sup>

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<sup>30</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 15. The date was first set at 1989, which was then extended another 25 years to 2015 in 1987.

<sup>31</sup> O’Neill: *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 22, 1964, 16517; Gooding: *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 23, 1964, 16830.

<sup>32</sup> *Congressional Record*, Senate, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 23, 1968, 10316.

<sup>33</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14626.

The addition of the OCS revenues gave LWCF a sufficient pool of revenue, but Congress was still not satisfied with the level matching the need for acquisition. The authorization ceiling, at that point set at \$300 million, needed to be raised, according to LWCF's supporters. Like the condition of the parks in the 1950s, LWCF was suffering from its own success. To a House committee in 1976, "the level of response to the program has now far exceeded the capacity of the fund at its presently authorized level." LWCF was not failing as a program, it just needed to do more and be more successful. "In any consideration of efforts to improve the quality of life for our nation," wrote the House panel, "the Land and Water Conservation Fund must rank as a major positive influence." Furthermore increases in offshore leasing had reduced LWCF's percentage of the revenues from 34 percent to 5 percent, and a "major increase" was warranted to "achieve" a more proportional transfer "into the lasting investments" made by LWCF.<sup>34</sup> In 1976, Congress raised the annual funding ceiling to \$900 million.<sup>35</sup>

Once the \$900 million ceiling was passed, LWCF funding approached the level in fiscal years (FY) 1979 and 1980 during the Carter administration. However, the budget diminished significantly through the Reagan, Bush, and Clinton administrations. Many domestic programs were cut during the Reagan years and stagnated thereafter. In FY 1980, LWCF received more than \$700 million; in FY 1983, it had been reduced to under \$200 million. Funding did not surpass \$350 million until FY 1998.<sup>36</sup> Changes to the domestic budget increasingly polarized Congress. As a result more omnibus and

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<sup>34</sup> House Interior and Insular Affairs Committee, *Amending the Land and Water Conservation Fund Act of 1965*, 94<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 8, 1976, H. Rep. 1021, 4.

<sup>35</sup> *An Act to Amend the Land and Water Conservation Fund Act of 1965*, Public Law 94-422, September 28, 1976.

<sup>36</sup> "Great Outdoors America," Outdoor Resources Review Group, Resources for the Future, Washington, DC, July 2009, 16.

reconciliation measures were needed to secure sufficient votes for budget control and spending measures. Indeed, Congress extended the authorization of LWCF from 1989 to 2015 in the Omnibus Budget Reconciliation Act of 1987.<sup>37</sup> Only in Bill Clinton's second term would LWCF resurface, as the president looked for environmental victories and Congress found itself with the oddity of a budget surplus.

### **Making LWCF Mandatory**

Supporters of LWCF in and out of Congress have long sought to provide the program with the soundest footing. They want to put more trust into the trust fund. In recent decades open partisanship and outright dysfunction has swamped Congress' ability to perform its constitutional duty to set appropriations priorities and conduct oversight through a functioning annual process. As a result, LWCF's political champions have urged removing it from the annual process and making it a mandatory program. By doing so, the program would receive its \$900 million from OCS receipts that would be promptly and automatically available in full to spend.

The proponents of this action often speak of the "promise" of LWCF as a trust fund. Congress did not set up the program for any reason. It did so to proceed on a necessary and singular function: the provision of outdoor recreational opportunities for the American people through land conservation. It did not provide funds from the non-renewable diminishment of nationally-owned offshore oil and gas resources to invest in the permanent protection of landed resources by the public only some of the time.

This "promise" was featured in the 1968 debate to add the OCS receipts. Describing the manner of congressional operation up to that point in LWCF's infancy, a Senate panel wrote:

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<sup>37</sup> *Omnibus Budget Reconciliation Act of 1987*, Public Law 100-203, December 20, 1987, Sec. 5201.

*in an effort to provide the quality and quantity of outdoor recreation resources as are necessary and desirable for the physical and mental health and vitality of the American people, the Congress from the very beginning of this program adopted a policy of annually appropriating from the land and water conservation fund for authorized purposes the full amount of moneys which have accrued to it. The committee recommends that the Congress continue its full funding policy in this regard in recognition of the great need for putting these programs on a current basis.*<sup>38</sup>

As his chamber considered the bill, Rep. John Saylor (R-PA), who was the ranking member of the House Interior and Insular Affairs Committee in both 1964 and 1968 and an influential supporter of LWCF, spoke directly to the program's design and promise:

*This legislation is, in my opinion, one of the most important conservation measures to come before this Congress. It is important because this legislation provides the basis upon which the Congress of the United States can meet the commitments which [it] has made to the American people. That commitment stated very simply is this: Congress, in response to the nationwide demand for outdoor recreation facilities, has authorized the acquisition of lands worth \$450 to \$500 million which belong to individual American citizens. In authorizing these facilities, Congress made a commitment to these Americans to purchase their lands for park and recreation purposes. These American citizens were promised that funds to purchase their lands would be available from [LWCF]. This promise has not been kept.*<sup>39</sup>

In his defense of LWCF on the floor in 1975 as the Senate debated increasing LWCF's funding authorization, Sen. Bennett Johnston (D-LA) noted that while the program was not going to be made mandatory, "it constitutes, in my judgment, a moral commitment, a goal, a statement of priority." Facing a resistant Ford administration and other senators, Johnston contended this was the best possible legislative outcome. "We recognize that these are limiting factors for all of our desires. But...we must set a higher

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<sup>38</sup> *Land and Water Conservation Act Fund Amendments*, S. Rep. 90-1071, 7.

<sup>39</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14626.

priority for [LWCF]...If we do not, we are going to lose this land. We are going to lose it forever.”<sup>40</sup>

By the late 1990s, the potential to fulfill the promise returned during a short and odd era of federal budget surpluses, the result of years of political and fiscal compromising and a surging national economy. A bipartisan group in the Republican-controlled Congress, prodded by the Clinton administration actively seeking environmental accomplishments and an engaged coalition of conservationists, embarked on providing mandatory funding for LWCF and other related programs. The proposed Conservation and Reinvestment Act (CARA) would have annually allocated \$2.9 billion from OCS revenues, including \$900 million for LWCF. “For decades,” wrote a House committee, “programs that improve the quality of American life and conserve important natural resources have not received adequate levels of funding.”<sup>41</sup> In testimony to a Senate committee, George Frampton, the acting chairman of the Council of Environmental Quality, wrote, “Historically, as you are well aware, our efforts too often have fallen short of these commendable goals.” A Senate panel elaborated further: “When Congress first channeled OCS revenues into the LWCF, it was anticipated that a substantial percentage of the revenues from the OCS, a non-renewable national asset, would be reinvested in permanent, public recreational resources by Federal, State, and local governments. That expectation has not been fulfilled.” By not appropriating the full amount for LWCF, “spending for the acquisition and development of new recreational

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<sup>40</sup> *Congressional Record*, Senate, 94<sup>th</sup> Congress, 1<sup>st</sup> Session, October 29, 1975, 34254.

<sup>41</sup> House Resources Committee, *Conservation and Reinvestment Act of 1999*, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, February 16, 2000, H. Rep. 499, 22.

resources has not kept pace with the growing demand for them.”<sup>42</sup> In addition to moderates already favorable to conservation, the bill earned more Republican votes through compromise language on private property rights and coastal impact revenue sharing popular with delegations along the Gulf of Mexico and Alaska, where much of the offshore drilling occurs.<sup>43</sup> The House passed CARA with a vote of 315-102.<sup>44</sup>

Despite the momentum, the appropriators refused to give up their power to distribute federal funds and westerners opposed the acquisition of more federal land. Rep. Ralph Regula (R-OH), the chairman of the House Interior Appropriations Subcommittee, appealed to his colleagues to not create an entitlement and to “put the government on automatic pilot.” With mandatory spending, Congress, and in particular his committee, would not control or decide where the funding went. He concluded, “This bill is certainly a case of abdicating responsibility that we are elected to make, in terms of priority decisions and the allocation of this Nation’s resources.”<sup>45</sup> Western conservatives believed that federal funding should go towards better land management and the expansion of multiple use principles. Rep. Richard Pombo (R-CA) said, “We are continually limiting access into our public lands so that people do not have access to them. That has to be fixed before we go buy more land. This bill does not allow for that.”<sup>46</sup> The federal government owns one-third of the territory in the country. That was enough.

Due to this opposition, CARA never made it to the Senate floor. In the end a compromise was reached, not in an authorization, but in the FY 2001 Interior

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<sup>42</sup> Senate Energy and Natural Resources Committee, *Conservation and Reinvestment Act of 2000*, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 14, 2000, S. Rep. 413, 24. Frampton’s testimony, 56.

<sup>43</sup> Two prominent Republican supporters of CARA were, Rep. Don Young of Alaska, the chairman of the Resources Committee and Rep. Billy Tauzin of Louisiana, the eventual chairman of the Energy and Commerce Committee.

<sup>44</sup> House Roll Call Vote 179, May 11, 2000.

<sup>45</sup> *Congressional Record*, House of Representatives, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 2000, H2833.

<sup>46</sup> *Congressional Record*, House of Representatives, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 2000, H2829.

Appropriations conference report. The victorious appropriators established a new six-year conservation spending program. “This action,” the conference committee concluded, “recognizes land conservation and related activities as critical National priorities and provides a mechanism to guarantee significantly increased funding for critical land acquisition and other land protection programs.” However, the key to the agreement was the sentence stating: “The program is not mandatory and does not guarantee annual appropriations.”<sup>47</sup> Defending the compromise, Rep. David Obey (D-WI), the ranking member of the House Appropriations Committee, argued, “This will deliver the goods without putting Congress in a procedural straightjacket.”<sup>48</sup> Sen. Slade Gorton (R-WA), the chairman of the Senate Interior Appropriations Subcommittee, said, “Vitality important is the fact that the bill does not create any new entitlements. At the same time, it is not an empty promise.” Leaving the programs in the appropriations process allowed the lawmakers to weigh needs and broader concerns, while still affording increases if required. “Congress has always had the ability to provide increases to the programs through the regular appropriations process,” Gorton continued, “but it has not necessarily done so due to the resulting impact on other programs and, of course, on the deficit or the surplus.”<sup>49</sup> Congress provided LWCF robust funding for several fiscal years, but it quickly dwindled. Terrorism and the wars in Afghanistan and Iraq took over the concentration of the government, leaving domestic programs like LWCF to face declines.

However, upon the assumption of control of Congress by the Democrats in 2006 and the election of Barack Obama in 2008, LWCF rebounded. In their first budget (FY

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<sup>47</sup> *Making Appropriations for the Department of Interior and Related Agencies for the Fiscal Year Ending September 30, 2001*, Conference Report, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 29, 2000, H. Rep. 914, 200.

<sup>48</sup> *Congressional Record*, House of Representatives, October 3, 2000, H8652.

<sup>49</sup> *Congressional Record*, Senate, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, October 4, 2000, S9797.



2010), President Obama and Interior Secretary Ken Salazar pledged full funding for LWCF by 2014.<sup>50</sup> Congress responded with a significant appropriation of roughly \$450 million that year.<sup>51</sup> Full and dedicated funding measures were also considered, especially after the Gulf of Mexico oil spill in 2010. On July 30, 2010, the House passed the Consolidated Land, Energy, and Aquatic Resources (CLEAR) Act, by a vote of 209-193.<sup>52</sup> The oil spill response measure included a 25-year extension of LWCF's authorization until 2040, full funding of the program at \$900 million annually in mandatory spending, and provided the appropriations committees with the ability to "provide by law for the allocation of moneys in the fund to eligible activities under this Act."<sup>53</sup> This time the bill received the support of notable Democratic appropriators. Rep. Norman Dicks (D-WA), a former chairman of the House Interior Appropriations Subcommittee, succinctly noted that "this legislation also will free up money [and] make it mandatory" while retaining "the right of the appropriations committee to appropriate that money." As a result "we'll get those dollars that we haven't been getting before."<sup>54</sup> However, like CARA ten years before, the bill never made it onto the Senate floor during an election year.

Despite the defeat, LWCF's champions on Capitol Hill looked for more opportunities to provide certainty to funding. As the Senate considered a surface transportation reauthorization bill in 2012, an amendment passed by a bipartisan vote of 76-22 that paired LWCF funding with additional Gulf oil spill restoration funds. The

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<sup>50</sup> U.S. Department of the Interior, *Fiscal Year 2010: The Interior Budget in Brief* (Washington, DC: U.S. Department of the Interior, May 2009), DH-52.

<sup>51</sup> *Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010*, Public Law 111-88, October 30, 2009.

<sup>52</sup> House Roll Call Vote 513, July 30, 2010.

<sup>53</sup> Consolidated Land, Energy, and Aquatic Resources Act, 111<sup>th</sup> Congress, HR 3534, Sec 402-403.

<sup>54</sup> *Congressional Record*, House of Representatives, 111<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 30, 2010, H6503.

amendment provided for a seven-year extension of LWCF from 2015 until 2022 and a two-year surge in mandatory funding in FY 2013 and FY 2014 of \$700 million per year.<sup>55</sup> Sen. Bill Nelson (D-FL) correctly noted that the marriage of the two pots of money was needed to entice non-Gulf Coast senators to support the geographically-specific restoration money.<sup>56</sup> However, the Republican-controlled House did not approve of the LWCF portion of the amendment, and it was stripped in conference. While 32 Republicans signed a letter to Speaker John Boehner (R-OH) urging adoption of the LWCF provision in conference, the amendment was strenuously opposed by many western Republicans, including Rep. Doc Hastings (R-WA) and Rep. Rob Bishop (R-UT), the chairman of the House Natural Resources Committee and chairman of the public lands subcommittee, respectively.<sup>57</sup>

### **Recommendations for LWCF**

As LWCF has returned as a priority for many in Congress and the Obama administration, it is worth discussing its future and what must be done. There are two programmatic problems and three political problems facing LWCF. It will expire on September 30, 2015 and its FY 2013 and FY 2014 appropriation was only one-third of the \$900 million authorized. Politically, the program faces a more conservative Republican party not favorable to land conservation, a budget that is ever tightening on domestic programs, and a severely dysfunctional Congress.

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<sup>55</sup> Senate amendment 1822 to S. 1813, the Moving Ahead for Progress in the 21<sup>st</sup> Century Act, text in *Congressional Record*, Senate, 112<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 7, 2012, S1475. Senate vote 32, March 8, 2012.

<sup>56</sup> *Congressional Record*, Senate, 112<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 8, 2012, S1508. Nelson said on the floor, “acknowledging that you want some of the money--because we had to get a pay-for, and the pay-for is not controversial, yet it produces about \$1.5 billion additional--that can go to the Land and Water Conservation Fund.”

<sup>57</sup> Phil Taylor, “LaTourette Says Land Acquisition Not 'a Big Sticking Point' for GOP in Talks,” *E&E Daily*, June 8, 2012.

The most pressing need is the expiration of LWCF's funding mechanism. According to current law, the provision of OCS revenue expires at the end of FY 2015.<sup>58</sup> This would dismantle LWCF as a trust fund and essentially turn it into a regular programmatic authorization for conservation activities. As described above, attempts have been made in Congress to extend the authorization of the revenue supply by 25 years in 2010 or by seven years in 2012. This loss of trust would dramatically reduce land conservation as a federal priority.

LWCF has not received the appropriations that Congress designed for it given that a revenue source was provided. The Interior Department reported in its FY 2013 budget request that 47 percent of the \$33.5 billion collected by LWCF has not been appropriated. Congress may not be able to rematerialize these funds, but it can devote future funds to the purpose.

In 1968, Rep. Roy Taylor (D-NC), the parks subcommittee chairman, found stability for federal agencies and states as the critical piece of the trust connection between the revenue source and funding. "In either case," he said, "it is of utmost importance that there be some predictable amount of money that is likely to become available in order for them to carry on a program and make future plans and commitments," especially in the light of land value increases and the one-time-only nature of saving land before it is developed or subdivided. Furthermore, "experience with the fund indicates that the Appropriations Committee will likely make available each year, though they do not have to do so, the amounts that come into the fund."<sup>59</sup>

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<sup>58</sup> 16 U.S.C. 4601-5

<sup>59</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14633.

Taylor and other members of both parties placed the hope of the program onto the appropriators and Congress as a whole. Rep. Bob Dole (R-KS) remarked in 1968 not only that the OCS pot “is envisioned to provide an increasing and dependable source of revenue for the fund,” but also to “provide a pool of revenue which the Congress can more conveniently utilize – from a source belonging to all the people, to a fund designed to benefit all the people – a fund building permanent recreation and conservation facilities for generations of Americans to come.”<sup>60</sup> Has Congress lived up to this decades-old commitment?

The answer can only be no. Otherwise, the bipartisan effort to enact CARA in 2000, as a hotly contested presidential election approached, or the efforts, mostly, but not exclusively, by Democrats ten years later to fix the spending side through making it mandatory, would not have occurred. The political reasons, as outlined, are significant.

In recent years, much of the Republican Party has abandoned its conservation roots as personified by Theodore Roosevelt. In a speech in 1907, the president said, “We have tended to live with an eye single to present, and have permitted the reckless waste and destruction of much of our National wealth. The conservation of our natural resources and their proper use constitute the fundamental problem which underlies almost every other problem in our National life.” Explaining the speech, an historian wrote in 2009 that Roosevelt had a “fervent belief that the federal government, not individuals or corporations, was the best steward of the land.” The government could provide the resources and longterm commitment to protection that other entities could not.<sup>61</sup> In 2000, Sen. Larry Craig (R-ID), meanwhile, spoke for many western conservatives in opposition

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<sup>60</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14636.

<sup>61</sup> Brinkley, *The Wilderness Warrior*, 692.

to CARA, when he said, “I will continue to be a strong opponent of an attitude or a philosophy and an effort to fund an attitude and a philosophy that somehow if the Federal Government owns the land, it is going to be better protected.”<sup>62</sup>

Politically, while sometimes supportive of measures within their own states, many Republicans would find systematic land acquisition less of a budget priority, especially compared to park or forest maintenance, firefighting, or other programs. In an era when the party has found success, notably in the 2010 congressional elections that seized the House from the Democrats, in budget austerity and spending reductions, many question land acquisition. Sen. Lisa Murkowski (R-AK), the ranking member of both the Energy and Natural Resources Committee and the Interior Appropriations Subcommittee said at a 2013 hearing:

*Coming from a State where we’ve got close to 70 percent of our lands that are held by the Federal Government, I always approach requests to purchase additional Federal land with some skepticism, and particularly during tough economic times. So I can’t imagine why purchasing more is such a priority. It strikes me as almost counterintuitive that we would be adding more lands to the maintenance list, when the Government already is dealing with such obstacles when it comes to the maintenance of the existing park lands. I do think that this is an area where we would have potential for an agreement that we could update the statute, making it more relevant to our current reality, both from a public lands policy and a budgetary standpoint.*<sup>63</sup>

The budget crunch has made it much more difficult to reauthorize, let alone pass new, programs. As for LWCF, for several years the Republican budget proposal, as authored by Rep. Paul Ryan (R-WI), the chairman of the House Budget Committee, has reduced conservation spending to “focus on paring back unnecessary spending being

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<sup>62</sup> *Congressional Record*, Senate, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, October 4, 2000. S9813.

<sup>63</sup> Senate Energy and Natural Resources Committee hearing, *Supplemental Funding Options to Support the National Park Service*, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, July 25, 2013, S. Hearing 113-82 (Washington, DC: U.S. Government Printing Office), 3-4. Murkowski did note however that “there are at times some sensitive, time-sensitive acquisitions that need to be made. I’d want to make sure that we have a process to include those.”

used to carry out overreaching regulatory expansion” and to “emphasize core government responsibilities, while reducing spending in areas of duplication or non-core functions.” Specifically, “This budget focuses on eliminating the maintenance backlog before moving to acquire additional lands.”<sup>64</sup> It is worth noting that the Senate FY 2014 budget resolution, authored by Sen. Patty Murray (D-WA), the chairwoman of the Senate Budget Committee, contained full funding for LWCF.”<sup>65</sup>

Finally, Congress is hardly able to function under regular order. The appropriations process has fallen apart and many responsibilities are not undertaken, partially solved at the last minute, punted for a later date, or patched over with an extension. For example, the Federal Land Transaction Facilitation Act (FLTFA) was allowed to expire in 2010. The program enabled the Bureau of Land Management to sell identified lands and use the proceeds for high quality land purchases. Because a one-year extension passed four days too late, the FLTFA account lost the roughly \$50 million that had accrued.<sup>66</sup> As has been noted, Democratic appropriators were supportive of the mandatory funding in the CLEAR Act, when many were opposed to it in CARA. Partisanship, committee dynamics, split control of the two chambers of Congress, and ideology all have contributed to a climate of inaction.

The manner of securing a durable extension of the LWCF revenue stream and reliable funding not only will require political savvy to traverse the legislative hurdles described above, but also embodying the three principles that enabled trust funds like

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<sup>64</sup> House Budget Committee, *Concurrent Resolution on the Budget – Fiscal Year 2014*, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, March 15, 2013, H. Rep. 113-17, 54.

<sup>65</sup> Senate Budget Committee, *Concurrent Resolution on the Budget FY 2014*, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, March 2013, S. Print 113-12, 105.

<sup>66</sup> Senate Energy and Natural Resources Committee, *Federal Land Transaction Facilitation Act Reauthorization*, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, June 27, 2013, S. Rep. 113-61, 2.

LWCF to be established in the first place. Any new measure to improve LWCF, as occurred with CARA, the CLEAR Act, and the transportation amendment, assuredly will be attached to another moving piece of legislation with lots of components popular with a diversity of members. Individually, a fix will require the demonstration of a functional crisis or problem, the national economic benefits to be obtained, and congressional authority and participation.

The problems facing the functioning of LWCF have been identified above. The program's revenue stream from offshore revenue will expire at the end of FY 2015. Congressional appropriations have not matched the national or state-based need for recreational needs through land acquisition. Landowners across the country are willing to sell their inholding properties to the federal government for conservation purposes.

The marshaling of economic data is another critical strategy. Federal agencies and other organizations have published reports on the contributions of outdoor recreation to the economy. The 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation found that 90 million Americans aged over 16 participated in wildlife related recreation, including hunting, fishing, and wildlife watching, spending \$144.7 billion, with \$70.4 billion from equipment and \$49.5 billion from travel.<sup>67</sup> The Interior Department reported 417 million visits to its lands in FY 2012, and that this activity added \$45 billion in economic output and supported 374,000 jobs.<sup>68</sup> The Outdoor Industry Association, the trade group representing retailers, manufacturers, and suppliers, published nationwide and state-based statistics for 2012, finding that 140 million

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<sup>67</sup> U.S. Fish and Wildlife Service and U.S. Census Bureau, *2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation* (Washington, DC: U.S. Fish and Wildlife Service, revised February 2014), 4-5.

<sup>68</sup> U.S. Department of the Interior, *FY 2012 Economic Contributions Report* (Washington, DC: U.S. Department of the Interior, July 29, 2013), 10-11.

Americans did some form of recreation, spending \$646 billion, sustaining 6.1 million jobs, and producing nearly \$80 billion in federal, state, and local tax revenue.<sup>69</sup> Continued dissemination of this material is essential to creating the bipartisan support needed to pass LWCF legislation.

Any measure to extend and dedicate LWCF funding requires some form of congressional control. Therefore, as provided for in the CLEAR Act proposal, the appropriations committees should be involved in the yearly allocation of mandatory funds by law or some other public process. Appropriators should be able to divide the pie into slices as they see fit, particularly as LWCF has developed into an umbrella for a variety of components.<sup>70</sup> As noted by Rep. Regula in support of the post-CARA appropriation for FY 2001, “I am pleased, frankly, that in the disbursement of the [money] for State and Federal land acquisition, the responsibility for appropriating this money rests with the Members of this House. We are elected by the people to make policy decisions, and I believe that in this bill we recognize the importance of that role.”<sup>71</sup>

Between the 1980s and 2010, appropriators also had the ability to interest themselves and other members in the spending process through earmarks. These line items in an appropriations bill could be secured by an individual member or delegation to provide an amount of money for a conservation project in his or her district or state. After considering a list submitted in the administration’s budget request, the House and Senate interior appropriations subcommittees would draft lists of their own and eventually

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<sup>69</sup> Outdoor Industry Association, “The Outdoor Recreation Economy,” (Boulder, CO: Outdoor Industry Association, 2012), 2.

<sup>70</sup> Other pieces include the Forest Legacy Program, the Cooperative Endangered Species Conservation Fund, the Highlands Conservation Act, and the Civil War Battlefield Protection Program. In the 2000s the Landowner Incentive Program, Private Stewardship Grants, and State and Tribal Wildlife Grants were funded from LWCF.

<sup>71</sup> *Congressional Record*, House of Representatives, 10<sup>th</sup> Congress, 2<sup>nd</sup> Session, October 3, 2000, H8650.



combine them in conference. In the absence of mandatory funding, the return of earmarking could increase the interest of rank and file members of the House and Senate in the annual funding levels of LWCF and increase the ability of the appropriators to pass bills. It would be more complicated to construct a mechanism of earmarking mandatory funds, though it was attempted in CARA.<sup>72</sup>

### **Conclusion**

The need for strong land conservation policies can be seen in two ways. Americans continue to enjoy their protected public lands with hundreds of millions of visits every year. They also can recall the farm or forest that was there before the tract was developed into houses, shopping centers, or other uses. The park will always be there, but the second is lost. The Forest Service reported that annual development of private forestlands surpassed 1 million acres nationwide in the mid-1990s.<sup>73</sup> Inholdings dot the landscape of federal lands and their acquisition prevents the development of homes in the most incongruous of places, like in the middle of Zion National Park in Utah.<sup>74</sup>

By enshrining trust into land conservation, Congress and the American people are expressing that they want these inholdings and tracts with important natural resources like clean drinking water, recreational opportunities, and wildlife habitat to be protected.

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<sup>72</sup> In the Senate-committee passed version of CARA, even though all \$2.9 billion in the bill was mandatory, a provision made sure they would only become available after Congress approved the federal side of LWCF, set at \$450 million a year, “in an Act making appropriations.” This was ostensibly for earmarking or oversight purposes. Critics argued in a dissent that the spending would be either filled indiscriminately (without considering their “value and justification”) in order to access the other funds or blocked by others “conversely motivated” to topple the whole process. *Conservation and Reinvestment Act of 2000*, S. Rep. 106-413, 2, 26-27, 65-66.

<sup>73</sup> Susan M. Stein et al., *Forests on the Edge: Housing Development on America’s Private Forests* (Portland, OR: U.S. Forest Service, May 2005), 5.

<sup>74</sup> Brandon Loomis, “Will Posh Subdivision Spring Up in Zion National Park?” *Salt Lake Tribune*, July 8, 2012.

It is also a measure of offsetting the diminishment of non-renewable resources (offshore oil and gas) with the protection of other critical and accessible resources. With a related and convenient funding source available, a trust fund is an effective means of providing this federal activity.

Congress created the Land and Water Conservation Fund in 1964 to improve the functionality of federal and state recreation programs, especially concerning land acquisition, by collecting, as of 1968, offshore development receipts, stimulate national economic growth through the acquisition of land to increase public access to existing lands, protect natural resources, and expand opportunities for recreation, and secure congressional interests and powers via program oversight, project approval, and the appropriations process. As Secretary Udall wrote in 1963, “The quiet crisis demands a rethinking of land attitudes, deeper involvement by leaders of business and government, and methods of making conservation decisions which put a premium on foresight.”<sup>75</sup> These means will be the manner in which LWCF is reauthorized and provided sufficient, dedicated, and reliable funding.

LWCF has problems on both the spending and the revenue sides. A massive deficit of spending has shortchanged the program, allowing tracts from willing sellers to be developed or fragmented. The revenue side expires in 2015. Trust funds are valuable means of governance, through their rules, reliability, and return on investment. The Land and Water Conservation Fund must be preserved.

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<sup>75</sup> Udall, *The Quiet Crisis*, 182.

## **Chapter 4: Trust Funds and their Consequences**

The appropriations process is both a powerful privilege and a complex chore that Congress undertakes every year. It is a constitutional prerogative that can productively consume lawmakers, as twelve spending bills must be outlined, written, and compromised, or can hang over the two chambers like a dreadful knot laced with assured failure. No matter the circumstances, it is one of the most impactful duties of the legislative branch.<sup>1</sup>

In the American political system, Congress holds the power to spend – as it holds the power to tax – because it was established and organized to be best positioned to shine the sunlight of representation into the mixture of self-government. Though an elected executive is better than the monarchy from which American revolutionaries sought independence, a regularly elected assembly best provides for the open discussion of national finances and forces a constant evolution of priorities. The arrangement cements the people’s oversight of the government through their representatives and makes resultant policy flexible to their perceived wishes.<sup>2</sup>

Through the decades Congress has created trust funds for specific governmental purposes. These activities are not necessarily removed from congressional oversight through the annual appropriations process, committee review, or reauthorizations, but are afforded separate Treasury accounts. This gives the program some level of prominence within the government and the Washington lobbying community. Proponents of a trust

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<sup>1</sup> Aaron Wildavsky, *The Politics of the Budgetary Process* (Boston: Little, Brown and Company, 1964), 56-57.

<sup>2</sup> James Madison wrote in Federalist 58: “This power over the purse may, in fact be regarded as the most complete and effective weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

fund have a legislative history in their favor that aids their argument for program operation, improvement, spending, and continuation.<sup>3</sup> Payments into the system and the expected benefit, whether a check, a construction project, or a better protected park, constitute the trust that bonds the program, politicians, groups, and the public together. Lastly, trust funds enable a current set of lawmakers, and their constituents and policy backers, to use their collective political power not only to achieve an immediate legislative victory, but also to provide an amount of government commitment that will presumably last longer than their terms and hopefully their careers.<sup>4</sup>

However, not every program can be a trust fund and trust funds are not innately and forever perfect. For more than a decade, trust fund receipts make up about 50 percent of all federal revenues, making them a massive component of the budget.<sup>5</sup> In order to retain fiscal flexibility, Congress is reluctant to create more of these programs.<sup>6</sup> Using the Highway Trust Fund (HTF) and the Land and Water Conservation Fund (LWCF) as examples, what are the political counterarguments and structural drawbacks of trust funds?

Four consequences will be presented: trust makes programs more permanent; alternative policy proposals are left behind without trust; the congressional budget process is hindered by revenue earmarking; and the trust expected by the public is not actually possible. If a trust fund makes it through Congress, these conditions, along with politics, will have caused compromises that reduce the overall level of trust, inevitably

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<sup>3</sup> Patashnik, "Unfolding Promises," 432, 437.

<sup>4</sup> Moe, "The Politics of Structural Choice," 124.

<sup>5</sup> U.S. General Accounting Office, "Federal Trust Funds and Other Earmarked Funds" (Washington, DC: U.S. General Accounting Office, January 2001), 5. Social Security and Medicare are the largest trust fund programs.

<sup>6</sup> Patashnik, "Unfolding Promises," 440.

affecting the program's reliability. As this paper is favorable to trust funds, these arguments will be rebutted, in the overall conclusion.

First, trust funds, as with many other government programs, rarely go away. They are created to solve problems, yet always seem to be in need of more revenue, more spending, a longer authorization, or an expanded portfolio. They become ingrained in the federal budget system, are heavily relied upon by the public, and are demanded by the interest groups that benefit from them. Simply put, trust funds are built to last, and that is an uncomfortable thought, especially to a conservative or incrementalist budgetary point of view.

Second, trust funds favor one activity over viable alternatives. For example, while a large postwar investment in highway construction was essential, a trust fund mechanism contributed to the diminishment of other transportation modes and hindered competition. It took several decades for the federal government to catch up or begin investments in passenger railroads and metropolitan transit programs. This favoritism can have significant policy impacts.

Third, trust funds complicate the federal budgeting and appropriations process. They tie specific revenues to specific programs and lessen Congress' ability to properly and flexibly budget and spend money from one fiscal year to the next. Trust creates the expectation that Congress must fund the program fully, instead of the hope that Congress in its discretion could provide robust funding. Subsequent pushes to make these programs mandatory only contribute to larger and significant budget pressures from entitlement or automatic programs.

Fourth, while trust funds connect users in the direct revenue-to-appropriation mechanism, it is very difficult to legally achieve the trust that is expected in and outside of Washington. Trust funds do not necessarily feature mandatory funding (where money is spent in an authorization without requiring an appropriation). There is no guarantee of full revenue or spending from one year to the next. Trust funds like the HTF and LWCF are subject to the annual appropriations process and the larger difficulties and vagaries of the congressional calendar.

### **Literature Review**

Change in American politics is always present. A democratic system creates imbalances, chances for victory and defeat, and a constant need to monitor the mood of the voters and political circumstances, by politicians, a free press, and individuals. An ascendant group now may certainly well be tomorrow's loser, and vice versa.<sup>7</sup> The appropriations process, when it works, mirrors this dynamic. Each year Congress conducts oversight and sets a new level of funding determined from the previous year's levels. A once-favored program may suffer a decrease and a maltreated program may suddenly be needed and receive a new infusion of vitality. The appropriations process can build long lasting changes with far-reaching impact, ranging from funding medical research to a new aircraft carrier, but it still lives and struggles with the contemporary political micro- and macroclimate on Capitol Hill. Political leadership, party control, and subcommittee cardinals come and go, and there is always next year.

The appropriations committees were very powerful in the postwar era. In 1966, Richard Fenno found that congressmen not only respected the committee for its

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<sup>7</sup> Moe puts it slightly differently: "Political uncertainty is inherent in democratic government." Moe, "The Politics of Structural Choice," 136, 146.

substantial annual workload and finished product, but also that “favorable images of the group are rooted as much in fear and caution as they are in love and affection.” Jealousy played a role in the committee’s power, which kept those in good standing hoping for seat on the panel, yet conversely “helps account for the vicarious delight which Members experience when someone succeeds in overthrowing the Committee on the floor.”<sup>8</sup> Power was retained through bipartisan granting of favors and solidarity. Committee strife would leave decision-making to the whole house, lowering the chance that preferred “elaborations” would survive the amendment process. Meanwhile, “a committee that is unified becomes singularly persuasive.”<sup>9</sup>

Fenno described the play of expectations between the committee and the full chamber. As the appropriators needed to retain their favor with the authorizers (as well as the public), while “the Committee is not expected to appropriate every last nickel requested...it is not expected to vote so little money that the program, as conceived by the House, cannot survive.”<sup>10</sup> House appropriators viewed themselves as guardians of the federal purse; Fenno wrote that their job “is to resist temptation.” However, guardianship became more difficult when faced with detailed program cuts or in dealing with the Senate: “While many are in favor of reduced expenditures, far fewer are willing or able to specify the exact areas in which reduction should take place.” Congressmen felt that senators favored using increased spending to take care of each other.<sup>11</sup>

A trust fund is one way of surpassing this annual struggle and increasing predictability. According to Terry Moe, as “no one has a perpetual hold on public

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<sup>8</sup> Richard F. Fenno, Jr., *The Power of the Purse: Appropriations Politics in Congress* (Boston: Little, Brown and Company, 1966), 31-32.

<sup>9</sup> Fenno, *The Power of the Purse*, 95-96.

<sup>10</sup> Fenno, *The Power of the Purse*, 7.

<sup>11</sup> Fenno, *The Power of the Purse*, 100-101, 11.

authority nor, therefore, a perpetual right to control public agencies,” enforcement mechanisms are essential for long-lasting schemes. Faced with the inevitability of the opposition eventually reaching power, “given the way authority is allocated and exercised in a democracy, this often means building agencies that are insulated from public authority in general – and thus from formal control by the group itself.”<sup>12</sup> The urge is to use power now to make it more difficult to change later. As Eric Patashnik wrote, “Fearing that their programs will be vulnerable to the interventions of successor politicians, winning coalitions try to institutionalize their preferences.”<sup>13</sup>

In addition to securing a political legacy for a government activity, trust funds in the short term reduce competition. By securing a funding source for that activity and making spending more direct, one walls that money off from other suitors. If political actors “can define their benefits as trusts,” argued Irene Rubin, “they can prevent the possibility of a future erosion of benefits resulting from tradeoffs with other expenditures that later seem more important.” To Remark on the various legislative means that provide political insurance for programs, Rubin wrote, “One cannot understand these adaptations and the direction of change without appreciating the intensity of competition that underlies them.”<sup>14</sup> As with securing future commitments, the reduction of competition is an assertion of political power. By earning their victory, “trust fund clienteles...regard themselves as more worthy and morally deserving than the

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<sup>12</sup> Moe, “The Politics of Structural Choice,” 136.

<sup>13</sup> Patashnik, “Unfolding Promises,” 434.

<sup>14</sup> Irene S. Rubin, *The Politics of Public Budgeting* (Chatham, NJ: Chatham House Publishers, Inc., 1997), 140, 171.



beneficiaries of other government programs.”<sup>15</sup> Politicians, groups, and other interests look upon the victors with an eye of jealousy, and the winners know it.

If trust foils the budgetary competition, the distributive nature of the HTF and LWCF helps to reduce the political competition. A new bridge or park expansion project was historically sufficient to satiate a hesitant congressman. Accommodation can be made for the required number of interests. “When a billion-dollar issue can be disaggregated into many millions of nickel-dime items,” wrote Theodore Lowi, “and each item can be dealt with without regard to the others, multiplication of interests and of access is inevitable, and so is reduction of conflict.”<sup>16</sup> These types of programs also increase the power of the relevant authorizing and appropriations committees, where much of the legislating over these programs has occurred.

However, the desire to increase program certainty by securing longevity and reducing competition has significant drawbacks. During times of constraint, it is much more difficult to reduce an entitlement or mandatory spending programs. Doing so would break the trust and presumably unleash a backlash from beneficiaries. Therefore, they leave fewer responses available to policy makers. According to Aaron Wildavsky and Naomi Caiden, “where classical budgeting is mostly about modifications of the budgetary base (increments up or down), entitlements guarantee a permanent base, thus foregoing flexibility.” By letting its spending authority slip away to apparently promote effectiveness, Congress is reducing its own functionality. “Entitlements,” they wrote, “posed the grim possibility that Congress would not be deemed responsible enough to hold the purse strings, the main fact and symbol of its power.” Eventually the positive

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<sup>15</sup> Patashnik, “Unfolding Promises,” 445.

<sup>16</sup> Lowi, “American Business, Public Policy, Case Studies, and Political Theory,” 690, 692.

benefit of creating a lasting program would be outstripped by a damaging congressional inability to regulate both itself and the program.<sup>17</sup> Additionally, Lowi found distributive programs to be troublesome. Reflecting on the overall manner in which these Keynesian outbursts are cooked, he asserted, “nothing open and democratic can come of them.”<sup>18</sup>

While budgetary problems do actually haunt a noticeable part of the electorate, entitlements and other trust programs are products of public support for an activity, especially those that are large and complicated. As these type of bills “typically entails a loss of policy discretion...battles over new trust funds are often hard fought” and usually fail. Those that survive almost always feature compromises that even include “internal tensions” resulting from “their creation by actors with competing goals” and multiple motivations.<sup>19</sup> Political leadership is needed to craft legislative language, assuage interests, work with other end of Pennsylvania Avenue, and obtain votes, but even those skills cannot go far without significant public support.

The structure of a trust fund is a result of the contemporary political environment.<sup>20</sup> When crafting the Social Security Act, New Dealers, desirous of landmark laws, not only cared about longevity, but also were always wary of the conservative Supreme Court, which was then actively overturning enacted legislation. The linkage of payroll taxes to benefits became a means of avoiding a similar fate. As the story went, Justice Harlan Stone whispered “the taxing power, my dear, the taxing power” to Labor Secretary Frances Perkins at an afternoon tea in 1934.”<sup>21</sup>

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<sup>17</sup> Aaron Wildavsky and Naomi Caiden, *The New Politics of the Budgetary Process* (New York: Longman, 1997), 165.

<sup>18</sup> Theodore Lowi, “Four Systems of Policy, Politics, and Choice,” *Public Administration Review* 32, Issue 4 (July/August 1972): 308.

<sup>19</sup> Patashnik, “Unfolding Promises,” 440-441.

<sup>20</sup> Patashnik, “Unfolding Promises,” 445.

<sup>21</sup> Kirstin Downey, *The Woman Behind the New Deal* (New York: Anchor Books, 2009), 236.

Lastly, by setting aside revenues and creating these funds, Congress leaves itself open to lobbying to make new ones. This lobbying is on top of the already continuous press for appropriations for programs favored by constituents or interests.<sup>22</sup> As Sen. Gordon Allott (R-CO) noted about LWCF, “we shall be extending an invitation to every group in the country, which believes it has a worthy cause, to find some income of the Government completely unrelated to the cause, and say that all the money shall go into a fund for that purpose.”<sup>23</sup> In announcing his opposition to Dwight Eisenhower’s corporate bill for highway finance, Sen. Harry Byrd (D-VA), the Finance Committee chairman, wrote that “If the federal government can properly borrow money for roads in this fashion, without regarding it as a debt, and spend it without budgetary control, it may be expected that similar proposals will be made for financing endless outlays which may be desirable for education, hospitals, public health, etc.”<sup>24</sup> Public or interest group support for a trust fund needs mass and political cunning to overcome the competition.

### **The problem and the program never go away**

Trust funds formed a significant part of governance in the middle part of the twentieth century from the 1930s to the 1970s. During that time, according to Patashnik, “the scope of conflict over the budget was muted by the backdrop of the Cold War, the distributive nature of many spending programs..., and the existence of large numbers of political moderates in Congress.” Largely due to the devotion by liberals to and the acceptance by moderates of the Keynesian economic principles, in which national fiscal policy should shape the economy and set the direction towards prosperity, employment, and stability, “a rough ideological consensus existed among politicians over many taxing

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<sup>22</sup> Roy T. Meyers, *Strategic Budgeting* (Ann Arbor: The University of Michigan Press, 1994), 138, 140.

<sup>23</sup> *Congressional Record*, Senate, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 12, 1964, 19104.

<sup>24</sup> *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, January 18, 1955, 473.

and spending issues.”<sup>25</sup> Fiscal activism was popular across the political spectrum because it meant making progress on defense, transportation, education, research, social programs, or any other favored endeavor.

While Keynesian fiscal policy has generally been superseded by monetary control of the economy by the Federal Reserve,<sup>26</sup> it has not been totally scotched. In the ascendant in 2009 as the economy was in complete tatters, Barack Obama and congressional Democrats returned to their modern roots forged in the 1930s and “airlifted record amounts of Keynesian stimulus out of the Treasury to resuscitate demand.”<sup>27</sup> Republicans wanted nothing to do with such a policy, and have attacked it vigorously ever since.

With this broader change in political fiscal and economic policy, trust funds, mandatory programs, and entitlements have a target across them. By placing more of the budget into trust or entitled track, they become permanent. Concerning LWCF, its proponents have sought to increase its priority through a trust fund with offshore development, increased authorization ceilings, and mandatory spending. The program is needed as long as Americans want to access to outdoor recreation, there are inholdings in federal units that complicate management, and there are tracts with finite natural resources facing irrevocable development and conversion.

To opponents it becomes a never-ending cycle of reckless spending. When will the current status be sufficient? How many times must proponents return to Congress to

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<sup>25</sup> Eric M. Patashnik, “Budgeting More, Deciding Less,” in *Seeking the Center: Politics and Policymaking at the New Century*, ed. Martin A. Levin, Marc K. Landy, and Martin Shapiro (Washington, DC: Georgetown University Press, 2001), 37.

<sup>26</sup> Patashnik, “Budgeting More, Deciding Less,” 36.

<sup>27</sup> Michael Grunwald, *The New New Deal: The Hidden Story of Change in the Obama Era* (New York: Simon & Shuster, 2012), 13.

fix a conservation program that has already been given an elevated status? In 1964, Sen. John Stennis, (D-MS) commented that “there is no reason to provide another exception” to the appropriations process. Sen. Frank Church (D-ID) responded, “If we were ever to do the job the way it needs to be done, we should have to find special sources from which to finance the program.”<sup>28</sup> And the program was created, offshore receipts were added in 1968, the ceiling was increased to \$900 million in 1976, and the fund was reauthorized in 1987. Upon recommending another 25 years for LWCF, a Senate committee judged that “Few programs in the area of natural resource protection and recreation have been as successful.”<sup>29</sup> When Congress was considering making LWCF and other conservation programs mandatory in 2000, a Republican-controlled Senate committee wrote, “Legislation is needed now to ensure that adequate funds are made available to meet the recreational needs of the ever increasing population of the United States in recognition that ‘space for outdoor recreation which may become, correctly or mistakenly, have been thought abundant is becoming scarce.’”<sup>30</sup> Thus it seems the only way to make it perfect is to remove congressional oversight and let it run automatically with the administration likely making decisions about acquisition priorities. That prospect is highly disconcerting to opponents.

The response from conservatives has been to prevent the growth and strengthening of LWCF. In 2000, Rep. Richard Pombo (R-CA) opposed the mandatory bill “because the system that we are force-feeding this money into is broken” and that

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<sup>28</sup> *Congressional Record*, Senate, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 12, 1964, 19108-19109.

<sup>29</sup> Senate Energy and Natural Resources Committee, *Reauthorization of the Land and Water Conservation Fund*, 100<sup>th</sup> Congress, 1<sup>st</sup> Session, June 11, 1987, S. Rep. 100-68, 1.

<sup>30</sup> Senate Energy and Natural Resources Committee, *Conservation and Reinvestment Act of 2000*, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 14, 2000, S. Rep. 106-413, 24. The report quotes Senate Interior and Insular Affairs Committee, *Land and Water Conservation Fund Act*, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 10, 1964, S. Rep. 1364, 5.

government overreach is prevalent.<sup>31</sup> It already owned too much land. In 2009, Sen. Thad Cochran (R-MS), then the ranking member of the Appropriations Committee, told his colleagues that while he backed some acquisitions in his state “to incorporate important resources” into national parks or “preserve sensitive habitats” at national wildlife refuges and forests, he was troubled by moves to make such funding mandatory. “This is just one example,” he continued, “of why Congress should consider programs on an annual basis through an open process rather than putting programs on autopilot and then struggling against the tide of entrenched interests to react when things do not go as planned.”<sup>32</sup> In 2012 House Republicans successfully removed in conference a Senate-passed provision in the MAP-21 transportation legislation that would have provided \$1.4 billion in mandatory funds over two years while extending LWCF’s authorization by seven years.

Another problem is Congress’ willingness to add new parks and refuges to their respective systems and then complain that more land must be acquired. In this view, instead of outside forces like rising land prices being responsible, Congress exacerbates the problem. Indeed, stopping park bills has become an easier activity in recent years. However, for decades, park bills were popular. They were specific demonstrations of political prowess in Washington matched with concern for unique local history and economic development. LWCF supporters frequently used the threat of stopping these bills to gain wider acceptance of more funds. When Rep. Joe Skubitz (R-KS) said, “We must either increase the funds available to be appropriated from the land and water

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<sup>31</sup> *Congressional Record*, House of Representatives, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 2000, H2828.

<sup>32</sup> *Congressional Record*, Senate, 111<sup>th</sup> Congress, 1<sup>st</sup> Session, November 19, 2009, S11579.

conservation fund or we must stop authorizing the acquisition of lands and waters for park and recreation facilities,” most voted for higher funding.<sup>33</sup>

### **Alternatives do not get same treatment**

The dedication of specific revenues to a program can have adverse effects on other related activities. The act confers upon the activity congressional favor at the expense of others alternatives. Afterwards legislators and the public may feel that the problem is satisfactorily resolved and not in need of review for a significant period of time. Without congressional review, original defects may not be addressed and legitimate alternatives may be buried. Corrective measures may be harder to pass, given the threat to the system as established or the additional time needed for the public to believe they are necessary after all.

Starting in 1956, the HTF has constructed the interstate system and – eventually – funded transit programs. The first authorization was set at \$25 billion; but by the early 1990s when the interstates were completed, the total federal cost had ballooned to \$114.3 billion.<sup>34</sup>

Drivers appreciated the investment in highways, but what was the outcome for national policy? “The national Interstate system,” wrote J. Ronald Oakley, “made travel easier, safer, faster, and more convenient and helped unify the nation as it had never been unified before.” However, the road spending spasm “also committed the nation to a system of transportation based on the private automobile for traveling and on trucks for shipping.” It almost became an addiction, for “in spite of all the disadvantages of the growth of the automotive society, the average American [in the 1950s] was convinced

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<sup>33</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14629.

<sup>34</sup> House Public Works and Transportation Committee, *1991 Interstate Cost Estimate*, 102<sup>nd</sup> Congress, 1<sup>st</sup> Session, July 1991, Committee Print 102-10, 1.

that his automobile was a part of his life that he could not live without.”<sup>35</sup> According to Kenneth Jackson, “The inevitable result of the bias in American transport funding...is that the United States now has the world’s best road system and very nearly its worst public-transit offerings.” In the future American cities would more resemble Los Angeles, with “its vast, amorphous conglomeration of housing tracts, shopping centers, industrial parks, freeways, and independent towns [that] blend into each other in a seamless fabric of concrete and asphalt” than more compact cities like New York or Boston. The hastening of suburbanization, which truly began with trolleys and commuter railroads, was a major outcome of the highway focus. To Jackson, “the secret of its success,” the construction of the “concrete colossus,” across America, “lay in the principle of non-divertibility of highway revenues collected from gasoline taxes.” It was the Highway Trust Fund.<sup>36</sup>

To Lewis Mumford, the highway plan was a disaster:

*When the American people, through their Congress, voted a little while ago for a twenty-six billion dollar highway program, the most charitable thing to assume about this action is that they hadn’t the faintest notion of what they were doing. Within the next fifteen years they will doubtless find out; by that time it will be too late to correct all of the damage to our cities and our countryside, not least to the efficient organization of industry and transportation, that this ill-conceived and preposterously unbalanced program will have wrought.*<sup>37</sup>

The car and readily accessible highways stretching out into suburbs and away from cities, Mumford believed, “will, eventually, wipe out the very area of freedom that the private motor car promised to retain for” Americans. In looking to escape crowded cities for a patch of relief in an existing suburb or in the countryside in a spot several

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<sup>35</sup> Oakley considered cars more integral to life in the 1950s than the television set, which perhaps conquered all in the 1960s. Oakley, *God’s Country*, 244-246.

<sup>36</sup> Jackson, *Crabgrass Frontier*, 250.

<sup>37</sup> Lewis Mumford, “The Highway and the City,” in *The Highway and the City* (New York: Harcourt, Brace & World, 1963), 234.



years away from the now inevitable conversion to suburb, the driver finds the roads more crowded than he or she expected to find. That promise had only brought sacrifice, in time behind the wheel, in expense to buy, maintain, and fuel a car, in “the sum of money it costs to keep this whole system running,” and the subsequent deficient spending on other local needs like police, libraries, schools, and parks. The driver, “demented with passion,” would find his car to be “a capricious mistress who promises delights” – the open road and quick mobility – that “he can only occasionally enjoy.”<sup>38</sup>

Transportation to Mumford was about efficiency and choice. It was not, as he suspected it was for highway engineers and congressmen, a “purpose of providing suitable outlets for the motorcar industry.” However the monopoly of the car in American society, to the detriment of the railroad, subway, or other means, compounded by the federal support of interstate construction, has “crippled the motorcar, by placing on this single means of transportation the burden for every kind of travel. Neither our cars nor our highways can take such a load.” With no alternative remaining, the highway had sealed its own fate of perpetual congestion.<sup>39</sup>

While the interstate system was easy to build in rural areas, it proved difficult to construct in metropolitan areas, often where need was the greatest. “The building of a public work,” wrote Robert Caro, “shapes a city perhaps more permanently than any other action of government. Large scale public works shape a city for generations.” Where would the interstates go in cities: along rivers, through solid neighborhoods, underground, above ground, parallel to avenues, unrelated to the street grid, or in parks? Under the direction of Robert Moses, who was New York’s czar of public works for

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<sup>38</sup> Mumford, *The Highway and the City*, 234-235.

<sup>39</sup> Mumford, *The Highway and the City*, 235-236.

decades, all were options. Because of federal money flowing to the states and cities for expressway construction, power accumulated in planning agencies and city halls and decisions were quickly made. In the case of East Tremont, a working class neighborhood facing bisection by the Cross-Bronx Expressway, “neighborhood feelings, urban planning considerations, cost, aesthetics, common humanity, common sense – none of these mattered in laying out the routes of New York’s great roads. The only consideration that mattered was Robert Moses’ will. He had the power to impose it on New York.”<sup>40</sup>

But that would change, and so would the HTF. By the 1970s urban expressway projects were being rejected in many cities, including Boston, New York, Baltimore, Washington, Memphis, and New Orleans. Proponents of highway projects were tossed out of office. For example, the change in public attitudes towards expressways in Baltimore impacted the Maryland congressional delegation for a generation. Rep. George Fallon, who was a chief House backer of the 1956 interstate legislation and running for a fourteenth term in 1970, was defeated in the Democratic primary by Paul Sarbanes, who went on to have a 36-year career in the House and Senate. In the days before the defeat, Fallon told reporters “I had thought my name would go down in history because of the interstate bill. Now highways seem to be unpopular.”<sup>41</sup> Another Maryland political legend, Sen. Barbara Mikulski, got her start by opposing the proposed construction of Interstate 83 through her East Baltimore neighborhood. The Democrat, who was first elected to the House in 1976, is now the longest serving female in congressional history.

National leaders, like John Volpe, a Transportation Secretary under Richard Nixon, began arguing for a balanced policy. According to Tom Lewis, “Volpe

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<sup>40</sup> Caro, *The Power Broker*, 753, 878, also 864-865.

<sup>41</sup> R.W. Apple, Jr., “Baltimore Vote Tests 2 in House,” *New York Times*, September 15, 1970.

understood that the country could not depend on a single form of transportation, that there would have to be highways, rail lines, trolleys, and subways in cities, and airplanes for long distances.”<sup>42</sup> Construction no longer reigned as the sole use of HTF outlays. After arduous negotiations, Congress allowed cities to use funds for bus and rail projects in 1973.<sup>43</sup> Ten years later, the Mass Transit Account within the HTF was created, codifying the principle. The House Ways and Means Committee explained the change:

*Rail and bus transit systems move millions of people daily. They complement and are interdependent with highways in moving people and goods efficiently and economically in and around urban areas. Capital investment in these systems has not kept pace in recent decades with growth requirements or the deterioration of the existing capital structure.*<sup>44</sup>

Under the HTF’s original restrictions, transit programs suffered. The pro-highway lobby was vociferously opposed to these additional uses for the fund. But the damage was done to metropolitan areas around the country. In New York, in the decade after Robert Moses submitted a new master construction plan in 1955, Caro reported, “public investment in new highways in and around New York was about \$2,700,000,000. The public investment in new mass transportation facilities was a small fraction of this amount. During this decade, 439 miles of new highways were built – and not one mile of new railroad or subway.”<sup>45</sup>

### **Earmarking of Federal Revenues**

In 1946 Congress passed a reorganization act to streamline its committees, improve its operations, and better accommodate America’s new eminent position in the

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<sup>42</sup> Lewis, *Divided Highways*, 232.

<sup>43</sup> Lewis, *Divided Highways*, 233; *Federal-Aid Highway Act of 1973*, Public Law 93-87, August 13, 1973, sec. 121.

<sup>44</sup> House Ways and Means Committee, *Highway Revenue Act of 1982*, 97<sup>th</sup> Congress, 2<sup>nd</sup> Session, December 6, 1982, H. Rep. 945, 32.

<sup>45</sup> Caro, *The Power Broker*, 930.

postwar world. A special committee concluded, in words that would resonate exceptionally well with politically disgusted Americans today, “our legislative machinery and procedures are by common consent no longer competent to cope satisfactorily with the grave and complex problems of the post-war world.”<sup>46</sup> In one provision, Congress sought to recover a sliver of its budgeting power from the onslaught of war and New Deal-related measures that had given Franklin Roosevelt commanding authority across the domestic, economic, and defense realms. It instructed the appropriations committees to study “existing permanent appropriations with a view to limiting the number of permanent appropriations and recommend...what permanent appropriations, if any should be discontinued.”<sup>47</sup> The triple repetition made the target of the survey clear and that Congress would be suspicious of bills that bypassed the appropriations process or earmarked revenues.<sup>48</sup>

In the immediate postwar era, a supporter of federal commitment referred to the alignment of revenue with spending as trust. Opponents called it earmarking. This version of earmarking must not be confused with the later practice of listing specific project funding amounts as line items in appropriations reports. Neither legislative act establishing the HTF nor LWCF created a permanent appropriation, as contemplated in 1946, but they both were perceived as hindrances on the ability of appropriators to make their decisions in the traditional manner. In the end, most appropriators voted for the bills and conference reports on the floor, but only after they successfully altered them to retain their spending and legislative powers.

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<sup>46</sup> Special Committee on the Organization of Congress, *Legislative Reorganization Act of 1946*, 79<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 31, 1946, S. Rep. 1400, 2.

<sup>47</sup> *The Legislative Reorganization Act of 1946*, Public Law 79-601, August 2, 1946, Sec. 139d.

<sup>48</sup> The special committee report noted that in FY 1946 a total of \$5.6 billion was covered by permanent appropriation authority. *Legislative Reorganization Act of 1946*, S. Rep. 1400, 5.

Conservative Republicans, especially Sen. Robert Taft (R-OH), were dismayed by revenue earmarking for trust funds. Concerning a 1950 Social Security expansion, Taft argued that “social insurance is not, in fact, insurance. It is not anything in the world but the taxing of people to provide free services to other people.”<sup>49</sup> Though conservatives were thrilled by his election in 1952, and he appreciated their political credentials, President Eisenhower pragmatically retained New Deal structures of his predecessors.<sup>50</sup> For example, he approved an expansion of Social Security to ten million new recipients in 1954.<sup>51</sup> The creation of the HTF is partly a story of Republicans overcoming their historical objections to earmarking revenues.

While the desire for highways was overwhelming, neither party had consensus on the means when the most relevant debate concerning highway finance occurred in 1955. The administration’s corporation plan dismayed Democrats and befuddled some Republicans for its removal of the construction program from normal congressional oversight. It presumably would have appalled Sen. Taft.<sup>52</sup> At several points that year, every highway bill presented resembled a deer trapped in the headlights. The president’s bill collapsed in the Senate on May 25, and the House failed to pass Democratic *and* Republican alternatives on July 27.

However, everyone agreed a big bill was necessary. As Sen. Edward Martin (R-PA), the ranking member of the Public Works Committee, stated in defense of the president’s bill, “The economical way to build the entire system is to plan it and construct

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<sup>49</sup> *Congressional Record*, Senate, June 14, 1950, 8586.

<sup>50</sup> Ambrose, *Eisenhower: Soldier and President*, 346, 545.

<sup>51</sup> *Social Security Amendments of 1954*, Public Law 83-761, September 1, 1954; Joseph A. Loftus, “President Signs Law Extending Social Security to 10,000,000,” *New York Times*, September 2, 1954.

<sup>52</sup> Taft had died in 1953. Sen. Francis Case (R-SD) referenced Taft in his defense of congressional control over interstate spending. He was followed by Sen. Robert Kerr (D-OK), who took a less serious approach to his memory and imagined Taft’s chagrin upon “look[ing] down from Valhalla, where I know his soul is in eternal security.” *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, May 25, 1955, 7014.

it as an entire project, rather than to sprinkle an inadequate amount over the whole system in a partial and patchwork program.” In a telling remark about congressional willingness to create a new type of funding structure, Martin subsequently explained the corporate plan “as a proper and convenient vehicle, to which can be channeled and dedicated the portion of the Federal gasoline tax needed to pay for the interstate construction program.”<sup>53</sup>

Martin was describing what became the HTF, except, critically, Congress controlled it, not a corporation. Control was the vital issue. Sen. Francis Case (R-SD) raised the issue on both the spending and revenue sides. Reflecting on the New Deal agency, Case said, “the [Tennessee Valley Authority] never was given the power proposed” by the administration. “The TVA, if it wanted construction funds, had to come to the Congress and ask for construction money.” On the revenue side, “the gasoline tax is not a revenue earned by the corporation...the gasoline tax is a revenue of the Treasury,” an institution within Congress’ legislative grasp.<sup>54</sup>

Unlike the Senate, which could not constitutionally originate revenue measures, the House tackled full on, in the words of Rep. George Fallon (D-MD), “this distasteful but all important aspect of the problem” of providing dollars to match the heavy expenditures needed over time for a national system.<sup>55</sup> In summarizing his bill, Fallon, the chairman of the roads subcommittee, noted that “putting the road program on a pay-as-you-go basis meant imposing taxes to help pay the bill.” Not surprisingly these taxes were controversial and, according to one observer, “from the day of [their] introduction...there occurred one of the most intense pressure campaigns observed on

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<sup>53</sup> *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, May 25, 1955, 6993-6994.

<sup>54</sup> *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, May 25, 1955, 7010.

<sup>55</sup> *Congressional Record*, House of Representatives, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, July 26, 1955, 11531.

Capitol Hill for many years. The trucking, oil, rubber, and certain allied interests, it appeared, worked unceasingly to arouse sentiment against the tax provisions.”<sup>56</sup> Yet, Fallon stated, with foresight, the “importance” of the revenue provisions “stems from the fact that our committee is firmly convinced that if there is no means provided for financing the road program there will be no law establishing such a program.” Though the bill did not create a trust fund, which had not been contemplated by that point, it did “establish the principle of the user charge, which is a great step forward.”<sup>57</sup>

As consensus around a trust fund coalesced in 1956 after the previous year’s failures and before the November elections, a dwindling few remained concerned about the consequences. Rep. Eugene McCarthy (D-MN) criticized the proposal from the left. While drivers would benefit from spending derived from a gas tax, he argued such a sales tax was regressive: “The effect of having a substantial outlay of government funds financed by a user or sales taxes is to cause the burden to fall on those less able to pay to a greater degree than at present.” Instead, the program should be financed from general revenues, particularly the progressive income tax. “The federal tax system should continue to depend principally on progressive taxes,” he concluded, “to compensate for regressiveness at lower levels of government instead of abetting this regressiveness through the imposition of additional excise taxes.”<sup>58</sup> He still voted for the bill.

Meanwhile, a contributor to the *New York Times* attacked the scheme from a conservative point of view. The author wrote, “Most constitutional experts long have opposed earmarked taxes because they tend to destroy control over the budget.” The

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<sup>56</sup> John M. Martin, Jr, “Proposed Federal Highway Legislation in 1955: A Case Study in the Legislative Process,” *Georgetown Law Journal* 44 (1956), 252.

<sup>57</sup> *Congressional Record*, House of Representatives, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, July 26, 1955, 11533-11534.

<sup>58</sup> *Congressional Record*, House of Representatives, 84<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 27, 1956, 7213-7214.

practice damaged review and oversight, but also cemented inflexible arrangements backed by powerful advocates. “These students contend,” continued the commentator, “that such a system tends to create permanent interests and commitments for spending that are hard to disturb. They say such a system makes it difficult for a given budget to respond to the needs of the time for which it is being drafted.”<sup>59</sup>

Despite these last-minute objections, the bill passed and America had its interstates. As a piece in a popular magazine began, “This year you’ll be able to hop into your car, set your speed at 60, and ‘cruise’ halfway across America – without ‘nerves’ or fatigue, and without getting into a single traffic jam.”<sup>60</sup>

The debate over the Land and Water Conservation Fund in 1964 and subsequent years was influenced by the experience with the Highway Trust Fund. Lawmakers wished to solve the accumulation of park and forestlands that needed to be acquired to secure and form existing and new federal units for the recreation and enjoyment of their constituents. Indeed, Rep. Morris Udall (D-AZ) was not the only member to recognize the similarity of the solutions when he “liken[ed] this bill to the great interstate highway program which is meeting one of the great unfulfilled needs of this country.”<sup>61</sup> Congress recognized the need for program predictability, but wished to reserve as much flexible power over it as possible. The House interior committee noted in 1963 that while it was focused on the “desirability of its main purpose of providing a base for the improvement

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<sup>59</sup> Special to the New York Times, “New Fiscal Policy Set by Road Bill,” *New York Times*, February 27, 1956, 23.

<sup>60</sup> Edward D. Fales, Jr., “More super-roads coming!,” *Better Homes and Gardens*, January 1956, 68.

<sup>61</sup> *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 22, 1964, 16551.



and extension of outdoor recreation opportunities for a healthy America, but also the necessity of sound fiscal controls over the development of the program.”<sup>62</sup>

Regardless of their disagreements with LWCF, whether its limitation on development, the continuation of acquisitions, or the spending of money, its opponents have charged that the earmarking of revenues prevents Congress from providing the ultimate level of oversight and control. After explaining his view that the bill created “a 25-year set-aside into a separate fund in the Treasury which can be used for no other purpose than the resources fund,” Rep. H. Ray Roberts (D-TX) asked bill managers on the floor in 1964, “How long, I ask you, can we continue to set up separate bureaucratic empires and the Congress still maintain control?”<sup>63</sup> The same year, Sen. Gordon Allott (R-CO) called earmarking “one of the worst and most pernicious legislative practices that can be used.”<sup>64</sup> He had joined two other western colleagues in penning a minority criticism to the committee report, in which they wrote, “This provision is tantamount to an invitation to the executive departments to seek out and lock up remaining available revenue sources for their exclusive use. If we allow this lockup to of funds to start, as this bill would do, we can foresee no end to it. The day may well come when so many sources of the Federal revenues are frozen for special programs and purposes that the financial position of the general and primary functions of the Government is seriously jeopardized.”<sup>65</sup> Also worried by the precedent, Rep. Charles Jonas (R-NC) asked in 1968, “Why do we pick out this particular program and say we will earmark \$500 million of the assets and receipts that normally would go into the general fund of the Treasury, to be

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<sup>62</sup> *Land and Water Conservation Fund Act*, H. Rep. 88-900, 22.

<sup>63</sup> *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, July 22, 1964, 16548.

<sup>64</sup> *Congressional Record*, Senate, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 12, 1964, 19102.

<sup>65</sup> Allott was joined by Sen. Peter Dominick (R-CO) and Sen. Len Jordan (R-ID). *Land and Water Conservation Fund Act*, S. Rep. 88-1364, 39.

used for national defense, for health, for education, and for all of the other problems of the country?”<sup>66</sup>

At the time appropriators were willing to fund authorized programs, but required constant and substantial political effort to justify deserving programs. Fenno wrote, “One can only generalize that when a majority has declared support for a program, the Appropriations Committee is expected to appropriate most of the money authorized or requested for it.”<sup>67</sup> The annual battle over appropriations serves as a major source of the committees’ power. The fight has an ending in which they make decisions, but the fight also continues next year when the supplication can be renewed. Sen. Peter Dominick (R-CO) shared his reasoning for why earmarking revenue had an appeal to interest groups: “They do not wish to fight with the State legislature or Congress in order to try to have their project taken care of. If they can earmark the fund and pay for the activity, they are assured that it will be taken care of in that way.”<sup>68</sup>

Another concern with earmarking revenue is that some wish to see the identified revenue used for other preferred purposes. The Louisiana congressional delegation has long resisted the use of offshore development revenue for land conservation across the country without a local share. It has frequently urged Congress to also share these revenues with coastal states, the area where the drilling and its potential repercussions actually occur. In 1968, Sen. Allen Ellender (D-LA), a senior appropriator and the only member of Congress to actually vote against the LWCF bill in 1964, waged a successful battle over three days to strip the offshore amounts and replace it with general revenues. Ellender remarked, “Let us not aggravate this [budget] situation. Let us not arbitrarily and

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<sup>66</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14653.

<sup>67</sup> Fenno, *The Power of the Purse*, 7.

<sup>68</sup> *Congressional Record*, Senate, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 12, 1964, 19106.

in advance freeze or dedicate our already scarce tax revenues. This income should continue to flow into the Treasury, subject to appropriation, with the President and the Congress determining by the usual appropriation process where and how this money is to be spent.”<sup>69</sup> Later in the House, Rep. Edwin Willis (D-LA), backed by majority whip Rep. Hale Boggs (D-LA), offered the same amendment, but was defeated. Referring to the offshore revenues, Boggs told his colleagues, “We are talking about funds derived in these areas which we now suddenly want to convey, dedicate, or earmark over into the parks, without any consideration whatsoever, No. 1, to the States that make this production possible; No. 2 for the great number of natural resources that must inevitably be developed in our oceans and in our seas.”<sup>70</sup> In conference, the Ellender amendment was replaced by a last-money-in provision, in which offshore funds would be used to supplement other existing revenues dedicated to LWCF if there was a shortfall below the authorized ceiling. This language remains law today.<sup>71</sup>

Louisianans continue to play a critical role in the outcome of offshore distributions. Two of the state’s congressmen, Billy Tauzin (R) and Chris John (D), were active negotiators in the House’s passage of the Conservation and Reinvestment Act (CARA) of 2000, in which offshore revenues would have been dedicated on a mandatory basis not only for conservation programs but also for revenue sharing with coastal states. Tauzin remarked in the debate, “we have opened up the gate of our coastal areas to offshore production; and the Government and the people of our country have benefitted to the tune of \$122 billion. We receive no share, no compensation, for what occurs on our

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<sup>69</sup> *Congressional Record*, Senate, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 23, 1968, 10305.

<sup>70</sup> *Congressional Record*, House of Representatives, 90<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 23, 1968, 14641.

<sup>71</sup> *An Act to Amend Title I of the Land and Water Conservation Fund Act of 1965*, Public Law 90-401, July 15, 1968, Sec. 2.

coastline.”<sup>72</sup> Sen. Mary Landrieu (D-LA), also a supporter of CARA for those purposes, has remained a staunch supporter of revenue sharing for coastal states.<sup>73</sup>

### **A Trust Fund or Not?**

After examining trust funds and their legal deficiencies, it has been concluded that these program mechanisms are not legitimate means of government conducting its business. They are seen as either budgetary gimmicks and false promises or budgetary black holes and inflexible commitments. They do not have the contractual and fiduciary bonds and relationships of private trust accounts.<sup>74</sup> All funds, receipts, collections, obligations, and other mechanisms operate under the general expectation in the federal government’s sovereign responsibility to its finances, bonds, and currency. A trust fund, therefore, “from an economic perspective...merely represent[s] an intragovernmental IOU.”<sup>75</sup> Indeed, they can also be bailed out and infused with funds from other sources if required.

In the end, it depends on the mood and favor of Congress, which drafts the rules and laws for these programs. While beneficiaries of user-fee programs receive special benefits, according to one government report, they “do not own the funds, and the Congress may, and often does, unilaterally alter the tax rates, benefit levels, or other

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<sup>72</sup> *Congressional Record*, House of Representatives, 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 2000, H2831.

<sup>73</sup> In a shift of chairmanships upon the confirmation of Sen. Max Baucus to be U.S. Ambassador to China in 2014, Sen. Landrieu became chairwoman of the Energy and Natural Resources Committee. She is also running for reelection in 2014. For examples of her position, see Senate Energy and Natural Resources Committee, *Revenue Sharing*, 113<sup>th</sup> Congress, 1<sup>st</sup> Session, July 23, 2013, S. Hearing 113-122 (Washington, DC: Government Printing Office); Katie Howell, “Contentious amendments pile up for today’s spill bill markup,” *E&E Daily*, July 21, 2011.

<sup>74</sup> U.S. General Accounting Office, *Federal Trust and Other Earmarked Funds* (Washington, DC: U.S. General Accounting Office, January 2001), 7.

<sup>75</sup> Patashnik, “Unfolding Promises,” 435.

features of programs financed from federal trust funds.”<sup>76</sup> Therefore, Congress is the owner of these programs.

Congress can make clear statements about a trust fund by giving recipients legal entitlements, providing enforcement mechanisms, or by reforming the rules of the program to give it new vigor. For example, due to the influence of Sen. Harry Byrd (D-VA), the Finance Committee chairman, the HTF received a mandate for pay-as-you-go financing. In order to provide a more environmental rationale for the program, and to increase the revenue pool, Congress added offshore development revenue to LWCF in 1968.

More frequent than not, Congress also makes murky judgments on these programs and their operation, especially in its unwillingness to remove programs from the appropriations process. During the Senate debate over LWCF in 1964, referring to the deference and use of the appropriations process for allocating land acquisition funding for parks, forests, and recreation needs, Sen. Allen Ellender (D-LA) asked, “Have we not [already] provided Federal funds with which to purchase lands for these purposes?” The response from Sen. Henry Jackson (D-WA) was “Frankly, the reason why we have earmarked the funds is to point out that these are proper sources of from which Congress could properly appropriate funds each year, in its judgment.”<sup>77</sup> As chairman of the Senate interior committee, Jackson was a strong champion of land conservation, but the accurate response challenged the belief that the LWCF program would completely revolutionize conservation spending.

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<sup>76</sup> U.S. General Accounting Office, *Budget Issues: Trust Funds and Their Relationship to the Federal Budget* (Washington, DC: U.S. General Accounting Office, September 1988), 6.

<sup>77</sup> *Congressional Record*, Senate, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 12, 1964, 19107.

The most revealing discussion over trust in LWCF occurred in 1975, when the Senate was debating a bill to increase the annual funding ceiling to \$1 billion from \$300 million. After the introduction of the bill by Sen. Bennett Johnston (D-LA), Sen. James McClure (R-ID), the minority bill manager, launched a careful attack on the Democratic majority. Noting his previous work in the House supporting LWCF, McClure said, “the establishment of [LWCF] was a mark on the part of the Congress of the importance of outdoor recreational opportunities and the necessity to get more funding, not less but more funding, for the acquisition and the development of outdoor recreational facilities, both Federal and state.” And now even more money was needed for the program. Had not Congress already addressed the matter? “It was precisely because we had been unable to get a sufficient amount of money in the appropriations process,” continued McClure, “year in and year out, to sustain a suitable level of activity in the outdoor recreation opportunities for our people, that the trust fund was established.”

Johnston made a clarification: “I would prefer to say that it is something more than just an authorization. It is something less than a trust fund. It is something less because the money is not actually released until the Appropriations Committee takes action.” However, he remarked with “regret that we cannot make [LWCF] a full-blown trust fund...subject to no further action by Congress. But unfortunately that does not comport with custom.” Such a bill would have had trouble in Congress or on Gerald Ford’s desk, leaving the exercise futile.

McClure responded that he wished Congress could spend a decent amount on money on LWCF as well, but was disappointed that that could not be accommodated. “I think it is a great step backward when we overreach by setting a level in the trust fund

which we all confess cannot be reached, and, in order to make that statement of need, we set it as high as we can, and destroy the principle that the moneys which are thus established by Congress will be available for this purpose and for no other purpose.”

Though he admitted that the offshore amounts were not directly reserved for LWCF, Johnston reiterated they were still available under the authorization. Having earlier called it “a claim, a first charge against those funds,” he stated, “I think this bill represents a commitment by Congress to appropriate from the fund an average of a billion dollars a year over the life of the fund. If it does not represent that commitment, then it represents idle action by Congress.” As for those roundabout attacks from McClure, and from other Republicans, notably Sen. Henry Bellmon (R-OK), the ranking member of the Budget Committee, stating that too much money was going towards land acquisition, Johnston retorted, “We hear on the other side of the aisle attacks on this bill as being a land grab on the one hand and a meaningless gesture to the grandstands on the other.” The present bill was “the best we can do with a resistant” Ford administration and “a resistant economy.”<sup>78</sup> This was a bill that could actually pass.

### **Conclusion**

Opponents of trust funds have significant arguments in their arsenal to use against their creation. In general and over the long haul, these programs become more permanent than ever expected, restrict the growth of respectable policy alternatives, constrict congressional flexibility as it manages the appropriations process by earmarking revenues, and provides a false sense of hope for supporters by leaving them to believe more trust is available than the compromise founding the program delivered. These

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<sup>78</sup> *Congressional Record*, Senate, 94<sup>th</sup> Congress, 1<sup>st</sup> Session, October 29, 1975, 34244, 34245, 34254.

arguments stop many trust funds from being enacted in the first place. Congress, and the appropriators in particular, does not like relieving itself of its own power.

These arguments continue to have impact on existing trust funds. Opponents of LWCF have dug in to prevent any expansion of trust in the program. They are unfavorable to the additional acquisition of land by the federal government and do not wish to see trust favor this activity. As it is facing reauthorization in 2015, there may be a steep price to pay for the trust mechanism to be extended. As for transportation, though trust is based on revenues going to spending, there is little appetite to raise the revenues that are historically tied to transportation to pay for it. Would an offset by any means necessary, essentially a weakening of the user fee principle, initiate another element that is harmful to trust? Are these unrelated offsets durable? These questions must be faced in the next few months and years as these programs reach important deadlines.



### **Conclusion: The Defense of Trust Funds**

On July 27, 1955, the House rejected dueling highway plans sponsored by President Eisenhower and Democratic leaders. Angry at trucking lobbyists who crashed the bill and defected members of their own party, the House leadership ended any thought of reconsidering the measure. One reporter wrote that “the one-sided defeat of the Democratic measure provided one of the session’s biggest upsets for the party’s House leaders.”<sup>1</sup> Speaker Sam Rayburn (D-TX) told reporters there would be “no chance of getting a bill this session – no chance whatever.” Also stinging from the melee was the president, who issued a statement from the White House. He noted he was “deeply disappointed,” and concluded with an olive branch that “adequate financing there must be, but contention over the method should not be permitted to deny our people these critically needed roads.”<sup>2</sup> Indeed, within a year, President Eisenhower was happily signing into law one of his greatest domestic achievements.

In this case, interests battled and it was not possible to assemble a coalition large enough to pass a meaningful highway bill. But Congress returned to the subject within a year and found a solution, unleashing a massive highway construction program that altered the face of the country. It is no surprise that one can see congressional dysfunction in action, but for how long? One year, between 1955 and 1956, or for twelve years from 1944 to 1956, the time Congress took to actually commit to the system it authorized as the war’s end seemed tantalizingly close?

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<sup>1</sup> John D. Morris, “2 Highway Plans Killed by House,” *New York Times*, July 28, 1955.

<sup>2</sup> Robert C. Albright, “Housing Bill Revived But Roads Plan is Ditched,” *Washington Post and Times Herald*, July 29, 1955.

The answer is both. But the most important thing is that Congress eventually acted. The central question of this paper is whether trust funds are durable, worthy, and valuable federal mechanisms. Using the history of these programs, it is argued that they are and their benefits outweigh their deficiencies. The first answer to this question is that in the case of highways, as well as that for land conservation, a trust fund was the means for ending a sizeable period of inaction in the face of significant and obvious challenges. These trust funds replaced clearly inadequate systems. The results of their enactment, the construction of the interstate system, the eventual funding of transit programs, and the conservation of millions of acres of land that hold the natural resources, ranging from clean water to outdoor recreation and wildlife habitat to historic battlefields, that Americans cherish, would not have occurred without the vigor, understanding, certainty, and structure afforded by trust.

While trust funds generate congressional dysfunction, they also overcome it. They create it through the consumption of budget space. With more spending going to “entrenched long-term programs like Social Security,” Patashnik wrote, “politicians may be fighting over budget issues more – but they are deciding less.”<sup>3</sup> With large pieces politically untouchable, warfare over domestic discretionary programs has accelerated and congressional output has declined. Speaker John Boehner (R-OH) told an interviewer in 2013 that “we should not be judged by how many new laws we create, we ought to be judged on how many laws we repeal.”<sup>4</sup> First among them is the 2010 health care law, which contained multiple mandatory funding streams to protect it from expected

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<sup>3</sup> Patashnik, “Budgeting More, Deciding Less,” 36.

<sup>4</sup> John Boehner, interview by Bob Schieffer, *Face the Nation*, CBS, July 21, 2013.

Republican raids.<sup>5</sup> Speaking both of the short and longterm consequences, one reporter wrote in the summer of 2011, “Washington discourse has shifted almost completely from the decades-long battle between both parties over how to allocate government resources to jousting over the moral high ground on imposing austerity, with seemingly none of the political or practical motivations that have historically driven legislation.”<sup>6</sup>

The budget is an important, demonstrable means of setting priorities. However, it happens every year, always coming back and reasserting itself for more decisions. This aids incremental decision making, but not necessarily the determination of long-term policy. Wildavsky noted in 1964 that “budgeting is carried on with the knowledge that few problems have to be ‘solved’ once and for all. Everyone knows that a problem may be dealt with over and over again.”<sup>7</sup> This suits the interest of complete congressional control. “If increased predictability is the goal,” argued Sen. Thad Cochran (R-MS) in 2009, “Congress should make greater efforts to get the annual appropriations bills done as close to on time as possible and in an open and orderly fashion that allows scrutiny of the proposed spending.”<sup>8</sup>

However, the appropriations process has been swallowed by partisan gridlock. Rank and file members no longer have earmarks to interest them in the details of the process. Bills are processed as continuing resolutions leaving agencies with last year’s level of funds and little instruction and flexibility or as large omnibus packages. Omnibus bills actually are reasonable means of getting many things done at once and allow for compromise and legislative trading, but have the unsurprising defects of increasing the

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<sup>5</sup> Sam Baker, “The Obamacare Funding Farce,” *National Journal*, March 5, 2014.

<sup>6</sup> Jennifer Steinhauer, “Debt Bill Signed, Ending Crisis and Fractious Battle,” *New York Times*, August 3, 2011.

<sup>7</sup> Wildavsky, *The Politics of the Budgetary Process*, 60.

<sup>8</sup> *Congressional Record*, Senate, 111<sup>th</sup> Congress, 1<sup>st</sup> Session, November 19, 2009, S11579.

power of the authors (who already have that authority under the committee system), and of being hundreds of pages long. Opponents of big government naturally distrust thousand-page bills, regardless of their necessary contents.

If Congress and the Eisenhower, Kennedy, and Johnson administrations found the process unsatisfactory in the 1950s and 1960s for getting funds to the activities wanted by the public, then they would certainly find it grotesque today. Sen. Cochran was absolutely correct in his assessment of the results of the mess: “Failure to process the appropriations bills in this manner has the effect of driving interest groups to seek the predictability of long-term mandatory funding schemes.”<sup>9</sup> The HTF and LWCF are not as enhanced as entitlements like Medicare and Social Security, but they are all based on the concept of trust. The public and Congress desired these activities to be carried out; they were enacted and have existed for decades. Even if these types of programs “mean operating the Government on two sets of books,” according to Sen. Harry Byrd (D-VA), who was critical of and commenting on the 1955 highway corporation idea, with “one set for activities financed by...expenditures outside budgetary control, and the other set for activities financed by...expenditures under budget control,” they still have enormous political and positive value.<sup>10</sup> With the stature of trust, they have more leverage and ability to survive the journey through the contemporary wasteland of congressional decision-making.

While the excesses of government spending should be identified and aired, as occurred with SAFETEA-LU earmarks, these aberrations should not be used to destroy an entire class of spending or the necessity of federal spending. Many modern federal

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<sup>9</sup> *Congressional Record*, Senate, 111<sup>th</sup> Congress, 1<sup>st</sup> Session, November 19, 2009, S11579.

<sup>10</sup> *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, January 18, 1955, 473.

responsibilities are permanent; it is their nature. Rep. Bill Shuster (R-PA), the current transportation committee chairman wrote, “American jobs and our competitiveness in the global marketplace depend on...the effectiveness and efficiency of our transportation network.”<sup>11</sup> Sen. Byrd, a famous fiscal hawk, noted in 1955 that, “In our future growth the need for road improvement can never be regarded as stationary.”<sup>12</sup> Public lands also are permanent responsibilities; retaining their integrity and accessibility is unquestioned. Having failed to resolve a budget dispute, causing a government shutdown in October 2013, the Republican House moved almost immediately to provide partial and temporary funding to reopen national parks. After the terrorist attacks of September 2001, Congress created a national memorial in Pennsylvania in 2002 and later appropriated \$10 million from LWCF, partly via earmark, to acquire land there.<sup>13</sup> Inaction and disengagement from responsibility in the face of need is unproductive and ineffective.

Concerning the diminishment of alternatives and the earmarking of revenues the question frequently is why should one activity be favored over others? The favoritism is not only a reflection of contemporary demands, but also the political legitimacy of trust fund linkages.

Cars dominated the twentieth century. Having withstood “growing pressures for change from a variety of sources,” wrote James Dunn, Jr., the HTF, “with almost complete congruence in the way gas tax revenues were treated at the federal and state level...proved to be very powerful and successful” from the mid-1950s to the late

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<sup>11</sup> Bill Shuster, “America’s Transportation System Is Foundation of American Competitiveness,” *Roll Call*, April 30, 2014.

<sup>12</sup> *Congressional Record*, Senate, 84<sup>th</sup> Congress, 1<sup>st</sup> Session, May 25, 1955, 6996.

<sup>13</sup> *Flight 93 National Memorial Act*, Public Law 107-226, September 24, 2002.

1970s.<sup>14</sup> Reflecting on the era, such dominance restricted the abilities of other transportation modes to compete and contribute to cohesive national networks. However, the HTF proved flexible when the Mass Transit Account was added, repairing the issue. This portfolio addition has helped it politically by extending its distributive strength. As the highway side has malaised since the completion of the Interstate Highway System, the transit account has helped the HTF survive. Broad spending cuts that were included in a Republican reauthorization proposal never made it to the House floor in 2012 because the recommended removal of transit from the HTF angered suburban moderates.<sup>15</sup>

The linkage of revenue to spending also requires a strong, politically defensible argument. For many years it has been argued that federal park development and construction should be eligible activities for LWCF money. This addition has caused debate since the program's enactment, when House and Senate committees reached different conclusions. The House panel noted that while development could be added later on, it wanted to first see how the acquisition program would function. Therefore, "it will be well to concentrate on land acquisition and to depend on the established procedure of appropriations from the general fund of the Treasury to meet development needs."<sup>16</sup> Later, a Senate panel added development as an activity, stating that while the measure "is primarily a land acquisition bill with respect to Federal agency authorization, nevertheless the committee was of the opinion that addition of more lands alone would

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<sup>14</sup> James A. Dunn, Jr., "The Politics of Motor Fuel Taxes and Infrastructure Funds in France and the United States," *Policy Studies Journal* 21, No. 2 (1993): 273, 281.

<sup>15</sup> Jason Plautz, "House Punts Controversial Energy-Infrastructure Plan to After Recess," *Greenwire*, February 15, 2012.

<sup>16</sup> House Interior and Insular Affairs Committee, *Land and Water Conservation Fund Act*, 88<sup>th</sup> Congress, 1<sup>st</sup> Session, November 14, 1963, H. Rep. 900, 13.

not meet immediate needs and problems.”<sup>17</sup> The House position won in conference; as noted by Rep. Wayne Aspinall (D-CO), the interior committee chairman, “to add another item now might well result in obligating the fund beyond what it can carry.”<sup>18</sup>

While there is increasing pressure to meet the backlog of maintenance projects, there is not a sufficiently strong argument to expand the non-renewable resource for renewable resource linkage to park development. It is difficult, especially for fiscal conservatives, to request a different form of spending when one is generally against increased, distributive, someone else’s, or any spending. For instance, during debate over CARA in 2000, six dissenting western Republican senators wrote in the committee report, “With total maintenance backlogs of \$20.8 billion for all of the land management agencies, it is clear that the federal government is struggling to take care of the land and facilities it already owns. Under these circumstances, why should we create an entitlement that would require an additional \$900 million a year be spent of land acquisition?”<sup>19</sup> Unanswered is the source of the offset to take care of the maintenance backlog. The prospect of cuts to traditional, trust-favored spending stirs its proponents. If neither side is willing to budge, the status quo is the result, favoring the program with more trust.

As for the rest of the competition, why is it not possible for every program to receive the benefits of trust? Political legitimacy remains critical. Not every program has a natural revenue source to link, such as user fees or mitigation measures for HTF and LWCF. The programs of the Defense, Justice, State, and Education departments, for

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<sup>17</sup> Senate Interior and Insular Affairs Committee, *Land and Water Conservation Fund Act*, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, August 10, 1964, S. Rep. 1364, 9.

<sup>18</sup> *Congressional Record*, House of Representatives, 88<sup>th</sup> Congress, 2<sup>nd</sup> Session, September 1, 1964, 21167.

<sup>19</sup> *Conservation and Reinvestment Act of 2000*, S. Rep. 106-413, 66.

instance, presumably benefit everyone and thus are natural fits for general fund revenue and appropriation.<sup>20</sup> Some programs do not naturally last decades. Procurement programs for the military or for weather satellites, for example, are one-time only operations. Funding for the Census Bureau is dependent on the proximity to the decennial count of the American people. Lastly, some programs have more powerful or more activated supporters, in and out of government; those without such influence simply will not be able to pass trust legislation for their preferred programs.

Concerning trust deficiencies, it is not possible to create a perfect program. Change and compromise, inherent in a politically and economically vibrant society, takes things down a different route than expected, sometimes beyond the point of conception. The arguments against trust funds still have impacts on their creation and function, assuming they are passed. However, most aspects of modern society require sustained political and governmental involvement with the people and the economy. Productive modern society – something strenuously desired by mid-century Americans, who had lived through the destructive Depression and World War II – is not modern without it. These actions, like creating a trust fund, leave a durable product for future legislators to consider, improve, and adjust. And they undoubtedly leave a legacy. Lashing out at the Supreme Court that had invalidated the National Industrial Recovery Act in May 1935, Franklin Roosevelt told reporters that the anti-New Deal ruling had “relegated [the nation] to the horse-and-buggy definition of interstate commerce.”<sup>21</sup>

The creation of trust funds that tackle complicated national objectives that require years, if not decades, of consistent, reliable government planning, funding, and structure

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<sup>20</sup> Furthermore, the Constitution mandates that military expenditures cover only two years. Article I, Section 8.

<sup>21</sup> Leuchtenburg, *Franklin D. Roosevelt and the New Deal*, 145.



is not easy. These types of programs, whether distributive or redistributive, are very difficult to enact. The former may never make it beyond a committee, and the latter require presidential leadership, and “usually comes with a price tag imposed by Congress.”<sup>22</sup> Furthermore, tremendous public support and the right circumstances are essential. In a speech nearly three decades after she had heavily influenced the passage of the landmark Social Security Act in 1935 as Labor Secretary, Frances Perkins said, “Nothing else would have bumped the American people into social security except something so shocking, so terrifying, as that depression.”<sup>23</sup>

These measures also require commitment. A public that desires a comprehensive social security program for senior citizens, the disabled, the unemployed, and dependent children will not want it only for five years. They will want it in place for the uncertainties of life and to prevent or lessen the impact of the next economic crisis, whenever they may come. That is why the public seeks mechanisms for ensuring that preferred programs are durable and reliable.

The postwar national endeavors to build the interstate system and to conserve landscapes required something more than the traditional process. Sen. Pat McNamara (D-MI) stated in a concurrence to a 1956 committee report that, “In such complex and important matters as updating our woefully inadequate highway system, a clear declaration of congressional intent as to long-range development is essential.”<sup>24</sup> Despite the efforts of a broad spectrum of influential supporters, construction of this system did not begin in earnest until Washington agreed on a longterm and sound means of paying

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<sup>22</sup> Robert Spitzer, *The Presidency and Public Policy: The Four Arenas of Presidential Power* (Tuscaloosa: The University of Alabama Press, 2012): 85.

<sup>23</sup> Downey, *The Woman Behind the New Deal*, 244.

<sup>24</sup> Senate Public Works Committee, *Federal-Aid Highway Act of 1956*, 84<sup>th</sup> Congress, 2<sup>nd</sup> Session, May 10, 1956, S. Rep. 1965, 20.

for it. In a supplementary statement to a Ways and Means Committee report on the HTF, nine Republican congressmen wrote, “the existence of this fund will insure that receipts from the taxes levied to finance this program will not be diverted for other purposes.” While they found “it is essential that the Congress must maintain careful and continuous scrutiny over the financing portions of the program as it develops,” they readily agreed “that it forms a basis for getting the highway program underway.”<sup>25</sup> In a bipartisan manner, Congress recognized that dedication of money was the only way to reach a dedication of a newly built expressway, or later, a fuller or new park, refuge, or forest. As Martha Derthick wrote about Social Security, “Financing was more than a means to an end. It was central.”<sup>26</sup>

As Congress is the ultimate owner of these trust funds, it has the ever-present opportunity to strengthen or weaken them. As political statements they are subject to the changing winds of the American electorate over time. Patashnik is correct to write that “they are subject to evolution and historical change” because while “trust funds have offered assurance of the government’s intention to make good on its commitment...[they] have not been inviolable.”<sup>27</sup> If Congress does not like the situation, it can fix it. If the people do not like the Congress, they can vote for new representatives and senators. However, regardless of how angry the voters and politicians get, trust still matters.

Trust funds are one way of enabling the federal government to do impressive things over time. They are durable, worthy, and valuable federal mechanisms. They would not have been enacted in the first place and improved over time without public

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<sup>25</sup> House Ways and Means Committee, *Highway Revenue Act of 1956*, 84<sup>th</sup> Congress, 2<sup>nd</sup> Session, March 19, 1956, H. Rep. 1899, 45-46.

<sup>26</sup> Martha Derthick, *Policymaking for Social Security* (Washington, DC: The Brookings Institution, 1979), 228.

<sup>27</sup> Patashnik, “Unfolding Promises,” 451.

support and a critical need for it, as demonstrated with the Highway Trust Fund and the Land and Water Conservation Fund. As one political scientist wrote, it is, “after all, the nature of Congress to prefer what [is] popular.”<sup>28</sup> As for another case, nearly eighty years later, Franklin Roosevelt has yet to find a politician that has scrapped his social security program.

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<sup>28</sup> Derthick, *Policymaking for Social Security*, 251.

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## **Curriculum Vita**

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