

# **Tribal Access to the Land and Water Conservation Fund**



Michael C. Spears, Sean O'Meara, and Barry Price Steinbrecher  
Anthropological Research, LLC



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## Cover Photograph Credits

*Front Cover:* Visitors along the coastline of Acadia National Park in Maine. Acadia National Park has received over \$25 million in funding from the Land and Water Conservation Fund. Photograph by [Trevor Pennington](#) on Unsplash.

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*Back Exterior Cover:* Redwoods in the mist at Redwood National Park in California. Redwood National Park has received over \$450 million in funding from the Land and Water Conservation Fund. Photograph by [Zetong Li](#) on Unsplash.

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SUBMITTED TO:

National Association of Tribal Historic Preservation Officers  
And  
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## Foreword

The Wilderness Society and the National Association of Tribal Historic Preservation Officers are deeply committed to the conservation of America's lands and waters for the benefit of all Americans, and the sovereignty and self-determination of Indian tribes. Since its inception, the Land and Water Conservation Fund has provided billions of dollars for conservation projects that have touched every county in the country. With the signing of the Great American Outdoors Act into law in 2020, authorizing \$900 million annually in permanent funding for the Land and Water Conservation Fund, we see an incredible opportunity for this funding to support the conservation of America's lands and water in perpetuity. This funding will continue to provide Americans with greater access to the outdoors, help combat climate change, support the preservation goals of Indian tribes, and foster new partnerships between governments, non-governmental organizations, and other conservation stakeholders. This is a rare opportunity that must be seized.

To seize this momentum, The Wilderness Society and the National Association of Tribal Historic Preservation Officers partnered to commission this report to understand how Indian tribes currently engage with the Land and Water Conservation Fund, so that future efforts to support their inclusion into this conservation opportunity can be effective. This was done with the acknowledgement that Indigenous peoples are the original stewards of America's lands and waters and the federal government continues to hold a trust responsibility to Indian tribes. Yet, Indian tribes and other minority groups have often been left out of the modern conservation movement through legislative, advocacy, and funding means.

Today, however, there is a growing commitment in changing the practices of the conservation movement to create a more equitable and inclusive approach that seeks to accomplish common goals through respectful information exchange, empowerment, and sharing of resources. We see these efforts in the commendable work of the Biden Administration who have centered Indian tribes and other minority groups in their conservation and climate change work, as well as through the exciting partnerships between

the federal government, traditional conservation organizations, Indigenous and minority-led organizations, and Indian tribes. This report, which centers the voices of our partners from Indian tribes through collaborative methodologies, is a step towards this more equitable and inclusive approach to the conservation movement. We hope that other conservation advocacy organizations will see the value in collaborating with and centering the voices of our partners through research, and continue to pursue innovative ways to engage Indian tribes as true partners in our vital conservation efforts.

To that end, The Wilderness Society and the National Association of Tribal Historic Preservation Officers applaud the current efforts to make the Land and Water Conservation Fund more equitable, inclusive, and diverse. This includes a \$12 million set aside in the Biden Administration's proposed Fiscal Year 2024 Budget for a direct funding program for Indian tribes managed by the Bureau of Indian Affairs; the Biden Administration's proposed changes to the State Assistance Program's manual to direct states to work closely with Indian tribes in the development of their Statewide Comprehensive Outdoor Recreation Plans and to clarify the eligibility of Indian tribes for grants through the State Assistance Program; and the proposed Outdoors for All Act that was recently reintroduced and would expand the eligibility of Indian tribes for the Outdoor Recreation Legacy Partnership Program. These opportunities would not be available without the important advocacy efforts of our partners.

However, our work is far from finished. This report highlights that while the Land and Water Conservation Fund has supported conservation across the country, the funding provided has not been equitable to Indian tribes. As good partners, we must direct our advocacy and funding resources to help address this current inequity and build a foundation for a more inclusive and diverse conservation vision for tomorrow. The Wilderness Society and the National Association of Tribal Historic Preservation Officers firmly believe that meaningful environmental policy must be guided by inclusive principles to deliver effective, equitable results.

Indian tribes are uniquely qualified conservation partners who have Indigenous knowledge, practices, and spirituality that continue to support the biodiversity and intactness of the continent, and we must stand beside them to support their conservation interests. This includes advocating for a permanent and secure direct conservation funding source for Indian tribes, whether within or alongside the Land and Water Conservation Fund, that supports their tribal sovereignty and fully recognizes their unique government-to-government relationship with the federal government. Furthermore, we must seek out opportunities to open doors for Indian tribes to other Land and Water Conservation Fund grant programs, such as what is proposed in the Outdoors for All Act, to ensure that Indian tribes can act as fully participating partners within the conservation movement. Finally, we must examine how we can develop better policies and procedures for existing statutory authority to encourage meaningful tribal engagement and incentivize partnerships with Indian tribes. While actively pursuing these pivotal equity advancements, we must also ensure the safeguarding of the Land and Water Conservation Fund's recently secured historic accomplishments, including its permanent authorization and mandatory funding.

The future of the conservation movement must be diversity focused, inclusivity centered, and grounded in tribal sovereignty and self-determination. We hope you will join us as we advocate for the conservation of America's lands and waters for the benefits of all people and for the generations to come.

Sincerely,

*Starlyn Miller, J.D.*  
*Native Lands Partnership Director*  
*The Wilderness Society*



*Valerie Grussing, Ph.D.*  
*Executive Director*  
*National Association of Tribal*  
*Historic Preservation Officers*



# Executive Summary

The Land and Water Conservation Fund, with an annual budget of \$900 million, is an unparalleled source of federal funding for conservation efforts in the United States. However, Indian tribes are woefully underrepresented in grant programs supported by the Land and Water Conservation Fund. Currently, Indian tribes are only directly eligible for three of the ten grant programs funded by the Land and Water Conservation Fund. The principal grant program of the Land and Water Conservation Fund available to Indian tribes is the State Assistance Program. Between 1965 and 2019, the State Assistance Program distributed approximately \$4.5 billion in grants, but Indian tribes only received about \$4 million of those funds, or about 0.1 percent. Although the State Assistance Program has awarded more than 44,000 grants, Indian tribes only received 90 of them. While Indian tribes only received 0.2 percent of State Assistance Program grants and 0.1 percent of State Assistance Program funding, tribal lands comprise 2.3 percent of the lands within the United States and 2.0 percent of the United States population lives in Indian areas as defined by the U.S. Census Bureau.

Interviews with employees of Indian tribes for this report demonstrated that there is significant interest by tribal governments in obtaining funding for conservation efforts. Indian tribes have wide-ranging interests in conservation that stem from their Indigenous traditions, knowledge, and worldview. However, few employees of Indian tribes interviewed for this report had previous knowledge of the Land and Water Conservation Fund and the grant programs it funds, suggesting a lack of outreach and education to Indian Country in these conservation efforts. The interviews also identified six barriers that contribute to Indian tribes' lack of representation and participation in Land and Water Conservation Fund grant programs:

1. The requirement that Indian tribes apply through state governments to access funding from the State Assistance Program infringes on tribal sovereignty, making many Indian tribes reluctant to participate in the program.

*[The federal government] talk[s] about wanting to work with tribes, but by imposing [the] requirement to work through states, they're really undermining tribal sovereignty by telling the tribal governments that you're not on the same level, that you don't have the ability to go after these funds [directly].*

—Susan Young, Houlton Band of Maliseet Indians

2. Indian tribes are concerned about the mandate requiring lands developed or acquired with Land and Water Conservation Fund grants be open for public access, and how public access adversely affects the traditional cultural practices of Indigenous people.

*The public access requirement makes this source of funding unappealing for tribes when [the] purpose of proposed land acquisition is for creating healthy and ecologically-restored landscapes to support tribal treaty rights exercise and cultural activities that may require privacy. ... LWCF monies and grant requirements can be at cross purposes with tribal needs, and inconsistent with tribal treaty rights.*

—Libby Nelson, Tulalip Tribes of Washington

3. The non-federal matching funds requirement for some Land and Water Conservation Fund grant programs is a financial burden for Indian tribes, and this can restrict tribal governments from applying to these grant programs.

*We basically rely on grants. So when we look at these grants [as] an income flow for us is if it's a matching grant those kind of get pushed to the side and the search continues for ones that aren't matching funds. We constantly are just coming across funds, grants that are matching and we can't even look at it.*

—Matt Reed, Pawnee Nation of Oklahoma  
[edited for concision]

4. Tribal governments find it difficult to apply for and administer Land and Water Conservation Fund grants because they are understaffed and have limited resources.

*Tribes may see that there's opportunities for funding but they don't have somebody on their staff who can follow through with ... that notice of funding opportunity, assess it, find a project that fits it, write the grant proposal, get the support letters. ... So it's just an incredibly onerous thing to apply for a grant and sometimes the money available is not enough to justify the level of effort that a tribe would have to go through, especially with no guarantee of success.*

—Shasta Gaughen,  
Pomo Band of Mission Indians

5. Indian tribes are excluded from being direct recipients of seven of the ten grant programs within the Land and Water Conservation Fund.

*[The Recovery Land Acquisition grant program] would be something that we would be interested in, if [the eligibility criteria] could be changed, that would allow tribes to be directly eligible ... we feel like we could be a valuable participant in the program if we were allowed to participate.*

—Jason Griffith, Stillaguamish Tribe

6. Indian tribes face administrative difficulties in partnerships with federal and state governments due to engrained practices and complex histories.

*[Through consultation] what the federal agency is looking for is consent and concurrence. They're not looking to deal with a real issue that the tribe may raise, because I don't think federal agencies are really that concerned about tribal sovereignty or tribal inclusion in their decision-making process, regardless of the rhetoric one hears at meetings or in correspondence from federal agencies.*

—Kurt Dongoske, Pueblo of Zuni

These six barriers have significantly hampered the participation of Indian tribes in the Land and Water Conservation Fund. Now that permanent authorization and mandatory funding for the Land and Water Conservation Fund has been secured, the federal government needs to

establish equitable access to these conservation grants. This report provides three recommendations based on input from tribal employees for making the Land and Water Conservation Fund more equitable for Indian tribes:

- I. The federal government needs to create a stand-alone grant program that provides Indian tribes and tribal consortiums with the ability to apply for conservation funding directly through the federal government. This would be more in line with the government-to-government relationship Indian tribes have with the federal government. This program should (a) allow for Indian tribes and tribal consortiums to acquire or develop lands for conservation purposes, (b) be funded at a funding level in proportion to the State Assistance Program, (c) eliminate the matching funds requirement, (d) be considerate of tribal capacity to apply for and manage grants, and (e) be inclusive of tribal perspectives, values, and priorities regarding conservation, recreation, and public access.

*Elevating the tribes to the point where they can apply on their own behalf ... [would] be truly a government-to-government type relationship. These are federal funds. ... We should be able to apply directly and not as a subset of a state or municipal application.*

—Susan Young, Houlton Band of Maliseet Indians

*That would be huge ... the value I would see there is that you wouldn't have to wrangle with the state, ... so having something come directly to the tribes through whatever department in the federal government would be tremendous.*

—Chief Anne Richardson, Rappahannock Tribe

- II. Existing grant programs within the Land and Water Conservation Fund need to be modified to enable Indian tribes to be direct recipients of funding. There are several grant programs funded by the Land and Water Conservation Fund that tribes are interested in and which would have immediate applicability to their conservation efforts. Indian tribes should be made direct recipients of these funding sources given their government-to-government relationship with the federal government, and in consideration of the difficulties tribal governments have in partnering with state governments.

III. Federal agencies need to develop policies and practices in consultation with Indian tribes that use existing statutory authority to more equitably engage Indian tribes within Land and Water Conservation Fund grant programs. Through these policies and practices, the federal government should reinforce the importance of Indian tribes serving as stewards and managers of America's lands and waters. Grant programs within the Land and Water Conservation Fund could be an important place where the federal government and Indian tribes can identify opportunities for co-stewardship, co-management, Indigenous management, and meaningful partnerships to conserve and protect America's lands and waters for present and future generations. If done successfully, this will greatly benefit the ongoing management of America's lands and waters, the traditional homelands of Indian tribes.

*[W]e really want to just be a part of the process when it comes down to it, and we want to participate and we're really trying to preserve what we have and make sure it's not destroyed or forgotten about. And that's our main goal. But we know that development is going happen, we know that things are changing, but we really want to preserve this stuff for our future generations. And that's what we do it for, is for our young ones. And not just our young ones, but also for everybody, the public, the youth there.*

—Crystal C' Bearing, Northern Arapaho Tribe

There is an important opportunity to make the Land and Water Conservation Fund more equitable and accessible to Indian tribes. Tribal governments are eager to continue their diligent work of conserving America's lands, and a reoriented Land and Water Conservation Fund that broadly supports Indian tribes' conservation efforts would provide an important foundation of those efforts.

*I think as the Land and Water Conservation Fund expands ... and figures out how to engage with tribes, it'll be very important. ... It'll benefit tribal communities, it'll benefit larger communities, it'll benefit the states and ultimately the goals and objectives of the Land and Water Conservation Fund, which is to conserve water, to bring native plants back, to bring healthy ecosystems. ... And I think there's certainly a space for the Land and Water Conservation Fund [to] ... help lead, I hope. Especially with the \$900 million, that's certainly a leading force, that can do a lot of good. And there are a lot of tribes ... who would be interested in partnering and working [to use] these funds to not only protect cultural sites and cultural significance, but to actually take care of and tend to the wild.*

—Ivan Senock, Buena Vista Rancheria  
of Me-Wuk Indians



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# Introduction

Since time immemorial, Indigenous peoples have stewarded the lands that comprise the United States of America. While many Indian tribes\* have been removed, displaced, or excluded from significant portions of their traditional homelands, they have not lost their connections to the land. Tribal members continue to view their traditional lands as living entities, and they have a reciprocal relationship with the land that is critical to their cultural resilience and persistence. As described by Ron Montez Sr., the Tribal Historic Preservation Officer of the Big Valley Band of Pomo Indians:

*When we see land, we see it differently, because it's a relationship. We don't own it. We're managers and caretakers because that land provides the food and the resources for us to survive and the water and plants and animals, all of that. So ... we're in a relationship which is hard for some people to understand ...*

*... in our history when the hitch [a native fish] came up the creeks, Indians came from all over different counties to camp out by the creeks to get the hitch. And so they made sure that those places that they came to stay every year were managed and ... they burnt the wood that was around there that was dead, they managed that. They kept their eye on the plants and stuff that we use for medicine. So they don't pull them out by the roots, they pluck them off and leave the roots. So it continues to grow. They knew where all the berries and different bushes were, and they didn't overtake it all, they cared for it ...*

*And so [the plants and animals] all had to be taken care of and managed, and then replenished sometimes when you take some out. And so when we look at land, we're not seeing a house on there with a ... yard and a barbecue set up, two story ... or a big garage. First, we see that it is alive. It has life in it, it is personal, and it is valuable but not the same value system*

*which others look at it for, ... they [look for what they] can monetarily make, but we [look for what we] can live off of it. We can cultivate it and we can gather our materials and our medicines off of it. And that's where our sense of peace and belonging comes from.<sup>1</sup>*

The proper care and management of land is vitally important to Indian tribes. As part of the government-to-government relationship that Indian tribes have with the United States, the federal government has a trust responsibility to “protect and enhance the people, the property and the self-government of Indian tribes.”<sup>2</sup> Recently, the federal government asserted that its trust responsibility for Indian tribes extends beyond tribal trust lands to include the proper stewardship of all public lands.<sup>3</sup>

In recent years, the federal government has directed law, policy, and resources towards the conservation and proper management of lands to support the health and vitality of the nation and its people.<sup>4</sup> However, in the past, federal conservation efforts have often been inequitably distributed to low-income communities and communities of color in the United States, in part because of discrimination in conservation and natural resource policy.<sup>5</sup> To better understand this disparity, the National Association of Tribal Historic Preservation Officers and The Wilderness Society commissioned this research conducted by Anthropological Research, LLC, to examine the access that Indian tribes have to the Land and Water Conservation Fund. The Land and Water Conservation Fund was established by Congress in 1964 to safeguard natural areas, water resources, and cultural heritage, and to provide recreational opportunities to all Americans.

Thus, the objectives of this report are to document past and present participation of Indian tribes in the Land and Water Conservation Fund grant programs, and to identify ways that the Land and Water Conservation Fund can be made more equitable and inclusive for tribes. This report is intended to inform Indian tribes, environmental organizations, policy makers, and federal and state agencies on these topics. The research for this report included a review of current opportunities offered by the Land and Water Conservation Fund; an analysis of funding awarded

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\* This report uses the term “Indian tribe,” and as shorthand “tribe,” rather than other terms such as Tribal Nation or Native American tribe, because the term is defined in 34 USC 12133, which states “‘Indian tribe’ means a tribe, band, pueblo, nation, or other group or community of Indians, including an Alaska Native village ... that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

through the Land and Water Conservation Fund; interviews with tribal leaders, Tribal Historic Preservation Officers, and tribal environmental and historic preservation specialists about the Land and Water Conservation Fund; and a synthesis of the interviews for use in this report.

The scope of this report is limited to considering how federally recognized Indian tribes access and engage with the Land and Water Conservation Fund. Thus this report does not address how other Indigenous peoples in the United States, including Native Hawaiians and state recognized Indigenous groups, engage with the Land and Water Conservation Fund. Future research is needed to address this subject.

### The Land and Water Conservation Fund

The Land and Water Conservation Fund was created on September 3, 1964, with the passage of the Land and Water Conservation Fund Act of 1965 by the United States Congress.<sup>6</sup> The purpose of this act is:

*[T]o assist in preserving, developing, and assuring accessibility to ... quality and quantity of outdoor recreation resources as may be available and desirable*

*for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States by (1) providing funds for and authorizing Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities and (2) providing funds for the Federal acquisition and development of certain lands and other areas.<sup>7</sup>*

The Land and Water Conservation Fund is the federal funding source for 10 federal grant programs (Figure 1). Nine of these programs provide federal funds to states, commonwealths, territories, or local governments, while the Federal Acquisition Program provides funding to federal agencies. Of the grant programs that provide funding to states, commonwealths, territories, and local governments, five are administered by the National Park Service, three are administered by the U.S. Fish and Wildlife Service, and one is administered by the U.S. Forest Service.

Since 1965, the Land and Water Conservation Fund has provided grants through the State Assistance Program and the Federal Acquisition Program.<sup>8</sup> The State Assistance Program is administered by the National Park Service and

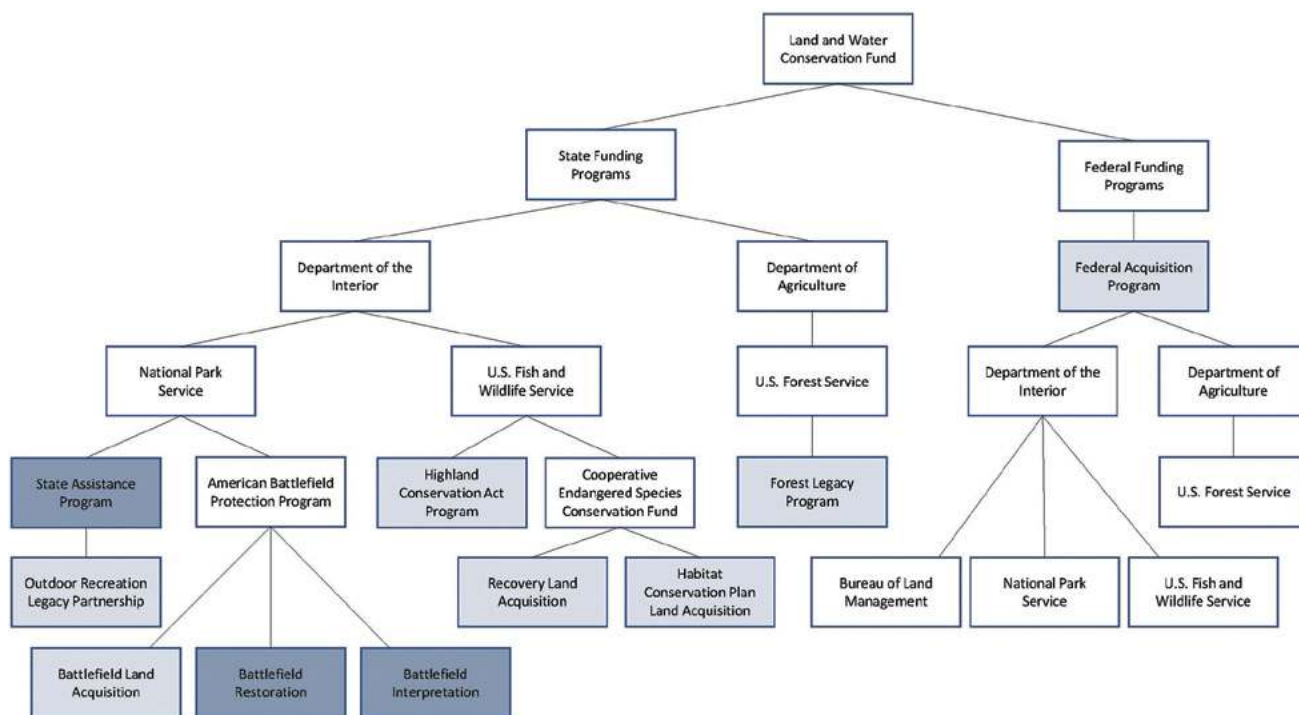


Figure 1. A schematic chart of grant programs funded by the Land and Water Conservation Fund, showing which federal agencies are tasked with administering each grant program. Individual grant programs are shown highlighted in blue. Indian tribes are eligible to be direct applicants to grant programs shown in dark blue.

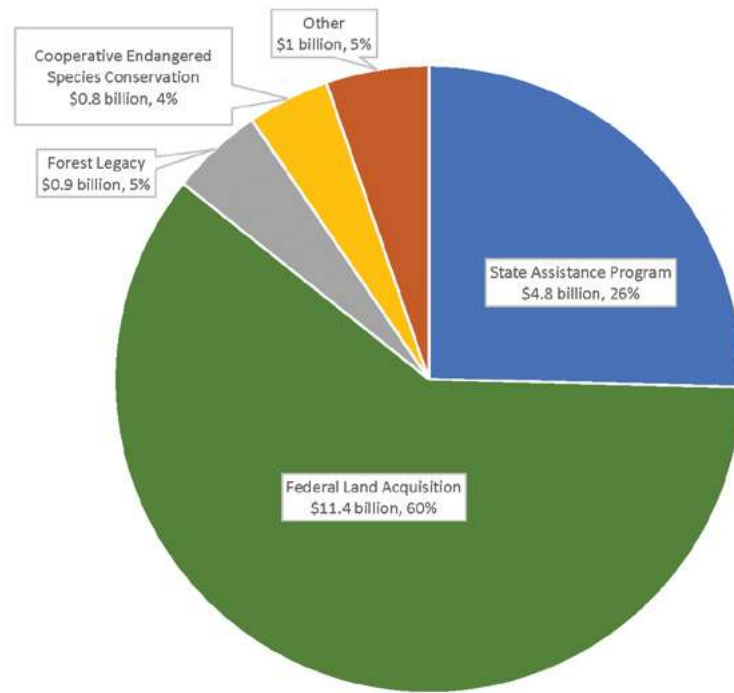


Figure 2. Land and Water Total Appropriations by Type, Fiscal Year 1965 to 2019.

funds the acquisition and development of land for outdoor recreation by state, territory, commonwealth, local, and tribal governments. While the Federal Acquisition Program funds the acquisition of land within or adjacent to existing federal lands for use in public outdoor recreation by the National Park Service, U.S. Forest Service, Bureau of Land Management, and U.S. Fish and Wildlife Service. Funding for the Federal Acquisition Program is based on Presidential budgets and Congressional appropriations. These two programs are often referred to as the Land and Water Conservation Fund “State Side” and “Federal Side” programs.

Beginning in Fiscal Year 1998, the Land and Water Conservation Fund began to support additional programs. These include the Cooperative Endangered Species Conservation Fund Program and Highland Conservation Act Program administered by the U.S. Fish and Wildlife Service, the Forest Legacy Program administered by the U.S. Forest Service, and the American Battlefield Protection Program administered by the National Park Service.<sup>9</sup>

Initially, the operating budget for the Land and Water Conservation Fund derived from fees for recreational use of federal lands, sales of surplus federal real property, and motorboat fuel taxes. These sources of revenue provided about \$100 million a year for the Land and Water

Conservation Fund. That funding was soon increased to \$200 million a year with revenue from the Outer Continental shelf mineral leasing program. In 1971, further demand for the Land and Water Conservation Fund led to an increased yearly allocation of \$300 million. The funding increased to its current level of \$900 million in 1978. The Land and Water Conservation Fund briefly expired for parts of 2015 and 2016 but was eventually extended for three years by the Consolidated Appropriations Act (P.L. 114-113). In 2019, the Land and Water Conservation Fund was permanently reauthorized by Congress as part of P.L. 116-9, and in 2020, the Land and Water Conservation Fund was fully and permanently funded as part of P.L. 116-152.<sup>10</sup>

Through Fiscal Year 2019, a total of \$18.9 billion was appropriated to the Land and Water Conservation Fund (Figure 2).<sup>11</sup> Sixty percent of that funding was appropriated to the Federal Land Acquisition Program and 26 percent was appropriated for the State Assistance Program. The remaining 14 percent was distributed among several other funding programs that began being funded by the Land and Water Conservation Fund in Fiscal Year 1998.

### **State Assistance Program**

The State Assistance Program is a funding program administered by the Land and Water Conservation Fund Program of the National Park Service that provides states



with matching grants, and through states to local units of government, including federally recognized Indian tribes, to acquire and develop public outdoor recreation sites and facilities.<sup>12</sup> As of 2023, the State Assistance Program has funded more than 45,000 projects and provided approximately \$5.2 billion for the planning, acquisition, and development of outdoor recreation resources in the United States since its inception in 1965.<sup>13</sup> This program has the following goals:

- a. Meet State and locally identified public outdoor recreation resource needs to strengthen the health and vitality of the American People.*
- b. Increase the number of protected State and local outdoor recreation resources and to ensure their availability for public use in perpetuity.*
- c. Encourage sound planning and long-term partnerships to expand the quantity and to ensure the quality of needed State and local outdoor recreation resources.<sup>14</sup>*

Forty percent of the first \$225 million appropriated for the State Assistance Program each fiscal year is apportioned equally among the states. While 30 percent of the next \$275 million appropriated and 20 percent of all additional appropriations above that amount are also apportioned equally among the states. The remaining appropriated funding for the State Assistance Program is apportioned based on the need of states each fiscal year, as determined by the Secretary of Interior. The apportionment for any single state cannot exceed 10 percent of the total allocation.<sup>15</sup>

To be eligible for the State Assistance Program, states must designate a State Liaison Officer to the Land and Water Conservation Fund, who administers the Land and Water Conservation Fund program within their state, and develop a Statewide Comprehensive Outdoor Recreation Plan (SCORP) and update it every seven years.<sup>16</sup> The SCORP is to evaluate:

*[T]he demand and supply of public outdoor recreation resources throughout a State; identifies capital investment priorities for acquiring, developing, and protecting all types of outdoor recreation resources; assures continuing opportunity for local units of government and private citizens to take part in planning*

*for Statewide outdoor recreation; and coordinates all outdoor recreation programs throughout the State.<sup>17</sup>*

Based on the SCORP, each state then must develop a set of “objective criteria and standards for grant selection that are explicitly based on each State’s priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP.” These criteria and standards known as an Open Project Selection Process (OPSP) are used in the evaluation and selection of grant applications submitted by local units of government to the state.<sup>18</sup>

After states select proposed projects for federal assistance, the National Park Service conducts an independent review of the proposed projects. This includes “a consideration of the project’s eligibility for assistance, its technical adequacy, and its financial soundness.”<sup>19</sup> As part of the review, the National Park Service will determine if the project is in accordance with the state’s SCORP and OPSP, that the proposal has been reviewed according to the National Historic Preservation Act and National Environmental Policy Act, and the project area represents an acceptable area for purposes of the Land and Water Conservation Fund Act.<sup>20</sup> Following National Park Service approval, the federal government, state government, and subrecipient, if applicable, will enter into a grant agreement.

For states, the grants provide up to 50 percent reimbursement match on allowable project-related costs. Grants provided to territories and commonwealths, which include Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands, provide 100 percent assistance.<sup>21</sup>

The State Assistance Program funds acquisition and development projects for outdoor recreation. Acquisition projects are defined as “the acquisition of land and waters or partial rights to them,” which allow for public access for outdoor recreation. While development projects are defined as “the development of certain outdoor recreation activities and support facilities needed by the public for recreation use of an area.”<sup>22</sup> Acquisition projects may include the:

*[A]cquisition of lands, wetlands, and waters for public outdoor recreation, including new areas, physical connections, or additions to existing parks, forests, wildlife management areas (including wildlife*

*corridors), beaches, and other similar areas dedicated to outdoor recreation may be eligible for assistance. Areas acquired may serve a wide variety of public outdoor recreation activities including but not limited to: walking and driving for pleasure, sightseeing, swimming and other water sports, fishing, picnicking, nature study, boating, hunting and shooting, camping, horseback riding, bicycling (including e-biking), snowmobiling, skiing, and other outdoor sports and activities.*<sup>23</sup>

Development projects “may consist of basic outdoor recreation facilities to service the general public.”<sup>24</sup> Recreational facilities types eligible for development project funding include sports and playfields, picnic facilities, trails, swimming facilities, boating facilities, fishing/hunting facilities, winter sports facilities, camping facilities, exhibit facilities, spectator facilities, community gardens, renovated facilities, professional facilities, accessible facilities, and mobile recreation units.<sup>25</sup>

Land and Water Conservation Fund assisted sites and facilities must remain accessible to the general public after completion, including to non-residents of assisted jurisdictions. All sites acquired or developed with Land and Water Conservation Fund assistance must be open to entry and use by all persons regardless of race, color, national origin, sex, and religion in keeping with Title VI of the Civil Rights Act of 1964. In addition, discrimination on the basis of residence is not permitted “except to the extent reasonable differences in admission and other fees may be maintained on the basis of residence.” The program allows for reasonable use limitations “when such a limitation is necessary for maintenance or preservation” of areas or facilities acquired or developed through the program. The limitations may impose restrictions on the number of persons or type of users using an area or facility.<sup>26</sup>

For Indian tribes, the State Assistance Program administered by the National Park Service is the most accessible program funded by the Land and Water Conservation Fund. Tribes are eligible to apply directly to the state for grant funding for the acquisition or development of public outdoor recreation areas or facilities. This program may support the acquisition or development for outdoor recreational purposes of places of cultural importance to tribes, if those areas are appropriate to being open in perpetuity to public outdoor recreation.

In July 2023, the Biden Administration proposed to update the manual for the Stateside Assistance Program to direct states to work more closely with Indian tribes during the development of their Statewide Comprehensive Outdoor Recreation Plans and to clarify the eligibility of Indian tribes for these grants.<sup>27</sup> While the updated manual has not been published at the time of this report, the policy directives within the manual may support greater integration of Indian tribes in the State Assistance Program in the future.

### **Outdoor Recreation Legacy Partnership Program**

In 2014, Congress provided initial funding for the National Park Service to create the Outdoor Recreation Legacy Partnership Program. The program is a competitive grant program administered by the National Park Service that is designed to complement the traditional State Assistance Program. The purpose of the program is to “provide new or significantly improved recreation opportunities in economically-disadvantaged communities.” Projects awarded through this program must meet the following three criteria: (1) meet at least one priority identified in the state’s SCORP; (2) be located in or abutting a town or city with a population of over 30,000, and (3) serve a community that is “severely lacking in walkable, publicly accessible, outdoor recreation (“park deserts”), and that has a poverty rate of at least 20 percent or that is at least 10 percentage points higher than that of the project city, county, and state rates.”<sup>28</sup>

Grant applications for the Outdoor Recreation Legacy Partnership Program are selected by the National Park Service based on a “national competition of projects solicited and nominated by LWCF State Lead Agencies.” Individual applicants apply for this program to their states, and states then make the initial determinations on applications that are to be submitted to the National Park Service for consideration in the national competition. Awarded grants are to the State Lead Agency who then makes a subgrantee award to the project sponsor.<sup>29</sup>

Similar to the traditional State Assistance Program, projects funded through the Outdoor Recreation Legacy Partnership Program are for the acquisition and development of public outdoor recreation areas and facilities. Eligible project types are the same as those described in the State Assistance Program section of this report. The properties funded by a grant must be used for public outdoor recreation in perpetuity.<sup>30</sup>

For Fiscal Year 2022, there was an estimated total funding of \$192 million with a maximum individual award of \$10 million and a minimum award of \$300,000. The federally-funded grants provide an up to a 50 percent match on allowable project-related costs, thus 50 percent of the costs must be provided by the project applicant through non-federal funds.<sup>31</sup>

States are the sole eligible applicants of Outdoor Recreation Legacy Partnership grants; however, eligible sub-recipients or project sponsors include state and local governments, as well as federally recognized Indian tribes. Given the narrow focus of the grant program towards urban communities, many tribes are ineligible for this program. Tribes that have communities within a qualifying urban setting may be eligible to use this program to increase access to outdoor recreation in their community. However, these tribes would have to be willing to apply as sub-grantees under a state applicant, which can raise issues related to tribal sovereignty.

### **Federal Land Acquisition Program**

The Land and Water Conservation Fund Act authorizes the appropriation of funding to federal agencies for the acquisition of land, waters, or interests in lands and waters for “recreation areas administered by the Secretary of the Interior for recreational purposes; land acquisition in national park, national forest, and national wildlife refuge system units; and land acquisitions that foster access to federal land for recreational purposes.”<sup>32</sup> This Land and Water Conservation Fund program is the largest source of funding for the federal acquisition of land. Lands are primarily acquired by the National Park Service, Bureau of Land Management, and Fish and Wildlife Service in the Department of the Interior, and the Forest Service in the Department of Agriculture.<sup>33</sup>

This funding is typically provided through appropriation acts passed yearly by Congress. The four land managing agencies provide an annual budget submission to the Presidential Administration that includes lands each agency seeks to acquire with funds from the Land and Water Conservation Fund. The President then submits a budget with their priorities for federal land acquisition to Congress as part of their annual budget submission.<sup>34</sup> After the budget has been submitted, Congress reviews the acquisition requests and decides on the projects and level

of funding to be included in the annual appropriations act. If no allocations or insufficient alternate allocations are made by Congress, the unallocated amount of funding for federal land acquisition through the Land and Water Conservation Fund is allocated by the President.<sup>35</sup>

While the Federal Land Acquisition program only provides funding to federal agencies, Indian tribes do consult, collaborate, and partner with agencies on land acquisitions. Tribes often seek to have lands conserved within their aboriginal territories, and as the primary source of funding of federal land acquisition, this is an important program for tribes to participate in. The level of participation that tribes can have in this program is based solely on the good faith efforts of federal agencies willing to engage with tribal governments, and these efforts vary significantly within and between agencies.

### **Forest Legacy Program**

The Forest Legacy Program is a program administered by the U.S. Forest Service that provides grants to states, territories, and commonwealths to support the acquisition of forest lands by local governments. In limited instances, the funding can be used to acquire forested land with the federal government then holding title to the land. The program’s purpose is to “identify and protect environmentally important forest areas that are threatened by conversion to non-forest uses and to promote forest-land protection and other conservation opportunities.” The goals of the program include the protection of scenic, cultural, aquatic, wildlife, riparian resources, while maintaining traditional forest uses including timber management and recreational pursuits.<sup>36</sup>

The Forest Legacy Program grants require a 25 percent non-federal cost share, which can be provided in cash, in-kind services, or donation of lands.<sup>37</sup> For the Fiscal Year 2024 cycle, states could submit up to three projects to the Forest Legacy Program, and these could not exceed a total cost of \$20 million.<sup>38</sup> States, territories, and commonwealths are the only eligible applicants to the Forest Legacy Program; however, these applicants may partner with local units of government who may “help facilitate transactions, hold title to land, or hold the conservation easement.”<sup>39</sup>

Indian tribes are not eligible applicants for the Forest Legacy Program, however the Fiscal Year 2024 guidance for the

program encourages outreach and communication with tribes during project development, as “Tribes have been important supporting partners for many projects.”<sup>40</sup> Tribal governments can participate in the program through partnerships with states to protect non-trust tribal allotment lands or other non-tribal lands of interest that will then be held by the state.<sup>41</sup> Tribes can also partner with a state for land to be acquired by the federal government. This option involves tribes participating in a Memorandum of Understanding (MOU) to protect non-trust Tribal allotment lands or other non-tribal lands of interest. The MOU can define how a tribe may have responsibilities for “certain aspects of project implementation and long-term management, including ongoing land management and conservation easement monitoring.”<sup>42</sup> Tribes have an interest in participating in the Forest Legacy Program to conserve forest lands within their aboriginal territories and, based on US Forest Service guidance, it appears they already serve as important partners to states as part of this program.<sup>43</sup>

### **Cooperative Endangered Species Conservation Fund**

The Cooperative Endangered Species Conservation Fund is authorized under Section 6 of the Endangered Species Act. The Land and Water Conservation Fund provides funding for two grant programs that are administered by the U.S. Fish and Wildlife Service, which focus on providing funding to states and territories for the conservation of species and habitat on non-federal lands. These programs are the Recovery Land Acquisition program and the Habitat Conservation Plan Land Acquisition program.

#### **Recovery Land Acquisition Grant Program**

The Recovery Land Acquisitions Grant Program provides states, territories, and commonwealths with grants to support the acquisition of parcels of land through purchase or conservation easements that support the recovery plans developed for at least one listed endangered and threatened species under the Endangered Species Act. Projects that provide a “direct and timely impact on species recovery, ideally moving the species toward down or delisting, will be priorities.” The program is authorized by Section 6 of the Endangered Species Act and is administered by the Cooperative Endangered Species Conservation Fund Grant Programs of the U.S. Fish and Wildlife Service, with funding provided through the Land and Water Conservation Fund.<sup>44</sup>

In the Fiscal Year 2023 funding cycle for the Recovery Land Acquisitions Grant Program, the U.S. Fish and Wildlife Service expected to award \$11,162,000 in funding. Those funds were expected to support the award of up to six grants to states, territories, and commonwealths. A 25 percent non-federal cost share of total project costs is required for projects from individual states, while collaborative projects involving two or more states have a reduced non-federal cost share of 10 percent of total project costs. For territories and commonwealths the match requirement is waived for grants received through this funding source.<sup>45</sup>

Indian tribes are not eligible to receive funding from the Recovery Land Acquisition Grant Program. However, as stated in the Fiscal Year 2023 guidance, “While funding may only be awarded to States, individuals or groups such as counties or conservation organizations may work with a state agency that has a cooperative agreement on conservation efforts that are mutually beneficial, as a subgrantee.”<sup>46</sup> Based on this guidance, it may be possible for a tribe to partner with a state and serve as a subgrantee. Tribes expressed an interest in participating in the Recovery Land Acquisition Grant Program, to assist in the conservation of plants and animals within their aboriginal territories.

#### **Habitat Conservation Plan Land Acquisition Grants Program**

The Habitat Conservation Plan Land Acquisition Grant Program provides states, territories, and commonwealths with grants to support the acquisition of parcels of land, through purchase or conservation easement, which complement conservation strategies in approved Habitat Conservation Plans for species that are considered listed, at-risk, or candidates based on Endangered Species Act criteria. The program is authorized by Section 6 of the Endangered Species Act and is administered by the Cooperative Endangered Species Conservation Fund Grant Programs of the U.S. Fish and Wildlife Service, with funding provided through the Land and Water Conservation Fund.<sup>47</sup>

The Habitat Conservation Plan Land Acquisition grants are considered an important and effective way “to promote species recovery, prevent extinction, and preclude the need to list species under the ESA in the future.”<sup>48</sup>

These grants are intended to complement the mitigation, minimization, and monitoring commitments made in approved Habitat Conservation Plans, which are designed to accommodate economic development to allow for the limited unintentional taking of species listed on the Endangered Species Act.<sup>49</sup>

In the Fiscal Year 2023 funding cycle for the Recovery Land Acquisitions Grant Program, the U.S. Fish and Wildlife Service expected to award \$21,638,000 in funding. Those funds were expected to support the award of up to five grants from states, territories, and commonwealths. A 25 percent non-federal cost share of total project costs is required for projects from individual states, while collaborative projects involving two or more states have a reduced non-federal cost share of 10 percent of total project costs. For territories and commonwealths the match requirement is waived for grants received from this program.<sup>50</sup>

Indian tribes are not eligible to receive funding from the Recovery Land Acquisition Grant Program. However, as in the Fiscal Year 2023 guidance, “While funding may only be awarded to States, individuals or groups such as counties or conservation organizations may work with a State agency that has a cooperative agreement on conservation efforts that are mutually beneficial, as a subgrantee.”<sup>51</sup> Based on this guidance, it appears possible that a tribe may partner with a state and serve as a subgrantee. Tribes are interested in participating in the Habitat Conservation Plan Land Acquisition Grant Program, as tribes are often concerned about the conservation of plants and animals within their aboriginal territories.

### ***American Battlefield Protection Program***

The American Battlefield Protection Program is a National Park Service program that promotes the preservation and interpretation of battlefields and sites of armed conflict. There are three American Battlefield Protection Program grants that are funded by the Land and Water Conservation Fund.

### **Battlefield Land Acquisition Grants Program**

The Battlefield Land Acquisition grant program provides assistance to state and local governments to preserve eligible battlefields through the acquisition of lands or easements to lands. Eligible battlefields are “principal battlefields and associated sites of the Revolutionary War and War of 1812”

as defined by the American Battlefield Protection Program, as well as Civil War battlefields documented by the Civil War Sites Advisory Commission.<sup>52</sup> Thirty-seven states contain battlefields eligible for the program.<sup>53</sup>

Eligible applicants for the Battlefield Land Acquisition grant program are state, county, city, and township governments. The guidance expresses that “Tribal governments or nonprofit organizations may acquire an interest in an eligible site by partnering in an application from a state or local government which has jurisdiction over the property to be acquired or put under easement. The government agency will be the grant recipient and serve as a pass-through entity for Federal funds to the nonprofit organization [or tribal government].”<sup>54</sup> Grants require a non-federal cost share of at least 50 percent.<sup>55</sup> Eligible sites must be an eligible battlefield on American soil and outside the exterior boundaries of units within the National Park System.<sup>56</sup> Some tribes would likely be interested in the Battlefield Land Acquisition grant program as there were a number of tribes that were active participants in the Revolutionary War, War of 1812, and the Civil War. Battlefields from those conflicts may be considered places of cultural importance to tribes.

### **Battlefield Interpretation Grant Program**

The Battlefield Interpretation Grant Program provides funding to modernize and enhance battlefield education and interpretation. Battlefields eligible to be supported by this funding opportunity are Revolutionary War, War of 1812, and Civil War battlefields listed in the Battlefield Reports developed by the American Battlefield Protection Program.<sup>57</sup> Eligible recipients of the grants are states and local governments, Indian tribes, Native American tribal organizations, non-profit organizations, and institutions of higher education. While tribes may be direct applicants to this grant program, the tribal trust lands of only five Indian tribes overlap with the American Battlefield Protection Program defined battlefield boundaries from the Revolutionary War, War of 1812, and Civil War.<sup>58</sup> These tribes are the Onondaga Nation, Oneida Nation, Osage Nation, Tunica-Biloxi Indian Tribe, and Tuscarora Nation. These tribes may be interested in this grant program if they already have existing battlefield interpretation on their tribal trust lands. Overall, while tribes may be direct applicants to this program, it has limited applicability for tribes.



### **Battlefield Restoration Grant Program**

The Battlefield Restoration Grant Program provides “assistance for the restoration of day-of-battle conditions of American Revolution, Civil War, and War of 1812 properties that have been acquired and protected with assistance from the NPS’s Battlefield Land Acquisition Grant Program.”<sup>59</sup> To be eligible for funding, projects must previously have been assisted by the Battlefield Land Acquisition Grant Program, so the only eligible battlefield sites are those associated with the Revolutionary War, the War of 1812, and the Civil War. The program provides both planning grants and implementation grants for those organizations who have already completed planning activities.

Eligible recipients of Battlefield Restoration grants are states and local governments, Indian tribes, Native American tribal organizations, non-profit organizations, and institutions of higher education.<sup>60</sup> While tribes are eligible to be direct recipients of this funding source, they are ineligible to be direct recipients of the Battlefield Land Acquisition Grant Program, making it unlikely that tribes will have lands acquired through that program, which then would make them eligible for this grant program. Moreover, the tribal trust lands of only five Indian tribes overlap with the American Battlefield Protection Program’s defined battlefield boundaries from the Revolutionary War, War

of 1812, and Civil War, and this further limits this funding opportunity for tribes.<sup>61</sup> The five tribes that overlap with the American Battlefield Protection Program’s boundaries are the Onondaga Nation, Oneida Nation, Osage Nation, Tunica-Biloxi Indian Tribe, and Tuscarora Nation. While tribes may be direct applicants to this program there is limited applicability of this funding source for tribes.

### **Highlands Conservation Act Grant Program**

The Highlands Conservation Act Grant Program was created by the Highlands Conservation Act (P.L. 108-421) to protect forested hills in Connecticut, New York, New Jersey, and Pennsylvania that are crucial to the drinking water supply in America’s most densely populated metropolitan corridor.<sup>62</sup> The grant program is administered by the U.S. Fish and Wildlife Service, and provides funding for the acquisition of lands or interests in lands that have high conservation value within the aforementioned states.<sup>63</sup> The program requires a match of 50 percent of the project costs. The states of Connecticut, New York, New Jersey, and Pennsylvania are the only eligible applicants for this grant program. The grant guidance for this program does not indicate a role for Indian tribes within this grant program. However, tribes are likely consulted as part of the land acquisition activities funded through this grant program.

# The Land and Water Conservation Fund and Indian Tribes

The Land and Water Conservation Fund is an unparalleled source of funding for conservation projects within the United States. However, in the past there has been little review of the access that Indian tribes have had to this funding source, or tribal perceptions of the fund. To that end, this section reviews the past participation of Indian tribes in various aspects of the Land and Water Conservation Fund, summarizes the perceptions of tribal employees regarding the Land and Water Conservation Fund, and makes recommendations on how the Land and Water Conservation Fund could be made more accessible to tribes based on interviews with employees of Indian tribes.

The State Assistance Program is the principal grant program funded by the Land and Water Conservation Fund that Indian tribes are eligible to apply for directly. However, Indian tribes need to apply through the state to receive State Assistance Program grants to acquire or develop public outdoor recreation areas or facilities.

Indian tribes are also eligible to be direct recipients for the Battlefield Interpretation Grant Program and the Battlefield Restoration Grant Program. However, the current structure of these programs limits funding to battlefields associated with the Revolutionary War, the War of 1812, and the Civil War, with battlefield boundaries defined by the National Park Service. Only five Indian tribes have trust lands that overlap these boundaries, making it unlikely that many tribes will have an interest in being applicants to these programs. Furthermore, the Battlefield Restoration Grant Program only provides funding to entities that have received prior support through the Battlefield Land Acquisition Grant Program. Because tribes are not eligible to be direct applicants of the Battlefield Land Acquisition Grant Program, the potential interest of tribes in the Battlefield Restoration Grant Program is limited.

There are several other grant programs funded by the Land and Water Conservation Fund in which tribes are not eligible to be direct applicants, but they may be a subgrantee or may develop a stake in a grant by partnering with an

eligible governmental or non-profit entity (Table 1). These potential opportunities include:

- Tribes may be subgrantees of states for the Outdoor Recreation Legacy Partnership Program.
- Tribes may be supporting partners of states in the Forest Legacy Program, including being signatories of MOUs regarding the management of forest lands.
- Tribes may be subgrantees of states for the Recovery Land Acquisitions Grant Program if they hold a cooperative agreement on conservation efforts with the state.
- Tribes may be subgrantees of states for the Habitat Conservation Plan Land Acquisition Grant Program if they hold a cooperative agreement on conservation efforts with the state.
- Tribes may acquire an interest from state, county, city, or township governmental structures in a project under the Battlefield Land Acquisition Grant Program by partnering with an eligible government agency on an application.
- Tribes may engage with federal agencies in their acquisition of lands under the Federal Land Acquisition Program.

## Past Participation in the Land and Water Conservation Fund by Indian Tribes

To better understand the participation of Indian tribes in Land and Water Conservation Fund grants, this study reviewed the past funding received directly by tribal governments through the State Assistance Program and assessed other ways that Indian tribes have participated in projects funded by the Land and Water Conservation Fund.

### *State Assistance Program*

A review of previous grant awards through the State Assistance Program administered by the National Park Service and funded by the Land and Water Conservation Fund

**Table 1. How Tribes Can Engage with the Programs of the Land and Water Conservation Fund**

	<i>Consultation</i>	<i>Subgrantee</i>	<i>Direct Applicant</i>	<i>Supporting Partner</i>	<i>Acquire Interest</i>
State and Local Assistance	X	X	X		
Outdoor Rec. Legacy Partnership	X				
Federal Acquisition	X				
Forest Legacy	X			X	
Recovery Land Acquisitions	X	X			
Hab. Cons. Plan Land Acquisition	X	X			
Battlefield Land Acquisition	X				X
Battlefield Interpretation	X		X		
Battlefield Restoration	X		X		
Highlands Conservation Act	X				

found that only 0.20 percent of grants awarded between 1965 and 2019 in the United States and the District of Columbia were awarded to Indian tribes. The funding provided in the grants to Indian tribes accounted for only 0.10 percent of funding awarded through this program during that period. The low rate of grants awarded and the total funding provided to tribes is not commensurate with the size of the federal trust lands of Indian tribes or the population living on Indian lands within the United States.

To examine the participation of Indian tribes in the State Assistance Program of the Land and Water Conservation Fund, a dataset of previous funding developed by the Land and Water Conservation Fund Coalition was queried for grants awarded to tribal governments.<sup>64</sup> This publicly-accessible dataset is an unofficial record of the grants awarded using funds from the Land and Water Conservation Fund. It was developed directly from the official records of grant awards distributed by the federal government. This unofficial dataset of grant funding was used because a new synthesis of the government records was outside the scope of the research, and the unofficial dataset developed by the Land and Water Conservation Fund Coalition provided accessibility to a wealth of data.

A subset of the Land and Water Conservation Fund Coalition database that included all the grants funded by the State Assistance Program in the United States and District of Columbia between 1965 and 2019 was analyzed. Territories and Commonwealths of the United States were excluded from the dataset. In total, this dataset

contained data on 44,316 awarded grants that comprised \$4,452,011,507 in federal funding awarded.

To identify grants awarded to Indian tribes, the dataset was queried for the names and phrases within the names of the 574 federally recognized Indian tribes, as identified by the Bureau of Indian Affairs in 2023.<sup>65</sup> Phrases within the names of Indian tribes were used to ensure that grants awarded to tribal entities (e.g., “Blackfeet Tribal Council” rather than “Blackfeet Nation”) and tribes that were not listed by their official name (i.e. “Nambe Pueblo” rather than “Pueblo of Nambe”), were captured as part of the query.

The results of this query identified 90 grants from the State Assistance Program awarded to tribes within the dataset. The grants awarded to tribes account for only 0.20 percent of the total grant awards between 1965 and 2019. Tribes received a total of \$4,533,159 of funding from the Land and Water Conservation Fund, which accounts for only 0.10 percent of the total grant funding awarded between 1965 and 2019.

The low percent of grants and funding awarded to Indian tribes through the State Assistance Program of the Land and Water Conservation Fund does not appear to be commensurate with the size of tribal lands within the United States or the population that lives on tribal lands (Figure 3). The federal government holds approximately 56,200,000 acres in trust for Indian tribes and individuals, which accounts for slightly over 2.3 percent of lands within the United States.<sup>66</sup> In terms of population, while data on the

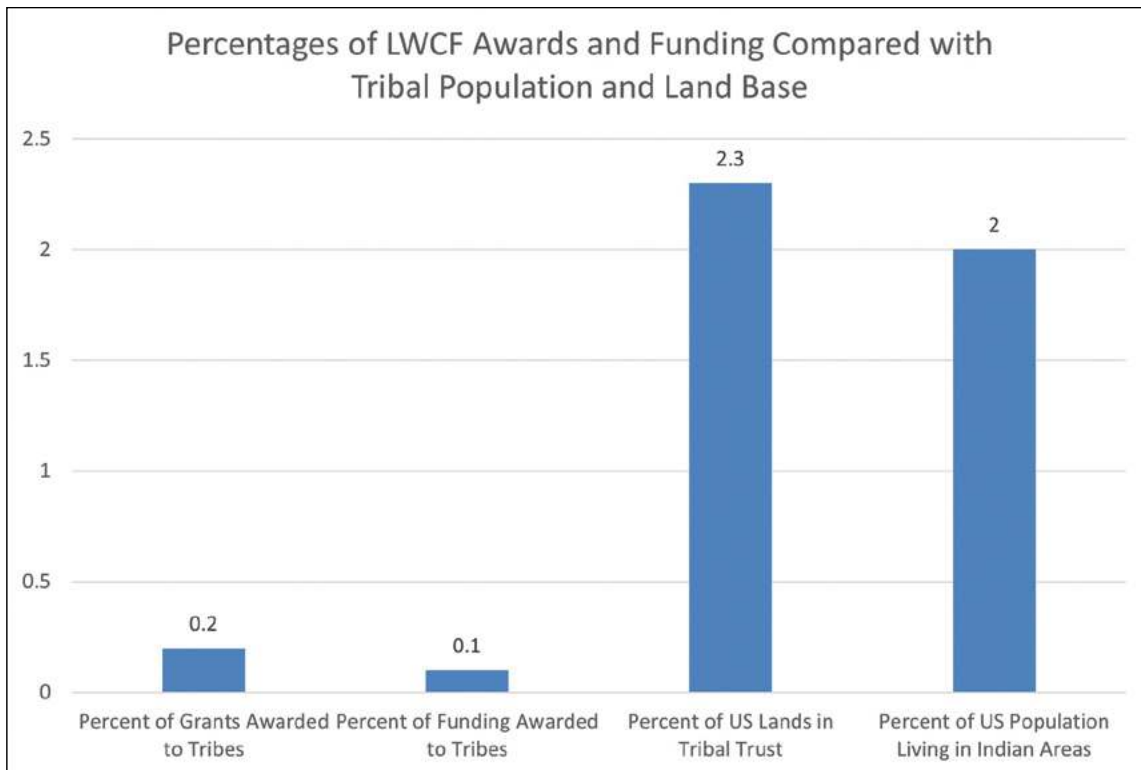


Figure 3. Percentages of Land and Water Conservation Fund awards and funding compared with tribal population and land base.

total number of people living on tribal trust lands is not easily obtainable, in 2010 the U.S. Census Bureau found that 2 percent of the U.S. population lived in American Indian areas and Alaska Native village statistical areas. While the population living on American Indian areas and Alaska Native village statistical areas is greater than that living on tribal trust lands, it appears clear that grants and funding to tribes by the State Assistance Program is not proportionate to the population on lands held in trust for tribes.

The data show that Indian tribes' access to the State Assistance Program of the Land and Water Conservation Fund has failed to increase through time, even as tribal governments have developed greater capacity in tribal programs (Figure 4). Between 1965 and 1969, 0.12 percent of the overall grants awarded were awarded to tribes. We see this increase in the 1970s, where 0.24 percent of grants awarded were granted to tribes, and this proportion held roughly steady in the 1980s when 0.21 percent of grants were awarded to tribes. However, we see a significant drop-off in the 1990s and 2000s, when respectively 0.13 percent and 0.08 percent of State Assistance Program grants were awarded to tribes. The proportion of tribal recipients increased slightly in the 2010s, when

0.21 percent of grants were granted to tribes. However, four of the seven grants provided to tribes in the 2010s were granted to a single tribe, suggesting this increase is anomalous rather than a broader trend.

The grants awarded to Indian tribes are not well distributed geographically, and some states with many tribes have failed to award any grants to Indian tribes. Forty-one of the 90 grants provided to tribes were awarded in New Mexico, but the last Land and Water Conservation Fund grant awarded to a tribe in New Mexico was in 1991. After New Mexico, the highest frequency of grants to tribes were awarded by the states of Alaska, Oklahoma, South Dakota, and Washington. Each of these states awarded seven grants to tribes, and Nevada awarded four grants to tribes. There have been two grants awarded to tribes in Kansas, Louisiana, Mississippi, Montana, and Oregon, and one grant awarded to tribes in Colorado, Connecticut, Minnesota, North Carolina, North Dakota, Utah, and Wisconsin. Many of the grants to tribes were awarded in states in the Western United States and in the Plains, where there are a large number of tribes. However, these data reveal that some states with large numbers of tribes, such as Arizona and California, did not award a single

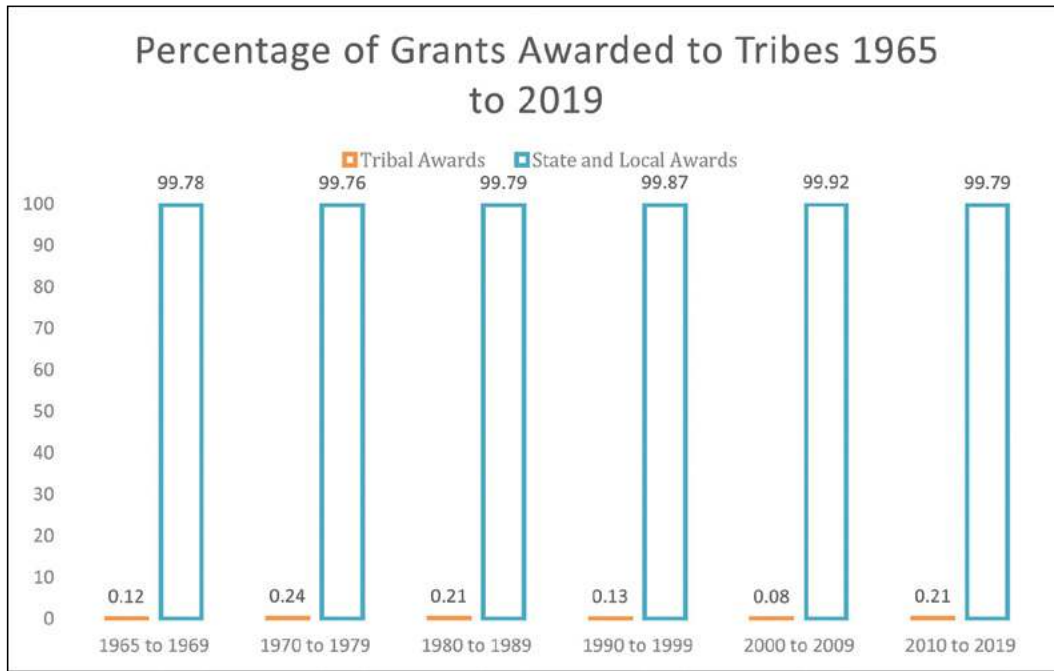


Figure 4. Percentage of grants awarded to tribes and state and local governments from 1965 to 2019.

grant to tribes between 1965 and 2019. Tribes in some regions, such as the Midwest and the Northeast, also appear underrepresented in the grants awarded by the Land and Water Conservation Fund.

The number of grants awarded to tribes in New Mexico from the 1970s to the early 1990s appears due to the supplemental funding the State of New Mexico provided for the match requirement for projects funded by the State Assistance Program.<sup>67</sup> The New Mexico program provided up to 25 percent of project costs for communities with a population less than 15,000, reducing by half the match costs for these small communities. Funding for this state-funded matching program ceased by the early 1990s, and there was an immediate decrease in grants awarded to tribes. In addition, 31 of the 41 grants awarded to tribes in New Mexico show county governments as a co-grantee on the award, even though the descriptions of the grants clearly indicate they were used to develop tribal lands. This type of partnership is reflected in only two other grants awarded to tribes in other states, and it appears to be a rare practice for State Assistance Program grants. It is unclear if the counties in New Mexico provided technical or financial support to tribes, but the additional funding and co-grantee structure developed in the state provided tribes with a greater capacity to access State Assistance Program grants.

When tribes access funding through the State Assistance Program, it has rarely been used to acquire lands for outdoor recreation. Only four of the grants awarded to tribes were used to acquire lands. We note that six grants in the database were not coded for project type, but the project descriptions provided in the Land and Water Conservation Fund Coalition database about the projects indicates they were development projects. The four acquisition grants awarded to tribes were all to acquire park lands. The last of these acquisition grants awarded to tribes was funded in 1977. Two of the acquisition grants were provided to the Lummi Indian Tribe and Whatcom County, Washington, for the acquisition of lands on Portage Island to be developed into a county park. However, the development of this park was never completed after a county right-of-way over tribal tidelands was terminated.<sup>68</sup>

Tribes that received grants to develop outdoor recreation lands or facilities primarily used these grants to develop parks and related facilities, including sports facilities, playgrounds, trails, lakes, and boating infrastructure. One tribe used its grant to develop a master plan for recreation.

This review of awards by the State Assistance Program of the Land and Water Conservation Fund suggests that tribes have only had minimal involvement in the grant program. The review makes clear that there are barriers to tribes in





Figure 5. A view of Great Temple and Lesser Temple Mounds at Ocmulgee Mounds National Historical Park. Photograph by the National Park Service, in the public domain.

obtaining funding through the State Assistance Program. Some of these barriers are reviewed later in the report, in a section of the report entitled “Perceptions of the Land and Water Conservation Fund by Tribal Employees.”

### **Federal Acquisition Program**

Federal agencies are the only eligible recipients of funding through the Federal Acquisition Program of the Land and Water Conservation Fund. While Indian tribes are unable to be the direct recipients of these funds, tribes can partner with federal agencies in the acquisition of lands with tribal cultural significance. These types of partnerships are difficult to quantify, and there is no known dataset documenting this type of tribal participation. However, tribes often consult with federal agencies regarding federal land acquisitions, and at times tribes and federal agencies partner to acquire lands that have cultural significance to tribes. In this section, two examples of recent federal land acquisitions made with support of tribes are discussed to highlight the potential benefits for tribes in partnering with federal agencies in the Federal Acquisition Program.

### **Ocmulgee Mounds National Historical Park**

In 2022, the National Park Service acquired 906 acres within the recently expanded boundaries of Ocmulgee Mounds National Historical Park using a \$1,575,000 grant from the Land and Water Conservation Fund.<sup>69</sup> This acquisition more than doubled the size of the park

and conserved land that was threatened by development. The expansion was done with the support of the Muscogee (Creek) Nation, whose tribal members are descendants of the Muskogean people who built the Ocmulgee Mounds.

The Ocmulgee Mounds National Historical Park preserves earthen mounds, burial sites, trenches, and other precolonial features built by the Muskogean people, including the 55-foot-high Great Temple Mound (Figure 5).<sup>70</sup> The park contains archaeological remains that demonstrate the continuous occupation of the Ocmulgee Basin for the last 17,000 years. The site was established as Ocmulgee National Monument by presidential proclamation in 1936 and was established as a national historical park by congressional act in 2019.

The newly acquired portion of the park is within an area known as the “Ocmulgee Old Fields” or the “Macon Reserve,” which is sacred to the Muskogean people.<sup>71</sup> In 1999, Ocmulgee Old Fields was listed as a District on the National Register of Historic Places for its traditional cultural significance because of its association with cultural beliefs and practices of the Muscogee (Creek) Nation and other tribes. It was the first historic property east of the Mississippi River to be listed on the National Register of Historic Places as a traditional cultural property.<sup>72</sup> As Muscogee (Creek) Nation tribal member Tracie Revis said, “We believe that those ancestors are still here, their

songs are still here, their words are still here, their tears are still here. And so we speak to them. You know, we still honor those that have passed on.”<sup>73</sup>

Expressing the importance of the area and the recent land acquisition, David Hill, the principal chief of the Muscogee (Creek) Nation stated, “This additional property includes some of our most important unprotected ancestral lands. The Muscogee (Creek) Nation has a long-standing history of preserving the Ocmulgee Old Fields-Macon Reserve. We have never forgotten where we came from and the lands around the Ocmulgee River will always and forever be our ancestral homeland, a place we consider sacred and a place with rich cultural history” (Figure 6).<sup>74</sup>

Jason Salsman, a spokesman for the Muscogee (Creek) Nation, called for the National Park Service to continue consultation with the tribe, and he said that the tribe should be able to partner with the National Park Service as they work to develop management and interpretive plans for the newly acquired lands. As Mr. Salsman stated, “We want to make sure that ancestral ... lands are environmentally sound, that they are free from any excavation that we’ve experienced before.”<sup>75</sup>

Mr. Salsman emphasized the importance of the Muscogee (Creek) Nation being part of the National Park Service’s

ongoing management of the Ocmulgee Mounds National Historical Park:

*... we want to just make sure that we have a presence there, that everything is done correctly, with correct consultation with us, our historical cultural preservation department, our environmental services department. ... It’s all a part of our beginning and where we came from originally. And so for us, the significant side, we can’t further our story, we can’t continue our story, without knowing exactly where we came from. So that all goes hand-in-hand with how significant that is.*<sup>76</sup>

The Muscogee (Creek) Nation is continuing to advocate for greater protection for Ocmulgee Mounds and the surrounding region. The congressional act that designated Ocmulgee Mounds as a national historical park and which expanded its boundary, also called for the National Park Service to conduct a Special Resource Study of the Ocmulgee River Corridor to determine if it meets the criteria needed for it to be recommended for inclusion within the National Park Service system.<sup>77</sup> The Muscogee (Creek) Nation and other stakeholders have come together to found the Ocmulgee National Park and Preserve Initiative to advocate for the creation of a 70,000 acre park and preserve that runs along nearly 60 miles of the Ocmulgee River.<sup>78</sup>

Figure 6. Muscogee (Creek) dancers doing traditional dance during the Ocmulgee Indian Celebration held every September at Ocmulgee Mounds National Historical Park. Photograph by the National Park Service, in the public domain.



As expressed by Tracie Revis, “Our [Muscogee] voice, our say has been all over this whole process for a while now.”<sup>79</sup>

In September of 2022, Secretary of the Interior Deb Haaland, expressed support for the collaborative work of the National Park Service and the Muscogee (Creek) Nation at Ocmulgee Mounds National Historical Park. She said, “This kind of land acquisition represents the best of what our conservation efforts should look like: collaborative, inclusive, locally led, and in support of the priorities of our country’s tribal nations.”<sup>80</sup>

While the work to conserve the Ocmulgee Old Fields and other places of cultural importance for the Muscogee (Creek) Nation is ongoing, today there is an undeniable presence of the Muscogee (Creek) Nation within their homeland, which they were forcibly removed from nearly two hundred years ago. As David Hill, Principal Chief of the Muscogee (Creek) Nation, said, “Our history is here. Our ancestors are here. Our stories started here. And we are committed to ensuring that this cherished site is protected.”<sup>81</sup>

#### **Sand Creek Massacre National Historic Site**

In 2022, the National Park Service acquired 3,478 acres to add to the Sand Creek Massacre National Historic Site in Colorado.<sup>82</sup> The site commemorates the massacre of 230 Cheyenne and Arapaho people camped in Sand Creek in November 1864, when they were attacked by the U.S. Volunteer Army (Figure 7). The acquisition was made possible with support of The Conservation Fund, a non-profit organization, coupled with a \$4,100,000 grant from the Land and Water Conservation Fund.<sup>83</sup>

In 2000, the U.S. Congress designated the Sand Creek Massacre National Historic Site and authorized a site boundary that included 12,480 acres, based on input from tribal experts, archaeologists, and historians.<sup>84</sup> By 2007, over 3,000 acres of lands within the site boundary had been acquired, and the Sand Creek Massacre National Historic Site was formally established and opened to the public. The 2022 land acquisition more than doubles the amount of land within the Sand Creek Massacre National Historic Site and provides greater opportunities for the National Park Service to protect, interpret, and memorialize the site. As said by Christine Quinlan of The Conservation Fund, “The freshwater spring on this land, the creek bed, the mature stand of cottonwoods—all are associated with the Cheyenne and Arapaho encampments that were

attacked at Sand Creek. Adding this land to the National Historic Site helps us to venerate the traumatic events of 1864, the land itself serving as a vehicle to carry the lessons of the Sand Creek Massacre into the future.”

The expansion of the Sand Creek Massacre National Historic Site was accomplished with the support of the Northern Arapaho Tribe, the Northern Cheyenne Tribe, and the Cheyenne and Arapaho Tribes, and these tribes travelled to the site for a ceremony announcing the expansion. Governor Reggie Wassana of the Cheyenne and Arapaho Tribes said that, “The Cheyenne and Arapaho Tribes are excited to see the additional 3,478 acres to the Sand Creek Massacre National Historic Site which is providing security for the protection of our Sacred site.” He continued, explaining that, “Our preservation is critical to learning and educating America about the past.”<sup>85</sup>

Secretary of the Interior Deb Haaland commemorated the importance of this acquisition by highlighting how the acquisition will honor Indigenous peoples and their stories:

*It is our solemn responsibility at the Department of the Interior, as caretakers of America’s national treasures, to tell the story of our nation. The events that took place here forever changed the course of the Northern Cheyenne, Northern Arapaho, and Cheyenne and Arapaho Tribes, ... We will never forget the hundreds of lives that were brutally taken here—men, women and children murdered in an unprovoked attack. Stories like the Sand Creek Massacre are not easy to tell but it is my duty – our duty – to ensure that they are told. This story is part of America’s story.*<sup>86</sup>

Max Bear, the Tribal Historic Preservation Officer for the Cheyenne and Arapaho Tribes of Oklahoma, welcomed Haaland’s message and the potential of the newly expanded National Historic Site to share the story of this hallowed place: “We don’t want our children and grandchildren to fight an uphill battle to know what happened to our folks,” Mr. Bear said. He continued, “We weren’t at war. ... You can’t call Sand Creek a battle ... In this time of book banning, I think it’s more important than ever that our history be told correctly.”<sup>87</sup>

While the acquisition was viewed as an important step in the recognition of Native peoples, some Cheyenne and Arapaho people who attended the acquisition ceremony





Figure 7. Storm clouds to the east of Sand Creek. Photograph by the [National Park Service](#), in the public domain.

felt that simply remembering the massacre does not go far enough to provide justice to Indigenous peoples. Patrick Spottedwolf said, “We as Cheyenne, we as Arapaho, this is our homeland. We were here,” adding “We ought to be charging Denver rent.” Cheyenne tribal member Michael Bearcomesout said, “We’re here all day listening to people talk about saving this site so that we remember, ... But not once did we hear anything about paying back the Cheyenne and Arapaho people for what happened here.”<sup>88</sup>

#### **Consultation Regarding the State and Federal Programs of the Land and Water Conservation Fund**

Land and Water Conservation Fund grant programs receive hundreds of project proposals a year that require government-to-government consultation with Indian tribes based on federal law, regulations, executive orders, memoranda, and guidance.<sup>89</sup> This consultation is conducted in recognition of the unique government-to-government relationship Indian tribes hold with the United States.

Guidance from the National Park Service indicates that proposals to the State Assistance Program of the Land and

Water Conservation Fund are federal undertakings that require compliance with Section 106 of the National Historic Preservation Act (NHPA), which mandates tribal consultation. As the State Assistance Program Manual explains:

*The Section 106 process seeks to accommodate historic preservation concerns with the needs of federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning (36 C.F.R. § 800.1(a)). The goal of consultation is to identify historic properties potentially affected by the undertaking, assess the effects of the undertaking on historic properties, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties. Section 106 of the NHPA encourages preservation but does not require a particular preservation outcome.*<sup>90</sup>

The National Park Service calls on states to assist the National Park Service in the compliance with Section 106 of the NHPA, including consultation with State Historic Preservation Offices and Tribal Historic Preservation Offices

about the identification of historic properties.<sup>91</sup> However, the guidance clarifies that the National Park Service “will carry out its government-to-government consultation responsibilities with Indian tribes and NHOs [Native Hawaiian Organizations]. States must coordinate with the NPS early in the planning process, prior to application submission, so that NPS can begin consultation with Indian Tribes and NHOs as early as possible in the planning process (36 C.F.R. § 800.2(c)(2)(ii)(C)).”<sup>92</sup> While states may assist the National Park Service in complying with Section 106 of the NHPA, the National Park Service makes all findings and final determinations, and “is also responsible for ensuring that the States meet all applicable standards and guidelines when carrying out Section 106 consultation.”<sup>93</sup>

In Fiscal Year 2022, the Land and Water Conservation Fund Program of the National Park Service had over 1,500 consultation correspondences with Indian tribes regarding the Stateside Assistance Program<sup>94</sup> This engagement included phone conversations, virtual meetings, invitation letters, and email correspondence regarding projects and project proposals for the State Assistance Program, which saw more than \$279 million of funding awarded to states, territories, and commonwealths for Fiscal Year 2022.<sup>95</sup>

### **Tribal Perceptions of the Land and Water Conservation Fund**

To better understand how Indian tribes perceive the Land and Water Conservation Fund, Anthropological Research, LLC, conducted a series of ethnographic interviews with Tribal Historic Preservation Officers, Environmental Directors, tribal leaders, and tribally-employed environmental and historic preservation specialists. Interviews with tribal employees were targeted to document first-hand tribal perspectives about the Land and Water Conservation Fund. Through these interviews, participants were able to provide their unique perspectives on the barriers, interests, and recommendations regarding the Land and Water Conservation Fund. Only through this direct coordination with Indian tribes and their employees was this report able to compile recommendations that would have immediate applicability to Indian tribes in relation to the Land and Water Conservation Fund. This approach was informed by decades of collaboration with Indian tribes, where tribes participate as equal partners, and with recognition and respect to each tribe’s sovereignty and unique circumstances. The research for this aspect of the study included the following

components: tribal outreach and engagement, ethnographic interviews, and synthesis and review. Each of these components of the methodology is discussed below.

Anthropological Research staff contacted employees of 79 federally recognized Indian tribes by email and phone to invite them to participate in the research. In most cases, contact was initiated with Tribal Historic Preservation Offices or their equivalent. In some instances, tribal leadership, natural resource departments, and environmental offices were contacted. Contacts for some tribes were provided by staff of the National Association of Tribal Historic Preservation Officers and The Wilderness Society. Emails to tribes introduced the research questions, research methods, and goals of the project, which were accompanied by an introductory letter from the National Association of Tribal Historic Preservation Officers. These emails were often followed up with phone calls or additional emails. Through this outreach, Anthropological Research staff and tribal employees arranged for times to meet for formal interviews as part of this project’s research.

Anthropological Research staff members Michael Spears, Sean O’Meara, and Barry Price Steinbrecher conducted virtual ethnographic interviews using Zoom® with tribal employees who responded to the research inquiry and who consented to participate in the research. A total of 20 tribal employees from 17 Indian tribes participated in the research. Nineteen tribal employees of 16 Indian tribes participated in the interviews, and one tribal employee from one additional tribe participated by submitting email comments (Figure 8; Table 2). This represents a small but high-quality sample of the 574 federally-recognized Indian tribes. The interviews were designed to document tribal familiarity with the Land and Water Conservation Fund, tribal interest in the Land and Water Conservation Fund; conservation values; relationships with local, state, and federal agencies; and recommendations regarding the Land and Water Conservation Fund.

The interviews generally lasted one to two hours. The first part of the interview introduced the interviewees to the Land and Water Conservation Fund, the project’s methodologies, and the project’s sponsors. All interviewees were told the goals of the project and how information obtained during the interview would be used in this report. All interviewees gave their explicit verbal consent to participate. The introduction of the project and the



consent process was followed by a recorded interview. Anthropological Research staff used a semi-structured, open-ended set of interview questions during interviews. This interview format allows for flexibility for interviewees to expand on individual thoughts and experiences that they believe are relevant to the project, while also maintaining consistency among interviews. Ethnographic information was recorded using handwritten and typed notes, as well as Zoom® audio and video recording technology. Interviews were transcribed using Scribie® transcription services and edited by Anthropological Research staff. Copies of the transcripts were provided to the interviewees.

Information collected during interviews was combined with information obtained from background literature to prepare this report. A draft of the report was sent to each participating tribe and the project sponsors for their review. Written and verbal edits were provided by participating tribes, project sponsors, and external reviewers during the review. Following the review process, Anthropological Research used the comments received to make edits and corrections and prepare a final report for The Wilderness Society and the National Association of

Tribal Historic Preservation Officers. The findings of this research are provided in the following sections.

### ***Familiarity with the Land and Water Conservation Fund***

The tribal employees interviewed for this study had minimal previous exposure to the Land and Water Conservation Fund, and no tribal representative had direct experience with applying for funding through its grant programs. Linda Ogo of the Yavapai-Prescott Indian Tribe said, “I had only heard of it from emails that have passed by, but I never really looked into it.”<sup>96</sup> Similarly, Shasta Gaughen of the Pala Band of Mission Indians said that she is “sure that something from the state has passed my email inbox and said, ‘Hey, we have some money, if you’re willing to let the public have it’ ... and I deleted it that kind of thing.”<sup>97</sup> While Martina Minthorn of the Comanche Nation of Oklahoma said she had “Briefly [heard of the Land and Water Conservation Fund], but never understood the big gist of what their goals are.”<sup>98</sup>

Other interviewees had a small amount of exposure to the Land and Water Conservation Fund through project reviews or working on tribal projects. Jason Griffith of

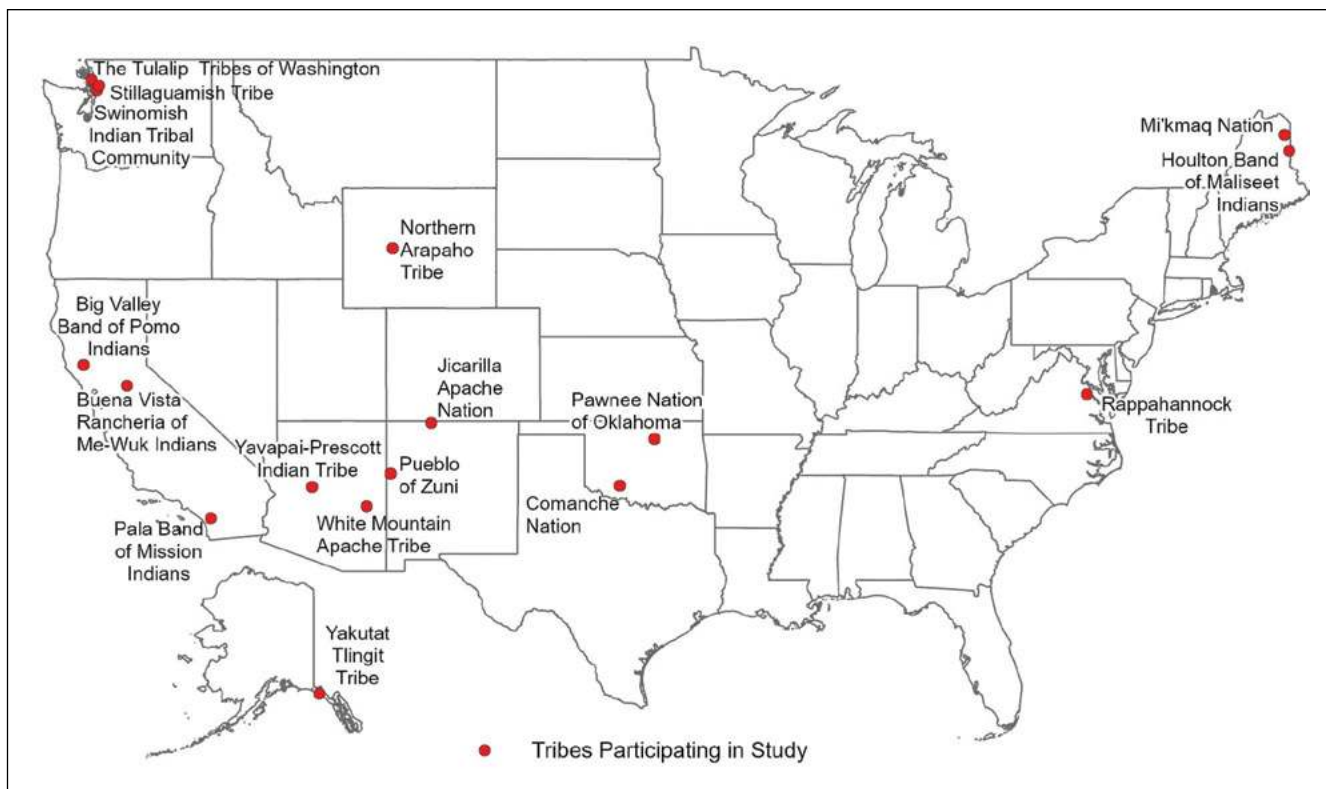


Figure 8. Location of Indian tribes that participated in the research.

**Table 2. Tribes Participating in the Study and Dates of Participation**

<i>Tribe</i>	<i>Individuals</i>	<i>Role</i>	<i>Date</i>
Mi'kmaq Nation	Kendyl Reis	Tribal Historic Preservation Officer	10/12/2022
Big Valley Band of Pomo Indians	Ron Montez Sr.	Tribal Historic Preservation Officer	04/07/2023
Buena Vista Rancheria of Me-Wuk Indians	Ivan Senock	Tribal Historic Preservation Officer	04/07/2023
Comanche Nation	Martina Minthorn	Tribal Historic Preservation Officer	10/17/2022
Houlton Band of Maliseet Indians	Susan Young	Director of Natural Resources	10/26/2022
Jicarilla Apache Nation	Jeffrey Blythe; Joanna Vigil	Tribal Historic Preservation Officer; Tribal Historic Preservation Office staff	10/12/2022
Northern Arapaho Tribe	Crystal C'Bearing	Deputy Director of Tribal Historic Preservation Office	10/06/2022
Pala Band of Mission Indians	Shasta Gaughen	Director of Pala Environmental Department and Tribal Historic Preservation Officer	02/23/2023
Pawnee Nation of Oklahoma	Matt Reed	Tribal Historic Preservation Officer	01/25/2023
Pueblo of Zuni	Kurt Dongoske	Tribal Historic Preservation Officer	10/27/2022
Rappahannock Tribe	Anne Richardson	Chief	05/11/2023
Stillaguamish Tribe	Jason Griffith	Environmental Program Manager	10/24/2022
Swinomish Indian Tribal Community	Amy Trainer	Environmental Policy Director	12/07/2022
Tulalip Tribes of Washington	Libby Halpin Nelson	Senior Environmental Policy Analyst	10/26/2022
White Mountain Apache Tribe	Mark Altaha; Waylon Traux	Tribal Historic Preservation Officer; Civil Engineer, Land Operations Department	10/24/2022
Yakutat Tlingit Tribe	Andrew Gildersleeve; Amanda Bremner	Chief Executive Officer; Chief Operating Officer	05/09/2023
Yavapai-Prescott Indian Tribe	Linda Ogo	Director of Culture Research Department	09/28/2022

the Stillaguamish Tribe said, “I’d kind of wondered about these grants, but I’d never really pursued them.”<sup>99</sup> While Matt Reed of the Pawnee Nation of Oklahoma said “So I don’t think that we’ve ever utilized it [as a direct funding source]. And just in my dealings with that funding source, I [had] to pause. I was like, is it a funding source or funding agency? Anyway, I get the things from Nebraska Department of Wildlife, I believe, and then it sometimes ... affiliates with the [National] Park Service.”<sup>100</sup> Similarly, Ivan Senock of the Buena Vista Rancheria of Me-Wuk Indians described,

*I’ve heard about the Land and Water Conservation Funds through several means. Buena Vista is interested in restoration work of traditional waterways. The Southern Sacramento-San Joaquin Delta is a place of concern due to environmental health and tribal sites as well. And through that restoration work, we’ve kind of heard [of] the Land and Water*

*Conservation Fund through various partners, collaborators, contractors, predominantly who know of the fund as a possible funding mechanism to acquire land acquisitions and restoration projects. That’s kind of been circulating those groups.*<sup>101</sup>

The interviews documented that many tribal employees have no familiarity, or only a vague awareness of the Land and Water Conservation Fund. Those who have heard of the funding source often did not have a clear understanding of the funding source and how it is administered by federal agencies.

#### ***Tribal Interest in the State Assistance Program of the Land and Water Conservation Fund***

The tribal employees interviewed during this study expressed interest in the funding opportunities of the State Assistance Program of the Land and Water Conservation Fund because it would allow Indian tribes to

develop or acquire outdoor recreation lands. The projects that tribal employees are interested in seeking funding for are infused with the cultural values of their Indigenous communities and often differ from traditionally funded projects, like developing or acquiring parks, playgrounds, pools, and sporting facilities.

### Development Project Examples

All of the tribal employees who were interviewed said that their tribes were interested in pursuing conservation projects, including the development of outdoor recreation lands. Employees provided a wide range of examples for conservation efforts they could envision their tribe pursuing, and a range of these examples is provided in this section.

Chief Anne Richardson of the Rappahannock Tribe said the tribe is working on a multi-dimensional approach to land development grounded in Rappahannock conservation practices and stewardship values. This includes using tribal lands as places to teach others about Rappahannock history, culture, and stewardship:

*[Through our development] we want to teach people a better way of living on the land and a better way of thinking about the land ... so US Fish and Wildlife is transferring to the tribe an old lodge that they've had for a number of years, and it needs to be renovated ... [and] we want to renovate that and open it up as an Indigenous conservation education center. We want to bring in schools, groups, colleges, put college interns in [there], allow them to learn about our tribal beliefs, how we see our environment, how we see ourselves as a part of that, just one part of the whole picture, and how we see the caring for the land is like the caring for our own people. ... we believe that we are at a point in the spiritual history of this nation that people desperately need strong belief systems. They need more understanding of who they are in the world and how important the world and everything in it is to our survival. So we can't keep abusing and extracting ... and all of those things that Western society has hinged on for 400 and some years. It's a better way. So we are trying to teach that better way to people.*<sup>102</sup>

Chief Richardson also described that the Rappahannock Tribe hopes to develop a newly acquired parcel of land on the Rappahannock River based on an Indigenous

perspective of development, which she framed as radically different from Western conceptions of development (Figure 9).<sup>103</sup> She said that on this parcel, the tribe plans to develop a tribal welcome center, outdoor recreation infrastructure for the public use of the Rappahannock River, public tour infrastructure, a food forest for the sustenance of the Rappahannock people, and a Powwow ground for traditional practices. She expressed this development as restorative for the tribe, stating “the fact that we will be able to share our history, educate people about who we are, and return our people to that place, to feel that power and engage with what’s there as our ancestors did, it’s going to be so restorative to our tribe as a people. So it’s got many, many aspects of restoration to it.”<sup>104</sup>

Susan Young of the Houlton Band of Maliseets described how she envisioned using the State Assistance Program to develop conservation lands with her tribe to support the needs of the community:

*[O]ne of the things that we would consider would be river trails and riparian buffers and things that not only provide environmental benefits, they provide human health benefits, etcetera, that all tie in [to] people whether they're walking, biking, the in-stream restoration, the riparian buffers. You've got people out in canoes. You've got people out who are fishing. You've got people who are kayaking. You've got people who are picking fiddleheads. So it really expands the definition of recreation and using the land that, like you said earlier, is pretty much narrowly focused on playgrounds or national battlefield parks and things like that. I do think it's going to change, how quickly that happens, I don't know. But I think if given the opportunity to get on an equal level with the states, I think the tribes would really help steer that because a lot of these activities, these traditional activities, these subsistence activities, people do that not just to feed themselves. They do that because it's something they enjoy. It gives them the opportunity to get out in nature.*<sup>105</sup>

Matt Reed of the Pawnee Nation of Oklahoma explained how he envisions his tribe could use funds from the State Assistance Program:

*[J]ust in reviewing the projects from this fund that's up in Nebraska. ... I wouldn't be surprised if the*



Figure 9. The Rappahannock River, along which the Rappahannock Tribe has recently acquired land. The tribe is in the process of developing the land based on Indigenous conservation principles. Photograph by Flickr user [justin.critzer](#), 2010. Photograph is licensed for free use with attribution under the Creative Commons [Attribution 2.0 Generic License](#).

*tribe liked swimming pools and splash pad [projects]. That'd be something that I could see us doing because it's for kids ... But just off the top of my head, I would say that [these projects] are vastly different than the kind of projects that we would do.*

*I would expect us to probably look more into the wild plants and the types of animals. ... like that importance of getting out and hiking and knowing the environment and learning what these plants look like, what we call them, how you say it in our language, what we used it for. So there's kind of a botanical aspect, like what you would expect out of a science class, in high school or something. But then there's this whole other dimension that gets added onto it because of the connection with our culture. And that's something that I've seen, this is why I say it's that we would, our ideas and value system is completely different than say the [projects funded through the State Assistance Program in the] State of Nebraska ... It would be night and day difference just because of that interaction with the environment.<sup>106</sup>*

Crystal C'Bearing of the Northern Arapaho Tribe envisioned using funding from the Land and Water Conservation Fund to develop active cultural sites on and off the tribe's tribal trust lands:

*For on the reservation, we have different community places ... [that] are living active cultural resources,*

*you could say where pow-wow is. And there could be a lot of improvements there because you could get funding to build a nice arbor to have bathrooms there, really good bathrooms, changing areas or parking or whatever for those because those are open to the public. And we get a lot of, not only state visitors, but from out of state, even from Canada, that come up or come to the pow-wow. So there's so much tourism that comes in when we do have pow-wow here in the summer that to improve those [facilities] would be really good. And to have that money to upgrade those because they're pretty old. They're pretty small, but we work with what we have.*

*But even on that end too, there's the Rodeo grounds, where nowadays, horse relays have gotten really huge across Indian country ... And they draw huge crowds. And to have [facilities] there for recreational purposes, that type of funding would be good.*

*And then off the reservation ... [this kind of development could be used for places that are] [n]ot only a place of recreation, but a place where they pray, where we know where people pray, but then to have those facilities there to have to accommodate that. But also, it'll be in a public space, but it'll be safe.<sup>107</sup>*

Kendyl Reis of the Mi'kmaq Nation also viewed the State Assistance Program as potentially providing the tribe with an opportunity to develop infrastructure for community gatherings and recreational uses:

*We have this area that we call Spruce Haven because there's a lot of spruce there. And that is where the sweat lodge is. ... And that's also where we host the powwow. And so we right now are in the process of building a new ... building that can be used for things. It's going to be where we can have cultural gatherings. It's where we can host weddings ... They had one before and then they just needed to upgrade it.*

*And having a little campground ... they are actually hoping to turn Spruce Haven into a campground. That's more of a business thing as opposed to recreational [use]. But I know that there is that desire to have recreational [opportunities] for the tribe, which I don't think they would say no to like non-community members, but doing it with the community at heart, I know that is something that the tribe is very much interested in.<sup>108</sup>*

Susan Young of the Houlton Band of Maliseet thought that the funding from the Land and Water Conservation Fund could support the restoration of traditional fisheries, so that tribal members could maintain their traditional cultural practices:

*One of the projects we've been working on in the last few years has been in-stream restoration for the cold-water fishery. Our river right here is a notorious brook trout fishery. Once upon a time, we had salmon runs coming up into this river, but through history, the agricultural communities as well as the timber industry has really impacted the river and surrounding tributaries, they used to run logs down the river, so they would dynamite any of the rock clusters and root masses and things like that that would provide structure refugia and as a result, the rivers had become wider, shallower, and warmer so fish like trout and salmon don't really survive. So we're trying to restore these rivers to a state that will support these traditional fisheries.<sup>109</sup>*

Martina Minthorn of the Comanche Nation of Oklahoma suggested that the State Assistance Program could be used to rehabilitate a boarding school and turn it into an interpretive location to tell the tribe's history with the boarding school:

*With the boarding school here at Fort Sill ... we share the land in common with the KCA, the Kiowas,*

*Comanches, and Apaches, and that place is just dilapidating. It's just heartbreaking to see, we're just trying to keep our heads afloat, but at the same time, it's sad to see something go to waste and not preserve it. But we would like to do something there just to be able to educate people of the history of that property.<sup>110</sup>*

Waylon Traux of the White Mountain Apache Tribe envisioned the funding from the State Assistance Program being used to improve recreational areas at tribally-owned lakes:

*I feel that improving the recreational areas around the dam, either by creating more campsites or the ability to put trails, that was one idea I had and I actually put in for the Heritage Fund I believe, I put in an application for that to build a trail around Holly Lake. Unfortunately, that project wasn't selected for any type of funding. So things like that I feel would be really advantageous if this program can assist in that, I think there are some great opportunities here, especially with the dams. And we could extend that even further to areas along certain rivers ...<sup>111</sup>*

Similarly, at the Jicarilla Apache Nation, Joanna Vigil thought that the State Assistance Program could be used to restore an important lake. As she described "one of the key things that the President's pushing for [is for] the water commission [to restore] our lake, our Dulce Lake here that got emptied out like 20 years ago."<sup>112</sup> Previously, the lake was a popular tourist destination and had campsites, recreational vehicle parking, and related facilities. If the lake was refilled, it could potentially again become an outdoor recreation destination for tribal and non-tribal members and generate revenue for the Jicarilla Apache Nation.<sup>113</sup>

Linda Ogo of the Yavapai-Prescott Indian Tribe could see the State Assistance Program potentially assisting in funding a recreational and interpretive walking path. She explained, "I know that we were working on a trail project or a walking trail project that would be open for the public, but that is kind of on the back burner and I'm not sure why, but we were working with them to provide some cultural information on the walk, on the trail, along the trail, the signage and things."<sup>114</sup> However, she added the caveat that "again, this funding opportunity is through the state, so [my understanding is] we would not apply for it."<sup>115</sup>



### Acquisition Project Examples

Indian tribes across the country are attempting to acquire land so that they can conserve and bring health and vitality of their traditional lands. In the interviews for this study, many tribal employees shared ideas for acquisition projects that their respective tribes are interested in pursuing. For example, Amy Trainer of the Swinomish Tribe said the tribe would be interested in acquiring lands to “conserve something for cultural and spiritual ceremonial practices, for hunting, and fishing and berry growing and gathering or for fostering elk habitat.”<sup>116</sup> Kurt Dongoske of the Pueblo of Zuni said that the tribe has been working “to buy private land ranches ... that comprises the Zuni cultural landscape to preserve some of these places.”<sup>117</sup>

Kendyl Reis of the Mi'kmaq Nation indicated that for the tribe the acquisition of land for recreational opportunities has “been a big conversation since I’ve been here for the last year and a half, is trying to find land that can be used for recreation, like buying land that has a decent chunk of a river on it, or even like a sizable enough lake or pond that you could like have boats there and that tribal members could just go to.”<sup>118</sup>

Ron Montez, Sr., of the Big Valley Band of Pomo Indians said his tribe is constantly trying to acquire land to support its growing population, explaining “the need is still very great for land ... and we try to find funding to go ahead and address those issues and try to meet the needs [of the growing population]. We have increased our land base, but it’s still not enough.”<sup>119</sup> He said that the tribe currently prioritizes acquiring land for tribal housing and to support native ecosystems:

*And so when we see land now [to potentially acquire], we look first to see how badly it’s been managed, what are the problems with growing some of our medicines, our native plants and acorns our food sources and how that we can keep it, that other people don’t come in and destroy it or do something. We still have problems with people digging up graves around here and finding objects and stuff and trying to sell them on eBay ...*

*When we see land that’s out there, we want it, we look first if it’s available for housing, if it isn’t, and then is it available that we can continue our traditional ways, our ceremonies out there, our managing of the watersheds and the trees that’s growing in there. A lot of the non-native plant species that have come in*

*and are taking over and choking out the native ones. And that’s where we believe in using fire to control a lot of that stuff. So that’s our point of view. First, if it’s housing, property we can use for housing. If not, then can we get it to save so we can go through and protect an area that the hitch [a native fish species important in Pomo cultural practices] can come up through, or an area that we can go through and clean up and take out all the garbage and make sure that the water is cleaned and flows through their right. So it’s not causing erosion and putting in plants along the banks to keep it in a nice productive way. And because we share it with animals, we share it ... And so those are our perspectives, when we look at land, especially right next to us.”<sup>120</sup>*

Mr. Montez said the Big Valley Band of Pomo Indians is also interested in purchasing a nearby State of California park called Clear Lake State Park, which is an important part of the tribe’s cultural landscape (Figure 10). He explained:

*... at one time that state park was for sale, but we didn’t have enough money to buy it, and then they took it off of the market. And so, because of our Aboriginal village sites are there, and we still have some burial sites there, we approach them this a year ago about co-managing it and get an MOU signed, and we recently have that signed, and so we’re looking to start co-managing that, but we told them what we’d like to do is eventually buy it and get it back, or they could give it to us, so.”<sup>121</sup>*

Chief Anne Richardson of the Rappahannock Tribe stated that they are currently working with numerous private, nonprofit, and federal partners to reacquire their traditional lands. She explained the primary benefit for the Rappahannock Tribe of accessing funding through the Land and Water Conservation Fund is:

*[To] have our land back, period. And for the [Virginia] tribes here that have been landless all of these years ... [now] we have two state reservations. One has federal recognition but the other one is still a state reservation. The rest of the tribes didn’t have any land, and so they had to buy their own land back. And now we’re coming together to use other people’s money to buy this land, to protect it and to preserve it for future generations.”<sup>122</sup>*



Figure 10. Dorn Bay in Clear Lake, as viewed from Clear Lake State Park in California. The lake is an important place within the cultural landscape of the Big Valley Band of Pomo Indians. The tribe had the opportunity to purchase the Clear Lake State Park at one point but did not have the funding for the purchase. Photograph by Wikimedia Commons user [Kglavin](#), 2007. Photograph is licensed for free use with attribution under the Creative Commons [Attribution 2.5 Generic License](#).

Susan Young said that the Houlton Band of Maliseets currently worked with some conservation groups to obtain access to conserved lands for tribal citizens to hunt, gather, and conduct other traditional cultural practices. She explained,

*In this immediate vicinity, a lot of the land has been developed for agriculture, so they really don't sustain the traditional plant communities needed for medicinal plants. Hunting opportunities are not as prevalent when all you've got is farmlands and you're in close proximity to homes. And through a variety of reasons ... Maine's got a lot of fish consumption advisories, so finding a place where you can go and catch fish that are not laden with mercury, etcetera is challenging. So in order to get to the traditional foods, a lot of time some people are having to go further and further from home.<sup>123</sup>*

Matt Reed of the Pawnee Nation of Oklahoma saw the State Assistance Program as an opportunity for his tribe

to purchase lands within the core of its aboriginal territory in Nebraska (Figure 11). He described a recent opportunity he presented to the tribe that could be similar to the types of acquisition that could be done through the State Assistance Program:

*I had found two tracts of land up there south of Genoa, one on the Platte ... And both the tracts were for sale for a time. And I was trying to get the council to purchase those so back then, and with the idea that that and this kind of goes back to our earlier conversation, my thought process was we could use that, maintain it the way that it was currently being maintained ... But then we could also start planting our native botany plants that are important to us. We could ... reintroduce or encourage [those plants] in that area. And then, either have earth lodges built up there or bring in some these ... little portable cabins to ... try to create a tourist business, where you could go out there and stay on Pawnee Nation land and enjoy nature and so forth.<sup>124</sup>*





Figure 11. The Platte River and the surrounding landscape viewed from Eugene T. Mahoney State Park outside of Ashland, Nebraska. The area around the Platte River is a core part of Pawnee aboriginal territory. Photograph by Wikimedia Commons user [Babymestizo](#), 2011. Photograph is licensed for free use with attribution under the Creative Commons [Attribution-ShareAlike 3.0 Unported License](#).

Mr. Reed said that the Pawnee Nation of Oklahoma is currently prioritizing the acquisition of lands for its cattle and agricultural operations to help establish food security for tribal members. He explained:

*Right now, acquiring land for [the tribe's cattle operation] is of importance mostly because we're going through a drought, I don't know how many years we've been in a drought. And so grazing ... right now, there's no hay to be found around here. And so the more land you have, the more cattle you can graze just because you can spread them out and that kind of thing. So that's of importance. Other than that, I would, aside from that cattle operation, I think that the next level of importance would just be lands that could be used for agricultural projects. So we have many varieties of corn and other crops, and food sovereignty and food ... security is of importance to us, especially after the pandemic. So that's kind of how that cattle operation figures into that, is that we don't have to rely on the shipments of beef from Argentina or someplace that's not going to come in.<sup>125</sup>*

The Yakutat Tlingit Tribe is seeking to acquire private land parcels within their traditional lands for conservation purposes and expressed interest in the acquisition opportunities available through the Land and Water

Conservation Fund. Andrew Gildersleeve, the Chief Executive Officer of the Yakutat Tlingit Tribe, explained that much of the tribe's traditional lands are currently subjected to extractive industries, such as logging and mining, that are causing environmental degradation. He explained that to halt this degradation of their traditional landscape, the Yakutat Tlingit Tribe is seeking to acquire portions of their traditional lands for conservation purposes. He said that while much of the tribe's traditional lands are held in private ownership, the tribe never ceded its stewardship obligation of their traditional lands, saying "that stewardship responsibility has not changed because of who has title to the land."<sup>126</sup>

### ***Tribal Interest in Other Funding Opportunities within the Land and Water Conservation Fund***

Tribal employees had an interest in other programs within the Land and Water Conservation Fund, including the Recovery Land Acquisition Program, the Habitat Conservation Plan Land Acquisition Program, and the Forest Legacy Program. Currently, tribes are not eligible to be direct recipients of these programs; however, the following case study based on an interview with Jason Griffith of the Stillaguamish Tribe is provided as an example of how one of these programs could be useful to tribes.

### The Stillaguamish Tribe's Chinook Salmon Recovery Efforts and the Recovery Land Acquisition Program

For decades, the Stillaguamish Tribe in the State of Washington has been involved in the Chinook salmon recovery efforts in the Puget Sound.<sup>127</sup> The Chinook salmon is listed as threatened under the Endangered Species Act. Currently, the population of Puget Sound Chinook salmon is around 1,000 individuals, well under the population standard of 30,000 that the National Oceanic and Atmospheric Administration set for de-listing the species as threatened.

The recovery of the Chinook salmon population is a crucial part of the ecosystem restoration that the Stillaguamish Tribe is working towards. Jason Griffith, the Environmental Program Manager of the Stillaguamish Tribe, explained that the Stillaguamish Watershed and other watersheds that drain into the Puget Sound “were converted 150 years ago to other land uses, primarily agriculture . . . and so the landscape, now looks very different than when the Stillaguamish Tribe signed the Treaty of Point Elliott in 1855.”<sup>128</sup>

In the words of Mr. Griffith, this shift in land use slowly disrupted “the productive capacity of the landscape to support fish and wildlife, such that . . . it’s growing something for the settlers and their descendants, but not for the tribes.”<sup>129</sup> Mr. Griffith continued, stating “what we’ve been trying to work towards is a level of acceptance from the agricultural community for them to produce certain crops, while the tribe produces different ‘crops’ on adjoining land, ‘crops’ that were there during treaty times and sustained tribal people and their culture since time immemorial.”<sup>130</sup> Mr. Griffith explained that “there’s this tension between these land uses, whether it supports fish and wildlife populations or it produces . . . European agricultural products” (Figure 12; Figure 13).<sup>131</sup>

A key component of Chinook salmon recovery efforts in the Puget Sound is land restoration. As described by Mr. Griffith:

*[W]hat we found over the years is that acquisition of the lands that are needed for recovery is our main tool, because when you approach many landowners with ambitious habitat restoration project types, like you want to set a levee back, or remove bank armoring and plant trees, or let beavers flood an area that was historically wet, you are more often than not met*

*with opposition. While most everyone likes salmon, not many like salmon habitat on their own property. And so when you approach a landowner with ideas about what they need to do on their property to restore it for fish and wildlife populations, the typical response is, “Well, I’m not going to do that. But if you want to buy my property, and if I want sell it, then you guys can do that.”*

*And so, the first step on these large projects is typically acquisition of the footprint needed to implement it. We have a variety of funds that we use for those acquisitions but we can always use more. And because there’s an ample supply of lands for sale, important critical habitat lands, the need consistently outstrips the supply of grant money. So we’re always looking to expand the grant sources that we can use for acquisition.”<sup>132</sup>*

Over the last decade, the Stillaguamish Tribe has purchased about 1,000 acres of floodplain and estuary for habitat recovery, lands which are currently in the process of being restored. However, the Stillaguamish Chinook Salmon Recovery Plan calls for restoring nearly 8,000 acres of habitat along the major waterways and delta of the Stillaguamish. This means the tribe still needs to purchase and restore nearly 7,000 additional acres of land, which Mr. Griffith said will take decades. He said that the tribe takes a generational approach to this work, knowing they are “doing things for generations that they’ll never meet.” The Stillaguamish Tribe is interested in “land acquisition and holding title to those lands . . . [so they are] protected in perpetuity.”<sup>133</sup>

The Recovery Land Acquisition grant program of the Land and Water Conservation Fund administered by the U.S. Fish and Wildlife Service provides funding for land acquisition to support the recovery of threatened or endangered species with an active recovery plan, which the Chinook salmon has. However, currently this funding opportunity is only available to states, meaning the Stillaguamish Tribe cannot access this funding to support their acquisition efforts. Mr. Griffith said that the Recovery Land Acquisition grant program “would be something that we would be interested in, if [the eligibility criteria] could be changed, that would allow tribes to be directly eligible, because we typically have matched in the form of other grants we can leverage, . . . So we feel like we could be a valuable participant in the program if we were allowed to participate.”<sup>134</sup>





Figure 12. An aerial view of the South Fork of the Stillaguamish River and the surrounding landscape. Much of the land around the Stillaguamish River and other rivers that drain into the Puget Sound have been converted to agricultural use, diminishing the ecosystem’s ability to support fish and wildlife populations. Licensed for commercial use from [iStock](#).

The current structure of Recovery Land Acquisition grant program allows for tribes to partner with states through a Memorandum of Agreement or Understanding. However, Mr. Griffith said that partnering with the state generates “a public process that often is at odds with salmon recovery” because some stakeholders are opposed to changing lands away from agricultural use.<sup>135</sup> He further explained that in “our experience ... when the state gets involved in those discussions, then there’s often constituencies that then contact their ... Fish and Wildlife Committee [representative] ... And ... the committee is highly political, and so people can contact their committee members and then kind of derail things, in our experience.”<sup>136</sup>

Furthermore, the State of Washington and Indian tribes have had a difficult relationship that makes it hard for these parties to partner on projects. As Mr. Griffith explained:

*[I]t’s much simpler and cleaner if the tribe doesn’t have to go through the state. ... [T]here’s a lot of tension, because the state and the tribes have an adversarial history regarding treaty rights issues. It actually*

*resulted in the U.S. government suing the State of Washington on behalf of Stillaguamish and other Washington treaty tribes in 1974 in what’s known as U.S. v. Washington. The state lost that case, and they appealed it to the U.S. Supreme Court, which upheld the case in the tribe’s favor in 1979. And so there’s been this uneasy coordination between the State of Washington and tribes, and it’s not always been very friendly. And so the tribes aren’t keen on partnering with the state in a subservient role.*<sup>137</sup>

Mr. Griffith said that there are sovereignty issues involved in partnering with the state and that working directly with the federal government on the Recovery Land Acquisition grant program would be much simpler:

*There’s just a lot of history there that makes partnering difficult. And so it just would be a lot cleaner, I think, from the tribe’s perspective, to be able to be on equal footing [with states]. Being forced to enter into a Memorandum of Understanding with [the] state ... further erodes sovereignty in [the tribe’s] view ... because there are signatories to a treaty on equal*

footing with the state. They view themselves as equal partners in these resource and habitat conversations. When you're putting them under a Memorandum of Understanding with the state in order to receive grant funds, it's putting the tribes under the state's authority, which the tribes don't agree with legally. And I don't think the Treaty of Point Elliott or the U.S. Constitution agrees with that either.<sup>138</sup>

Regardless of the challenges the Stillaguamish Tribe faces in Chinook salmon recovery, it continues to work towards its goals as part of a broader cultural and resource preservation effort. As explained by Mr. Griffith,

*[T]he culture and natural resources are ... intertwined ... [The Stillaguamish people] depend on the plants and animals that sustained their culture for thousands of years. And the work that we're doing is really ecosystem restoration in the sense that ... while we're often getting acquisition and restoration dollars*

*through Chinook recovery grants, Chinook are just an indicator of the whole ecosystem's health. And so if we are restoring Chinook, we're restoring bear and deer and elk and waterfowl and cedar.*<sup>139</sup>

While the efforts of the Stillaguamish Tribe to restore Chinook salmon habitat fit well within the conservation goals and values set forth in the Land and Water Conservation Fund, and specifically the Recovery Land Acquisition grant program, the Stillaguamish are currently excluded from direct access to the program. As Mr. Griffith explained, that means that the Stillaguamish Tribe will not access funding that is directly applicable to their conservation efforts, saying “[the program] absolutely would work if we were able to apply directly like the states can, but I don't think it's currently worth bringing it up to the tribal board of directors as it is now because of the strings with the state. And so it's full stop. They're just not going to go for it, which I completely understand.”<sup>140</sup>



Figure 13. A field of daffodils being grown in the Skagit Valley, along the Skagit River, which drains into the Puget Sound. Significant portions of the river valleys within the Puget Sound watershed have been converted from land use that supports fish and wildlife populations to land use that supports commercial European-style agriculture. Licensed for commercial use from [iStock](#).

### **Tribal Barriers and Concerns to Accessing Funding from the Land and Water Conservation Fund**

The tribal employees interviewed for this report described various barriers that their tribes have in accessing grant funding and specific barriers and concerns they saw to their tribe applying for funds through the Land and Water Conservation Fund. This section highlights those barriers and concerns in the words of the interviewed tribal employees.

#### **Capacity Issues**

Nearly every tribal representative interviewed for this report highlighted the capacity of tribal programs to apply for and administer grant funding as a significant barrier to accessing grant funding for their tribe. These capacity issues include having a lack of staff, not having staff with the technical expertise in grant writing, difficulties in keeping up with grant reporting, and lack of capacity to maintain projects started with grant funding after the lifetime of the grant.

Numerous tribal employee interviewees described that they had difficulty in applying for grants because of minimal institutional support for grant writing within the tribe. As explained by Mark Altaha of the White Mountain Apache Tribe:

*We're just short-staffed, just myself and the grant administrator ... do all the grant writing, collecting all the documents necessary for the grants. And a lot of time, it's the short timeframe, with the tribe you have to present your proposal to the tribal council, which only meets once a month. And a lot of times it's hard to meet the deadline and get all the forms together. Yeah, just the shortage of staff ... to assist with the grant writing [is a significant issue].<sup>141</sup>*

The lack of institutional support for applying to grants that Mr. Altaha spoke of was similarly expressed by Crystal C' Bearing of the Northern Arapaho Tribe:

*I think the barriers for accessing grants and accessing grant funding, I think is just ... we have one person in our tribe who helps us with the grant writing. And so it's hard to get the one person to focus on your grant with you. I'm learning more how to write the ... grants myself, so I'm pretty knowledgeable in it now, but I*

*know that with other programs, it's really hard and getting that grant writing assistance to write a good grant and be competitive.<sup>142</sup>*

Matt Reed of the Pawnee Nation of Oklahoma also discussed a lack of resources for applying for and administering grant funds at his tribe:

*[I]t's a problem here ... grant support or grant management ... We don't have any grant writers ... there's supposed to be an office that manages grants, but they don't. And so I do everything for my grant officer ... We write it, we have to monitor how much money we have in which category, how much we can spend shuffling funds from one category, to whatever. It's like shuffling the funds around and then all the bureaucracy that goes with that.<sup>143</sup>*

The minimal support for grant writing at Indian tribes is often coupled with the intensely strained workloads of tribal employees. As expressed by Martina Minthorn of the Comanche Nation of Oklahoma:

*[A]s far as applying for grants, we have such a big workload. Recently I was gone and just for those days that I was gone, I had 700 emails. It's just like I'm drowning. And then having to do all the grant stuff on top of that. We do have a grants department, but basically, they just submit the grant for you, it's not like I have additional grant writers that help apply for these grants, and so that's a barrier for us, time. ... So if I do apply for grants, I'm going to have to do it on weekends or between phone calls and site visits and emails and all the other consultation that we have.<sup>144</sup>*

The burden of administering grants is also an issue for tribal programs, particularly those that are heavily reliant on grant funding. As explained by Kendyl Reis of the Mi'kmaq Nation:

*The other limit is more of an internal one. It's the fact that ... I have seven to nine grants, I can't take on anymore. So our grant writer will find these really cool grants and I'm just like, "I can't do anything with that. I can't do it. Thank you. I'll keep it in mind for next year, but I can't," and I'm not the only person. We had an entire conversation yesterday at our director's meeting about how we all have way too many grants.<sup>145</sup>*

Matt Reed of the Pawnee Nation of Oklahoma similarly described passing on relevant grants because of ongoing workload constraints:

*I know just for on my end, there's been several times that there's been grants come across my desk that I know we have a project for, or there's a potential to do a project because this grant would fit it. And I don't go for it because I spend enough of my time managing the one grant ... I don't need to divert more of my attention away from my job than what's already done. So grant support, grant coordination, man, that's a big deal right there.*<sup>146</sup>

In considering how a grant through the Land and Water Conservation Fund could be applied to and administered by the Jicarilla Apache Nation, the Tribal Historic Preservation Officer, Jeffrey Blythe, highlighted the interconnected difficulties the tribe may encounter:

*The Water Administration has always been a really small office, and I think they would have challenges of administering a grant of that size, no matter how easy it was made. Game and Fish, they handle a lot of different grants, but I believe that so many of the people are paid for under a 638 grant, and I think they have specific things they have to do under that grant. So I don't know what they would have in terms of being able to go after a grant. So that's where all the challenges lie. A lot of NAGPRA [Native American Graves Protection and Repatriation Act] grants, a lot of other things that the tribes do, they're able to write in grant administrators within the grant who handle it off-site ... But no matter what happens, if the money comes directly to the tribe, we have to get tribal resolutions. We have to deal directly with the Finance Office. We cannot handle finances separately. Even if we're going to subcontract everything, to handle it, it has to go through the tribe.*<sup>147</sup>

For smaller tribes the issues of capacity are even more acute, because they compete for grant funding not only from various governments and institutions but also from larger tribes with more resources. As Ron Montez, Sr., of the Big Valley Band of Pomo Indians said:

*[W]e're competing against each other for the same pot of money. And there are tribes that are larger,*

*that have staff and people who are very proficient in writing for grants. The smaller tribes like mine and around here, we don't have access to that expertise. And so we don't get those funding. We're way down low on that list that actually gets funded because the bureaucrats, again, are looking for every, every dot to be, everything crossed everything because of their requirements for these documents to be, according to their ways that it's, it meets all their requirements.*<sup>148</sup>

Even the tribes with the most resources and staff often lack the capacity to pursue all of the grants for which they are eligible. Shasta Gaughen, the Director of the Pala Environmental Department and the Tribal Historic Preservation Officer for the Pala Band of Mission Indians, explained:

*I will say for Pala, we have more resources than a lot of other tribes do. So Pala is able to hire people like me to navigate this system. Most tribes don't have somebody like me, or if they do that person is the only person they have. I have six people in my department who help me and then some other people under them, so I have a lot of capacity and yet my capacity is still not enough to manage all of the things that come across my desk. ... And tribes may see that there's opportunities for funding but they don't have somebody on their staff who can follow through with ... that notice of funding opportunity, assess it, find a project that fits it, write the grant proposal, get the support letters, sign up in usually some new platform where you have to do passwords and this and that to be able to submit your grant proposal ... So it's just an incredibly onerous thing to apply for a grant and sometimes the money available is not enough to justify the level of effort that a tribe would have to go through, especially with no guarantee of success. So that's the capacity issue.*<sup>149</sup>

Some tribal employees described the hurdles in executing projects after a grant is received, commenting on the inability to build staff capacity within a grant funding structure. Susan Young the Director of Natural Resources for the Houlton Band of Maliseet Indians explained:

*A lot would come back to just sheer capacity. One, having the people to put together the proposal and put together the projects is one thing, but actually*



*having staff to actually implement these projects is a whole other ballgame. And a lot of these projects that we've undertaken that we've had to bring in multiple partners, it doesn't lead to capacity building in any way. It doesn't support a lot of staff time. We can't take a project like some of the in-stream restoration and put four or five people on it. We end up having to contract it out just because the grants don't really allow for overhead, don't allow for hiring staff. A lot of time the budgets would support hiring a contractor to come in and do the job. If the funding was flexible enough that we could build capacity while doing these, that would also make it a lot more attractive.*<sup>150</sup>

Tribal employees also discussed a lack of capacity to maintain projects funded through grant programs, noting how there is often funding to build something but rarely is there tribal revenue to support maintaining something. Susan Young of the Houlton Band of Maliseet Indians said:

*We have six people in our department right now, and we're working out of multiple funding sources, multiple projects. A lot of these funding sources they're competitive, which is the way of the world these days. But they are very project-centric and don't really set up an opportunity to have ongoing programs. It's great to go out and do this one-shot thing, but how do you keep it going? How do you do maintenance upkeep? How do you expand after that project period is done? That is one of the things, as a tribe, we try to think about those that are coming after. We can go out and do this great project, but if we can't maintain it, if we don't have the people, we don't have the funding, etcetera, to maintain it or roll it into another project, then it's sometimes hard to say, do we take our limited assets and do this one-shot deal? Or do we do something that we're going to be able to maintain and have it grow and benefit the tribal citizens into the future? So unfortunately, there's no real easy answer to a lot of these questions.*<sup>151</sup>

Ron Montez, Sr., of the Big Valley Band of Pomo Indians similarly described the flaws in the grant funding cycle, saying “there's a lot of different pots of money out there to help. It's never enough to do a real good job. It's just enough to put a Band-Aid on or to address something, then you have to look for more funding to keep it alive.”<sup>152</sup>

Directly addressing funding opportunities in the Land and Water Conservation Fund, Susan Young, of the Houlton Band of Maliseet Indians, expanded on her earlier point about the lack of follow through in grant programs:

*[S]omething as simple as putting in a park or playground, you're going to have to do things, routine maintenance. You're gonna have to have people cutting the grass. You're gonna have to have people picking up the trash. And not everybody can absorb yet another parcel to take care of. So that is the thing that the nature of philanthropy has grown away from. It's more of the one-and-done look ... We can shine a light on, “Hey, look, we did this piece.” And then at the end of the day, you pack up and go home. It doesn't really carry through into the future.*<sup>153</sup>

Fundamentally, the lack of capacity leaves tribes in a position where it can be impossible to access certain grant funding, even if it is technically available to them. Ron Montez, Sr., of the Big Valley Band of Pomo Indians described how he felt about the potential for applying for funding through the Land and Water Conservation Fund:

*So you have these cities, larger tribes, and larger people that, groups that can go after this \$900 million or the people that need all of that. And on that smaller scale, we don't have a chance to even try to get some of that. So it's hopeless. In our case, we feel it's just a waste of time because we know we'll never get funded.*<sup>154</sup>

### **Matching Funds**

Numerous tribal employees interviewed said that the one-to-one match that is required from applicants to the State Assistance Program would create barriers to applying for funding from the program. Some tribal employees said it would be a large hurdle in an application while other tribal employees said that matching funds requirement would exclude their tribe altogether from applying to the grant program.

Susan Young of the Houlton Band of Maliseet Indians said that having a matching fund requirement on a grant makes accessing that grant program quite complicated for the tribal program she directs, saying:

*It does get very complicated when trying to meet the match requirements. Sometimes it's a cash match.*



Sometimes for some of our projects we can use the value of the land that it's going on to meet the match. A lot of our funding does come from federal sources, so we cannot really use any of our other funding to satisfy the match. Like a lot of our restoration projects, if they required a match, we wouldn't be able to do it because of the federal partners that are coming to the table. So that's when we get into 638 contracts and all of this becomes a dance depending on how much match is required, if it's got to be a cash match, [or] if it could be in-kind. A lot of times some of our funding sources, some of the applications we do, we're able to use staff time to meet the match. But we've had a couple of different projects that I've worked on with our grant writer and it has to be a cash match and we can't pull that off a good chunk of the time. And some projects have 50, 75 percent match or cost share and that is a real barrier.<sup>155</sup>

Shasta Gaughen of the Pala Band of Mission Indians said that even for well-resourced tribes the match requirements for the State Assistance Program make it a difficult opportunity for the tribe to pursue and speculated that it would be nearly impossible for smaller tribes:

*Even for a tribe like Pala where we have a lot of financial resources ... doesn't mean that money is just pouring out the doors that we can spend however we want[.] ... [M]y program is almost entirely grant-funded, which I would do regardless of whether we have the casino or not. ... If you've got a \$4 million project and the tribe has to come up with \$1 million, either you got to do that in cash, which can be hard for tribes to do, even if they have economic generation like a casino or if you're going to have to do in-kind. If you're a small tribe, where ... are you gonna come up with \$1 million of in-kind? You're not. So yeah, it's a huge barrier.<sup>156</sup>*

Ivan Senock of the Buena Vista Rancheria of Me-Wuk Indians explained the difficulties his department has in applying for grants with matching fund requirements:

*I would say it's not a non-starter, but it is a higher hurdle to climb. Because if I'm coming after a grant, I also have to compete internally for other projects because a lot of federal grants, a lot of matching things will take up those matching funds or funds available*

*for matching. Because sometimes I'd have to compete with community health, and again that's kind of a difficult call for me to make, but I have to present it, saying this is a good idea to purchase this park, or to engage in this nature trail, like this is important. But sometimes I'd have to present it against community health or economic development. And that again is the internal discussions of a nation, of a tribal nation that has to occur. So there are ways we can get around the matching funds, and that includes a lot of the services, a lot of the equipment, a lot of the plants. For restoration projects, we'll transfer matching funds that way and provide the plants for a restoration project instead of providing staff time. So there's ways to get around it, but again, that's ... It's a higher hurdle and a benchmark to clear when it is a one-to-one matching.<sup>157</sup>*

Similarly, Matt Reed of the Pawnee Nation of Oklahoma said that matching funds requirements in grant programs makes those grant programs nearly inaccessible for his tribal program. He explained it is,

*[N]ot impossible, but it's very difficult. ... when we go through economic downturns, like the pandemic, our little, tiny casino that we have takes a major hit and to make up or to kind of supplement that income flow, we basically rely on grants. ... So when we look at these grants ... like an income flow for us is if ... it's a matching grant, it kind of makes it a moot point. ... And so those kind of get pushed to the side and the search continues for ones that aren't matching funds ... And it's only if it's a project that like, we have to do this and this is the only funding source, then we would build for something that's matching to us ... we constantly are just come across funds, grants that have, are matching and we can't even look at it. And that cultural center, that museum, it's important to me and what I do, but to the tribe, they're just, [do not consider it] up to that level of importance for them to begin relying on matching funds.<sup>158</sup>*

Martina Minthorn of the Comanche Nation said that while her department can access matching funds, matching funds create additional burdens. She explained that "our tribal council has to vote on those types of ordeals."<sup>159</sup> Continuing, she said "we'd have to know a year in advance, [and say to Tribal Council] 'well, hey, next year this is due,' ... and Tribal Council would have to allocate that funding

for that portion, but then what do we do if we don't get it? And that money just sits in that account. So yeah, there's a lot of stipulations with tribal government and finances."<sup>160</sup>

Kendyl Reis of the Mi'kmaq Nation explained that "the match funding requirement is easily one of the most limiting things [to accessing grants] ... there just aren't funds."<sup>161</sup> She continued that her "immediate knee jerk reaction is ... [the match requirement of the State Assistance Program is] not doable. The moment you said 50 percent I was like, nope, we can't even do 25 percent of cost shares."<sup>162</sup> She said that applying for a grant that required matching funds would "have to be council's idea. I don't think anybody could bring it up. I don't think they'd say yes. But I would say knee jerk reaction 50 percent for anything over \$10,000 would be unobtainable for sure. Especially if you can't use other grants."<sup>163</sup>

Ron Montez, Sr., of the Big Valley Band of Pomo Indians said that the match requirements would exclude his tribe from applying for funding through the State Assistance Program. He said that "for a small tribe ... we can't do that. Bigger tribes can do that and more power to them, but we can't, so we can't apply for any of these things because we don't have the funds for matching funds. So this [funding source] may have \$400 million in there, but we'll never see it."<sup>164</sup>

#### **Applying for the State Assistance Program of the Land and Water Conservation Fund Through States**

The State Assistance Program of the Land and Water Conservation Fund is currently the principal program funded by the Land and Water Conservation Fund available directly to Indian tribes. The structure of this program, however, requires tribes to apply through state programs rather than directly applying to the federal government. Most of the tribal employees interviewed for this project indicated that applying for a grant from the State Assistance Program through the state government represented a significant barrier to their accessing this funding.

Some tribal employees viewed the requirement that Indian tribes apply for federal funding from the Land and Water Conservation Fund through state governments as an undermining of tribal sovereignty by the federal government. As Susan Young of the Houlton Band of Maliseet Indians said:

*Well, one of the things that really strikes me that in reading everything, they talk about wanting to work with tribes, but by imposing that requirement to work through states, they're really undermining tribal sovereignty by telling the tribal governments that you're not on the same level, that you don't have the ability to go after these funds that you must come down and that you have to require the state to apply on your behalf. I'm not saying that depending on the project, the tribe might invite the state to come in and become a partner in the project, but the fact that the state has the ... Not the ultimate power, but the state has the only authority to apply, it does somewhat undercut tribal sovereignty.<sup>165</sup>*

Concerns about tribal sovereignty were also expressed by Crystal C'Bearing of the Northern Arapaho Tribe, who said:

*[W]ith our state government here, to me, they do have a tribal relations committee, but a lot of times, it feels like if they're going to give us funding, then they ... feel like they have a say in how ... we should do [it] or what they think is best, and I don't like that. I don't like that overseeing, and I've seen that happen here ... with the state government, and I don't like it. So I would rather deal with the federal.<sup>166</sup>*

Ms. C'Bearing explained that her interest in working directly with the federal government is because of the "government-to-government consultation or relationship that we have with the federal government."<sup>167</sup>

The barrier of applying for Land and Water Conservation Fund grants through states can be significant because that is not allowed by some tribes. Linda Ogo of the Yavapai-Prescott Indian Tribe said, "[o]ur tribe prefers not to apply for funding that involves the state."<sup>168</sup> She further explained "[t]hat's from our governing bodies' end. They're the ones that approve grant applications once they're submitted, but one grant writer did say that a lot of it is because of access to information from the tribes. They don't want to give up any more sovereignty than they have to."<sup>169</sup> She added, "I'm sure it has to do with financial information, too, since it's a grant."<sup>170</sup>

Some tribal employees said that their tribes do not allow tribal programs to apply for state grants because states

often require a waiver of sovereign immunity. Ivan Senock of the Buena Vista Rancheria of Me-Wuk Indians said that “allows litigation against the tribe to happen. But it also forces tribes even on tribal lands or wherever the tribal project is, to be audited to have state investigations on or to enforce California ... the state’s environmental regulations or business regulations ... That’s a big thing for tribes.”<sup>171</sup>

The waiver of sovereign immunity undercuts the sovereign status of federally recognized Indian tribes, and Mr. Senock stressed that for the Buena Vista Rancheria of Me-Wuk Indians, “waivers of sovereign immunity are an immediate no-go.”<sup>172</sup> He continued stating that “If that is in the notice of funding opportunity or in any of the RFPs that we receive, or the contracting services that my department provides, I am not allowed to go for that kind of funding in any way, shape, or form.”<sup>173</sup> He added that, “I know several other tribes have that standing order.”<sup>174</sup>

Shasta Gaughen of the Pala Band of Mission Indians expressed that the State of California’s request to tribes to waive their sovereign immunity highlights “a lack of understanding by the state of what the tribes’ rights [are] and what their responsibilities are to tribes.” She described the skepticism the Pala Band of Mission Indians has about waivers of sovereign immunity when considering applying for state grants:

*[The state will] put things in there like we want you to waive your sovereign immunity for the purpose of arbitration, if there is any sort of dispute over the use of the funding ... and the thing is, is that a tribe will not waive its sovereign immunity when it’s put like that. Of course, when tribes enter into contractual agreements with companies and things, yeah, there’s gonna be some sort of a contract that you go through and say, this is what we’re willing to do if we have a dispute. So dispute resolution clauses and things like that but the state continues to call it, will you waive your immunity from suit for X, Y and Z? And you might as well be asking tribal people, will you set yourself on fire if we tell you to? It’s not gonna happen because that’s ... such an important part of who tribes are and the rights that they have in this country vis-a-vis the federal government and a state should not be asking another sovereign to waive its immunity from suit, that’s not the way this stuff works.*<sup>175</sup>

Many tribes have strained political relationships with the states where their trust lands are located, and this makes engagement with those states difficult. As Matt Reed said about Oklahoma, “everything we do is antagonized by the current governor of Oklahoma. He does not like tribes. He would really like it if we were dissolved and went away. So they’re very bad political climate with the State of Oklahoma right now between any tribe in Oklahoma, not just us.”<sup>176</sup>

The complex relationship between tribes and states is not an isolated issue. Susan Young of the Houlton Band of Maliseet Indians described the relationship between tribes and the State of Maine:

*The tribes in Maine do not have a good working relationship with the State of Maine. A lot of that stems from the Maine Indian Claims Settlement Act. It is not a true government-to-government relationship. ... The state feels that they are superior, and they have the ultimate say in everything. They do not respect tribal sovereignty. So there are a lot of issues where things like water quality standards, fish consumption advisories and things like that are not protective of sustenance needs. So there’s a lot of pushback on most anything that the tribes are trying to do. There’s been a big effort in the last couple years to try and improve tribal-state relations and that is a mixed bag. But the state very much wants to have the ultimate say in everything and does not really want to have any feedback or any input from the tribe ... That’s one of the issues with the Land and Water Conservation Fund. You have to go through the state to apply and it is getting a little bit better but we’re nowhere near having that type of relationship with the state.*<sup>177</sup>

Speaking further on the relationship between tribes and the State of Maine, Kendyl Reis of the Mi’kmaq Nation said “The relationship between the state and the tribes is really fascinating. It’s not great.”<sup>178</sup> She said that even with Maine having what is often perceived as a relatively liberal state government, there is pushback on tribes receiving more rights. While Ms. Reis said there would potentially be state agencies that her program could work with on a grant, she said that to date, “I haven’t really done much [with] state grants honestly. Either our grants are federal or they are through these private small trust companies through private donation philanthropy type things. My department hasn’t done anything with the state.”<sup>179</sup>

Chief Anne Richardson of the Rappahannock Tribe said that the tribe faces many barriers to accessing federal funding through the State of Virginia because of the prevalent attitude towards tribes at the state level:

*I know that when we called our State Department of Conservation and Recreation to talk to them about funding that comes in from the federal government, ... [they said] “Oh, well if any money comes to the state, we decide where that goes and it can go wherever we want it to go. And it doesn’t necessarily have to go to you.” So even if you find money at the federal level, if they send it to the state, you definitely will not get it.*<sup>180</sup>

Chief Richardson described the difficult maneuvering required of the tribe to gain access to conservation funding through the State of Virginia:

*We had to actually go to General Assembly and get included in the eligibility to even apply for it. ... we were told we could apply for it. And then the agency asked us to do a preliminary proposal so that they could take it to the General Assembly and show the General Assembly that there were all these requests for this money so they could appropriate what was needed, only to find the day before the application was due that we didn’t qualify for it. So they used the tribe to go to the General Assembly and get additional funding and then didn’t give it to the tribes ... So our attorney brought it before the General Assembly because we found that there was this money there that was doing exactly what we wanted to do, but we weren’t eligible for it. So then that’s when we used our story to shame Virginia into passing that so we could be eligible for it, which was pretty sad.*<sup>181</sup>

Beyond the relationship with a given state itself, applying for state grants also creates a barrier because most tribes do not often apply for state grants, so there is significant time invested in understanding the granting standards and procedures. Jeffrey Blythe said that even though the Jicarilla Apache Nation has a good relationship with the State of New Mexico, applying for grants through the state requires a different awareness. Dr. Blythe said, “There are just different restrictions the state has. They’re real picky about certain things like travel, other things you want put into a grant they’re real picky about.”<sup>182</sup>

Linda Ogo of the Yavapai-Prescott Indian Tribe looked at the Arizona State Assistance Program application before her interview, and she described difficulties in being able to easily identify grant eligibility and application requirements:

*[I]t’s not clear whether the tribe is submitting the application or the tribe is contacting the state to submit an application on their behalf. It gets real murky there. So that being so unclear would make most tribes just say, “I can’t find what we have to provide as far as a project, as far as financial commitment,” if it’s just all going to be awarded for the full project or if there’s a split somewhere that the tribe has to match, whether it’s for the project itself, if it includes construction or infrastructure if necessary, or staffing, none of that is provided to you if you’re looking at the grant project.*<sup>183</sup>

Tribal employees also indicated that states can have more significant grant reporting requirements than the federal government, leading to extra time and resources dedicated to reporting from the tribal government. As Shasta Gaughen of the Pala Band of Mission Indians (Figure 14) explained, “The state tends to want more from the tribes than the federal government does and I’ve had ... multi-million dollar grants from the federal government where they’re happy with a grant report that’s a paragraph and then the State of California wants just so much back up for every dollar that they give you.”<sup>184</sup>

#### **Partnering with Federal, State, or Local Governments in Support of Land and Water Conservation Fund Grants**

Indian tribes are not eligible to be direct applicants for seven of the ten programs within the Land and Water Conservation Fund. While each grant program provides an opportunity for tribes to participate as a sub-grantee, a supporting partner, or in government-to-government consultation, there are significant barriers to tribes in partnering, collaborating, and cooperating with federal and state agencies in conservation projects.

Kurt Dongoske, Tribal Historic Preservation Officer of the Pueblo of Zuni, described the difficult position that he sees the federal government placing Indian tribes into:

*Whatever response that the tribe gives to the federal government is never the right one from the federal*

Figure 14. Staff from the Pala Environmental Department, Pala Band of Mission Indians and a crew from the California Conservation Corps doing work to prepare a new community demonstration garden. Photograph by Pala Environmental Department.



*government's position. The federal government will always somehow demean, deflect, or devalue what the tribe says. Because through consultation, and what the federal agency is looking for is consent and concurrence. They're not looking for to deal with a real issue that the tribe may raise, because I don't think federal agencies are really that concerned about tribal sovereignty or tribal inclusion in their decision-making process, regardless of the rhetoric one hears at meetings or in correspondence from federal agencies.*<sup>185</sup>

Mr. Dongoske explained that for productive collaboration to take place between the tribe and the federal government regarding conservation efforts, there would need to be “an understanding and agreement between Pueblo of Zuni and a federal agency, that ‘conservation,’ the definition of that term, there was an agreement or an alignment between Zuni and the federal agency of what that meant, or if there was some action that would deviate from that understanding of what conservation means, then the federal agency would earnestly consult Zuni, and get Zuni’s input on how a decision should be made.”<sup>186</sup> However, he continued that “I think that’s hard to honestly implement because of what the federal government sees as its legal responsibilities, as well as because you have Western law in

there, where federal agencies actively make decisions so as not to be held accountable for their actions. At least that’s how I interpret my many years of interacting with federal solicitors and federal agencies regarding their decisions.”<sup>187</sup>

The lack of accountability diminishes tribal trust in the government agencies with grant programs funded by the Land and Water Conservation Fund. Mr. Dongoske explained (Figure 15):

*I can tell you that my experience as a THPO for Zuni, the Park Service, Fish and Wildlife Service, the Bureau of Land Management, ... [and] Forest Service. None of those agencies would I give high remarks to, or high grades to in terms of their equitably dealing with Zuni. The BLM and the Forest Service, well, BLM particularly is still based on the idea that they have to make the land productive or useful. And they have historically, you can see, disproportionately favored the extractive industry at the expense of the environment and at the expense of polluting the environment. Because once they permit the extractive industry, they do a terrible job of monitoring the environmental effects of those industries. The Forest Service has, I would say, also disproportionately privileges the*





Figure 15. The San Francisco Peaks outside of Flagstaff, Arizona are an important part of the cultural landscapes for many Indian tribes in the Southwest United States. Mr. Dongoske referenced in his interview the ongoing conflict between Indian tribes, the U.S. Forest Service, and operators of a ski area regarding the use of the sacred mountain range. Photograph by [Brady Smith](#), 2011. Photograph is licensed for free use with attribution under the Creative Commons, [Attribution-ShareAlike 2.0 License](#).

*lumbering industry. And on the San Francisco Peaks, they have also disproportionately favored Western capitalist enterprise, Snowbowl, to the detriment of the tribe's sacred association to that mountain. Fish and Wildlife Service, those are people I'd just rather not even be in a room with because I refer you to Amity Pueblo and their complete disregard for their compliance responsibility under [Section] 106 and the destruction they cause to [a] Zuni ancestral site ... The Park Service, I find them to be paternalistic and condescending to tribes.<sup>188</sup>*

Mr. Dongoske explained that the barriers to working with federal and state governments are based on differences in how these government entities and tribes consider and understand the world:

*The fundamental barriers are differences in ontology and epistemologies. There are assumptions about how the world operates that Zunis hold and that federal agencies hold. Federal agencies for the most part, their ontology is based in Western science ... and they see the universe as materialistic and mechanistic, and that humans are somehow separated from nature and are superior to nature. ... But when you believe that Western science is the only way to really understand and seek truth about nature, then you limit yourself to thinking that one can control nature by continuing*

*to do scientific studies of the different resources that you think comprise nature. And yet there is oftentimes not a very good holistic understanding because all the sciences are sort of siloed into their different compartments and they try to drill down individual species or individual resource topics and they tend to miss the full integration of how the ecosystem works.*

*... [For Zunis] there is a spiritual connection too, that if you mistreat or don't give the proper respect to other non-human life forms, that those life forms are sentient, and they will recognize that they're being treated poorly and there will be consequences. ... It seems to me when you approach your interaction with nature with that sense of responsibility, you don't view nature as a commodity to exploit and to solely benefit humans. There is a fundamentally different way that you treat it, which is at odds with the way federal agencies ... treat [it] as though it's a resource to be managed not a relationship to be managed.<sup>189</sup>*

The systemic barriers to Indian tribes engaging with federal or state government agencies can result in tribes being excluded from decision making regarding their traditional lands. For example, Martina Minthorn of the Comanche Nation discussed the difficulties her tribe faces in working with the U.S. Fish and Wildlife Service on the management of the Wichita Mountains National Wildlife Refuge (Figure 16):



*Just as far as the Fish and Wildlife, since it's federal land we've had people go to jail because they've went and got some sweat rocks out there to be able to build fires. There's so much red tape just to be able to say, "Can we pick cedar?" And then you have to put it in your application and then people just get discouraged. Because we've helped people. We never got any answers or returned calls or emails or anything like that [from the agency]. I've been leaving messages for a while and so I guess during COVID, their rangers were working from home. I'm like, "Well, I thought you were supposed to be working with the land," but nobody would answer their phone calls.<sup>190</sup>*

Ms. Minthorn continued to describe these difficulties, particularly the emphasis of recreational use of the area over Comanche traditional cultural practices:

*Those mountains are sacred to us. The whole area is such a beautiful area. But again, it's like we're trespassing on our own lands. We haven't had a meeting in a long time, but again, I was a new THPO when I came in to doing consultations. And so I'm here with all these different partnerships of the community and the whole meeting was about bike trails and all these different people that were tourists and wanting different bike trails. I felt like they never gave us any time to talk about our concerns or issues or anything like that. The Wichita Wildlife Refuge is a really big popular tourist attraction but as far as the tribes, we really don't have any type of acknowledgement that we were here and we're still continuing our culture. So you really don't see much within the Wildlife Refuge or interpretive signs about us. One thing I wanted to do is to have a Native American Church meeting on*



Figure 16. Mount Scott in Wichita Wildlife Refuge. The mountain is a sacred place for the Comanche Nation but the tribe has difficulty in working with the U.S. Fish and Wildlife Service to gain access to the site for traditional cultural practices. Licensed for commercial use from [iStock](#).



*top of Mount Scott [within the refuge] just to be able to reclaim that as a sacred site or a ceremonial site. But just for [the agency] to shut down the mountain, people would be so mad. But just being able to give us that time, that peace to be able to practice our traditional ways, [that's all we want].*<sup>191</sup>

Crystal C' Bearing of the Northern Arapaho Tribe said that in Wyoming, state agencies often do not seek tribal input on important topics. She described an example at Sinks Canyon State Park where land managers failed to identify the Arapaho cultural resources at the park (Figure 17):

*[R]ight next to home is Sinks Canyon State Park. ... [Right now] they're trying to [develop] there a via ferrata [climbing route] ... [but] there was no tribal involvement with that from the beginning. Now, we are having conversations, but even having that there, their survey that they did, they identified no cultural resources, which was not true. Because that whole Canyon, both for the Shoshone and Arapaho and other tribes, that is a very heavy place for cultural resources where we still gather and collect medicines. And there's rock art all over out there, and so there's a lot of things that we knew growing up, because it's right next door. But it was frustrating to hear that ... they thought there were no cultural resources in the area, and we knew better.*<sup>192</sup>

Ms. C' Bearing explained that the lack of tribal input by state agencies manifests in their lack of support for tribal involvement in development processes:

*If they have the funding to bring in an archeological firm from another state and to be able to pay them, why can't they pay us ... to do our job, and to have our input into the planning process? I feel like we provide a lot of traditional knowledge that can help that area with history. And a lot of people want to know Native American history and we'd be able to share those things, but when we're not involved in that process, it's frustrating to me and that's when I get upset because ... we're overlooked. And it feels like we're insignificant to the area, when we have a lot of history and ... we're not involved. And they'll say, "Oh yeah, we sent you a letter to let you know," and they think that's good enough. "We notified you. We sent you a letter that we're going to do this." And that's not good*

*enough for me. And I just don't want to be a box that you check off and say, "Yeah, we sent the Northern Arapaho letter for this project. They know."*<sup>193</sup>

Amy Trainer of the Swinomish Tribe described how Indian tribes have had difficulty in partnering with the State of Washington to conserve lands:

*[T]his is a key argument the tribes have been increasingly making in the past few years, that as "Treaty Tribes they are sovereign nations, and they should not have to compete with stakeholder conservation organizations, who do plenty of good work, but the State should not get to make unilateral decisions without consultation first." And this comes into play certainly when we're trying to restore salmon habitat. From my perspective, the tribes are fixing problems that they didn't create, but the State of Washington's land use policies, it's very inequitable land use policies, that have been largely ineffective at protecting salmon habitat, created the degraded habitat problems that tribes are working to fix. So, despite that the tribes are doing everything they possibly can as fast as they can to restore salmon habitat for the next seven generations. The State is making us compete for these dollars. It has been an issue when we say something is a priority, but the State does not take that into account. The Western Washington Treaty Tribes worked hard to get a direct, albeit small, percentage of the large federal funding that comes to the Puget Sound Partnership, and the direct set aside is extremely important for tribal capacity to protect and restore habitat. I would hope that the LWCF could mirror this at some level, especially for tribes with significantly large usual and accustomed treaty fishing and hunting areas like the Swinomish Indian Tribal Community.*<sup>194</sup>

Jason Griffith said that requiring tribes to partner with the state on projects as subgrantees is viewed by the Stillaguamish Tribe as eroding their sovereign status as a federally recognized Indian tribe:

*There's a lot of distrust ... And I can't speak for all tribes, but I have worked a long time here at Stillaguamish ... [and] between the Stillaguamish Tribe and the state of Washington, there's a lot of history that makes partnering difficult. And so it would be a lot cleaner, I think, from the tribe's perspective, to be*



Figure 17. Sinks Canyon State Park is an important place for the Northern Arapaho Tribe. Crystal C’Bearing said that in the past the park has not involved the tribe in important topics related to the park’s management. Photograph by Flickr user [dayvayen](#), 2013. Photograph is licensed for free use with attribution under the Creative Commons, [Attribution-ShareAlike 2.0 License](#).

*able to be on equal footing with the State. ... Being subject to an MOU with the state erodes sovereignty in the tribe’s view, and so because there are signatories to a treaty on equal footing with the state, they view themselves as equal partners in these funding opportunities. And when you’re putting them under an MOU with the state, it’s sending the message the tribes are under the state’s authority, which they don’t agree with legally. And I don’t think the Treaty of Point Elliott or the U.S. Constitution agrees with that either.<sup>195</sup>*

Susan Young of the Houlton Band of Maliseets described how staffing and funding issues at the state level presents issues in partnerships or collaborations:

*I do know that in the State of Maine, there has not been a lot of funding increases. There’s been a lot of funding cuts. So a lot of the state programs do not*

*have adequate funding to do the things that they’re mandated for. They don’t have enough staff. They have been under a hiring freeze for a very long time. So the fact that the state is not able to, or the state does not have the capacity to apply for these things, further limits the tribe’s ability to partner with them to go forward. If they’re just barely keeping the lights on and they have one person doing the job of four, that’s not going to make them very open to establishing new projects and new partnerships.<sup>196</sup>*

#### **Recreation, Public Access, and Conservation Mandates**

Indian tribes have concerns with outside entities requiring restrictions on the use of tribal lands. Funding from the Land and Water Conservation Fund, particularly the State Assistance Program, is linked to mandates requiring that lands acquired or developed with grant funding be made publicly accessible for outdoor recreation in perpetuity.

Tribes also expressed concerns about other forms of conservation easements that place restrictive covenants on their lands.

Jason Griffith of the Stillaguamish Tribe explained his perspectives about the Land and Water Conservation Fund's goals and underlying values, including public recreational access. He stated:

*[They are] definitely tipped ... away from things that the tribe would value because I think one of the things that the tribe [disagrees with] is this focus on recreation ... [from] using a European lens on [the tribe's traditional practices.] ... to them [this perspective] is a cheapening of why they're out on the land. They're not recreating, they're ... living their culture ... And so to them, it is wrong to assume that recreation why they are outside, "No, this isn't recreation. This is who we are as Indian people." And so yes, I think if [the federal government] could shift more money towards ... things that tribes value and not calling it recreation [more tribes would be interested in the funding].<sup>197</sup>*

Libby Halpin Nelson of the Tulalip Tribe expressed similar concerns about public recreational access in regards to the Land and Water Conservation Fund:

*The latter, public access requirement, makes this source of funding unappealing for tribes when [the] purpose of proposed land acquisition is for creating healthy and ecologically-restored landscapes to support tribal treaty rights exercise and cultural activities that may require privacy. A requirement to provide for public recreational access in perpetuity takes away from value of land acquisition to support conservation and tribal needs in an ever increasingly crowded landscape dominated by high recreational use—in other words, LWCF monies and grant requirements can be at cross purposes with tribal needs, and inconsistent with tribal treaty rights [emphasis added].<sup>198</sup>*

Susan Young said that while the Houlton Band of Maliseets has generally allowed public access to their tribal trust lands, that access can cause damage to the lands. She explained:

*[Public access,] [i]t's mostly an open opportunity until that right is misused or abused. We've had to restrict access because the four wheelers would come through*

*and just tear up the land or the snow sleds would go through tree plantations and not stay on the trails. But the tribe has been, in the past, very open to sharing the lands until we can't, until something takes place. Tribal lands used to be open for hunting and trapping and things, but we were forced to close our tribal lands when we had people poaching moose and things like that. So we had to close the land to tribal members only or members of other Indigenous tribes, just to protect the people and the resource.<sup>199</sup>*

Ivan Senock of the Buena Vista Rancheria of Me-Wuk Indians considered public access as conflicting with the protection of places of cultural importance. He explained:

*[A]s the THPO, ... [we are] responsible for cultural resources at Buena Vista, I've shied away from recreational grants to preserve sites. And the problem for that is a very long history of pothunters and grave robbers ... So my initial reaction to going after a grant [that then requires public access] to preserve a cultural resource or a historic site for the tribe is no, like that needs to be one of the last options ... due to the public's access to some sacred sites and some very recent events that have happened in the last 10 years of people going in and destroying burial mounds, people going in and digging up things, even though there are laws enforcing the protection of Native American sites and Native American objects. I wouldn't want to open up a sacred site because I would think it's a little bit safer in private hands than in public hands. I would more look for it to be a national wildlife refuge or a restoration grant first, or the tribe to ... First and foremost, the tribe to purchase it [outright].<sup>200</sup>*

Shasta Gaughen of the Pala Band of Mission Indians also said that there are always concerns for places of cultural importance when there is public access. She explained, "You always have to worry about people who think it's okay to take things or deface things, but we also know that a sacred area can be a mountain. It doesn't have to be an archaeological site or something tangible that could be defaced or destroyed or stolen."<sup>201</sup>

Beyond public access issues, some tribal employees also highlighted the fact that the development of recreational lands is often not a priority for tribes. As Amy Trainer of the Swinomish Tribe explained:

*For Swinomish, again, as a tribal nation, recreation is not the priority, in part because additional public access can further preclude access to traditional lands for cultural and spiritual ceremonial purposes, it can create conflicts. The tribe understands that there is a huge appetite for additional public lands, but hopes that there can be a better balance of stewardship and co-management going forward. The lack of management funding opportunities for tribal nations creates an additional challenge and it seems like there's just inherently not much of an acknowledgement of the need for financially supporting tribal co-stewardship and some level of co-management. That type of funding could be a game changer, and it's really exciting to think about.*<sup>202</sup>

Tribal employees believed public access, even for outdoor recreation, may potentially cause impacts to tribal cultural landscapes. Ms. Trainer explained “there’s a lot of challenges with illegal dumping and different levels of destruction ... [of] off-road vehicles ... the kind of typical land management challenges.”<sup>203</sup> She said that in response to the recreational impacts that tribes have seen on their cultural landscapes that:

*Twenty Western Washington Treaty Tribes recently came together [around recreational impacts on treaty resources], which was led by the Tulalip Tribes that authored a report about recreational impacts to treaty resources. ... One take away is that there’s a lot of education that needs to happen about honoring and respecting cultural landscapes, what meaningful, respectful stewardship by the public looks like. We have started to explore ideas about co-stewardship with the North Cascades National Park and they’re very open and very receptive ... to a much greater role by the Swinomish Tribe. ... But with the public, I think there can be a disconnect, because the concept of recreational lands from a tribal perspective should support hunting and gathering and cultural practices. Yet, to actually ensure that those treaty rights and cultural practices and lifeways are protected, there needs to be funding dedicated, set aside, to ensure that the first stewards of these lands, the tribes themselves, can have the appropriate staff and tribal members participating. And I think that’s a big gap that needs to be filled, and a paradigm shift in how the LWCF is administered could help make a significant positive difference, it’s exciting to think about.*<sup>204</sup>

Mr. Griffith pointed to some of the conflicts between Western forms of recreation and the traditional land uses of tribes:

*I think the issue is with the outdoor recreation is that, ... there’s often conflicts between the tribe practicing their culture, including cultural gathering, hunting and fishing, and recreation. And so it is important that the tribe have lands that don’t require public access, typically meaning that the tribe owns it ... but it’s not open to the general public. To the tribe, this is increasingly important, because there’s enough public land, maybe not enough, but there’s a lot of public lands out there. And [the public lands are] getting busier and busier. And it’s getting harder and harder for the tribe to practice their culture without feeling like they’re in an aquarium. And so to the tribe, if they can acquire the lands without the strings of having members of the public like myself out there it is attractive. ... The tribe is looking for funding sources that allow them to limit access to lands they acquire ... because when you open it up to full public access, you often get vandalism, dumping, illegal tree harvesting, and that sort of thing. So the Stillaguamish Tribe actually have most of their lands gated, and the general public doesn’t have free access to enter and do whatever they please. These gated lands provide a quiet environment for tribal members to gather and hunt and fish [emphasis added].*<sup>205</sup>

Similarly, some tribal leaders and employee interviewees expressed that Western conservation values often conflict with tribal land stewardship responsibilities and initiatives. Chief Anne Richardson of the Rappahannock Tribe said “when tribes are getting land, these conservation groups want to restrict exponentially what you can do. They don’t want you to do anything with the land.”<sup>206</sup> She described that lands donated to the tribe have come with conservation easements that restrict their ability to conduct traditional practices including regenerative controlled burns and agriculture, as well as generate needed revenue for the tribe.<sup>207</sup> She explained conservation “easements are very, very restrictive. And I think it’s primarily to keep revenue out of the hands of the tribes.”<sup>208</sup> She explained further:

*So [easements] pose lots of challenges ... we need to come up with a standard easement that can be*

*utilized for tribes that have their interests included in [them,] so that [tribes] are not locked out from being able to bring in economic benefit to their communities just because they're getting conservation easements on land. Because [tribes] are going to conserve [the land] anyway ... It's just a natural thing we do. And so the big thing for me was everybody was afraid I was going to put a casino on the river, which is what the developer [the land was purchased from] was trying to do ... But no, we don't want to [build] a casino on the river.<sup>209</sup>*

Similarly, Kendyl Reis of the Mi'kmaq Nation also expressed concern that conservation easements placed on lands may limit traditional cultural practices on those lands:

*[W]hen people put in these easements and they don't think about the tribes and again this is the access to resources. Access to ash trees and harvesting and sustainable foraging and stuff like that. ... Because the way we always talk about it is like "Oh, once the*

*easements are on there you are out of luck." Basically. And that's what makes me a little bit nervous about having the state do something like that. ... And I don't mind when conservation happens obviously it's a great thing. It just makes me nervous if there's no tribal input I guess.<sup>210</sup>*

Chief Anne Richardson of the Rappahannock Tribe said that Western conservation groups have been practicing a model of conservation that has excluded tribes:

*It's just those kinds of Western thinking that really becomes a problem when donors are trying to give money. And a lot of the NGOs [non-governmental organizations], they've been in that mode, that mindset for so long. "We buy the land, we give it to Fish and Wildlife, and they put their easement on it." And that's how it's worked for so long. And now we're challenging that system and trying to create another system where we're included in it. And we also are included in the negotiations around the easements.<sup>211</sup>*

# Key Findings and Recommendations

Indian tribes are currently eligible to apply directly to three of the 10 grant programs funded by the Land and Water Conservation Fund. The State Assistance Program is the principal grant program that tribes can directly apply to, however, this program requires tribes to apply through states to access this federal funding. While tribes are eligible to apply for the Battlefield Interpretation Grant Program and the Battlefield Restoration Grant Program, there is limited applicability of these programs for Indian tribes. Tribes may be subgrantees, supporting partners, or consulting parties to grants funded through the seven other grant programs funded by the Land and Water Conservation Fund.

An analysis of grant awards from the State Assistance Program between 1965 to 2019 found that tribes have historically been underrepresented in receiving funding from this program. Tribes received only 0.2 percent of the grants awarded during that period, and the grants awarded to tribes accounted for only 0.1 percent of the funding awarded. This is in contrast to the 2.3 percent of lands in the United States that are owned by tribes, and the 2.0 percent of the United States population that lives in Indian Areas defined by the U.S. Census Bureau.

It is difficult to quantify the participation of Indian tribes in the other nine programs of the Land and Water Conservation Fund with publicly available data. However, this research identified numerous examples of federal agencies consulting and collaborating with tribes in their acquisitions of lands funded by the Federal Land Acquisition Program. Tribes likely also participate in numerous other programs, particularly through government-to-government consultation; however, it would take more research to better understand this type of participation.

Interviews with tribal employees indicated that many Indian tribes had little or no knowledge of the Land and Water Conservation Fund or the grant programs it funds. This study did not identify why there is so little awareness of this funding source among tribes, but our research suggests there is little outreach and education about the funding source for tribes.

The tribal employees interviewed for this research expressed an interest in the conservation opportunities that can be funded through the grant programs of the Land and Water Conservation Fund. Interviewees said their tribes are potentially interested in using outdoor recreation development funds to support traditional cultural practices, ethnobotany education, facilities for powwow and rodeo grounds, campgrounds, river and lake restoration, walking paths, and interpretative programs for historical places. While interviewees said their tribes could use acquisition funding to support traditional cultural practices, preserve their cultural landscape, develop educational opportunities within their traditional lands, restore species habitat, and support food sovereignty efforts.

While the tribal employees who were interviewed were interested in the potential opportunities of the grant programs of the Land and Water Conservation Fund, they pointed to a series of interwoven barriers and concerns regarding the Land and Water Conservation Fund. These barriers and concerns include:

1. Tribes do not have adequate capacity to identify, apply for, and manage grants. Tribal programs are often understaffed and the staff they do have are often overworked. Tribal employees often work in several capacities within the tribe, and they have minimal support from other tribal programs. This makes it difficult for tribal employees to seek out new grant opportunities, be experts in grant writing, administer projects funded under a grant, and have the time to commit to the strenuous reporting requirements of grants.
2. Tribes often do not have the resources to support non-federal matching funds for grant programs. This barrier can restrict tribes from considering or applying for grant funding, including grant programs in the Land and Water Conservation Fund.
3. Tribes consider it an infringement of their government-to-government relationship with the federal government and their tribal sovereignty to be required to access the federal funds allocated



to the State Assistance Program through state governments.

4. Tribes often have difficulty partnering on projects with federal, state, or local entities due to engrained practices and complex histories.
5. Tribes are concerned by mandates for lands developed or acquired with Land and Water Conservation Fund monies to be open to public access for outdoor recreational activities. Public access may adversely affect Indigenous traditional cultural practices and make it difficult to protect places of cultural importance.

### Recommendations

Based on input from tribal employees during interviews for this project, this report makes three recommendations to address the underrepresentation of Indian tribes in grant programs of the Land and Water Conservation Fund.

1. **Create a stand-alone grant program funded by the Land and Water Conservation Fund for Indian tribes that allows them to apply for the funding directly through the federal government.**

A stand-alone competitive grant program for Indian tribes and tribal consortiums funded by the Land and Water Conservation Fund should be created to allow tribes to apply for conservation funding directly through the federal government. This would be more in line with the government-to-government relationship Indian tribes have with the federal government. As expressed by Susan Young, “elevating the tribes to the point where they can apply on their own behalf ... [would] be truly a government-to-government type relationship. These are federal funds. They’re set aside as a federal entity. We should be able to apply directly and not as a subset of a state or municipal application.”<sup>212</sup>

The Biden Administration’s Fiscal Year 2024 budget proposes a grant program of this nature, which they recommend be administered through the Bureau of Indian Affairs with a proposed fiscal year expenditure of \$12 million.<sup>213</sup> When this or a similar program is developed, it should:

- Allow for the acquisition or development of lands for conservation purposes by Indian tribes and tribal consortiums.

- Be funded at a funding level in proportion to the State Assistance Program based on the size of and population on tribal lands or adjudicated tribal treaty lands. This research found that there has been a significant underrepresentation of tribes as recipients of Land and Water Conservation Fund grants, leaving these communities without the same level of conservation support that states and local governments have seen since 1965. This new program should attempt to address that by ensuring adequate funding for tribes.
- Eliminate a matching funds requirement. This research found that previous efforts to provide matching funds to support applicants for the State Assistance Program significantly increased tribes’ access to Land and Water Conservation Fund monies.<sup>214</sup> In several Land and Water Conservation Fund grant programs, matching funds are not required for U.S. territories and commonwealths, setting a precedent that could be followed to make this program more accessible to all tribes.<sup>215</sup>
- Be considerate of tribal capacity to apply for and manage grants. This research found that tribes are understaffed and tribal employees are under-resourced. This grant program should acknowledge that by providing dedicated education, outreach, and support to assist tribes in applying for and managing these grants.
- Be developed to allow for the Bureau of Indian Affairs to contract with Indian tribes through the contracting framework established in P.L. 93-638, the Indian Self-Determination and Education Assistance Act. This structure will ensure effective and meaningful participation in this new Land and Water Conservation Fund grant program through a mechanism that many tribes are already familiar with.
- Be inclusive of tribal perspectives, values, and priorities regarding conservation, recreation, and public access. This would include empowering tribes in using their cultural wisdom for conservation efforts, and seeing them as invaluable and co-equal partners in achieving the goals of the Land and Water Conservation Fund with their own unique set of needs and realities. This research found that tribes are interested in diverse

conservation projects that support traditional cultural practices, preserve traditional lands, promote ecosystem health, and foster strong and resilient Indigenous communities. The grant program should work to be inclusive of these diverse efforts and ensure that guidance regarding recreation and public access is designed to fit the needs of tribes.

*If I were to restructure the Land and Water Conservation Fund, first thing I would do is would be able to let the tribes apply directly to the fund.*<sup>216</sup>

—Ivan Senock, Buena Vista Rancheria of Me-Wuk Indians

*[J]ust enabling tribes to apply on their own [through the federal government], I think would blow this thing wide open and would really make tribes a lot more willing to put the time and resources into trying to put an application together or put a project together.*<sup>217</sup>

—Susan Young, Houlton Band of Maliseet Indians

*That would be huge ... the value I would see there is that you wouldn't have to wrangle with the state, number one, and that you would have more control of who you decided to partner with. ... So having something come directly to the tribes through whatever department in the federal government would be tremendous.*<sup>218</sup>

—Chief Anne Richardson, Rappahannock Tribe

*... look a bit more broadly at the definition of recreation. Recreation is just not fun and games, recreation can fill so many different boxes. And I think expanding that definition will make it easier for tribes to effectively participate with this funding source.*<sup>219</sup>

—Susan Young, Houlton Band of Maliseet Indians

## **2. Modify other grant programs within the Land and Water Conservation Fund to enable tribes to be direct recipients of funding.**

There are several grant programs funded by the Land and Water Conservation Fund that Indian tribes are interested in and which would have immediate applicability to their conservation efforts. These grant programs include the Recovery Land Acquisition Grants Program, the Habitat Conservation Plan Land Acquisition Grants Program, Battlefield Land Acquisition Grants Program, and the

Forest Legacy Program. Tribes should be made direct recipients of these funding sources given their government-to-government relationship with the federal government, and the difficulties tribes have in partnering with state governments identified in this research. In addition, the criteria for the Battlefield Land Acquisition Grants Program should be expanded to provide preservation opportunities to any battlefield or associated site on American soil, as it is for the Preservation Planning Grants Program, so that it could be more inclusive of sites of armed conflict of importance to tribes. The federal government should consider waiving the match requirement in these grant programs for Indian tribes, to reduce barriers to their inclusion in these programs.

An example approach for addressing the direct eligibility issue is found in the proposed Outdoors for All Act,<sup>220</sup> which would codify the Outdoor Recreation Legacy Partnership Program and add “Indian Tribe, urban Indian organization, or Alaska Native or Native Hawaiian community or organization” as eligible entities to apply for and directly receive funding. The legislation would also provide the authority for the Secretary to waive matching requirements, as well as define qualifying areas to include “an area administered by an Indian Tribe or an Alaska Native or Native Hawaiian community organization” broadening the applicability of the program to Indian tribes beyond urban areas. While this proposed bill is an important step towards the inclusion of Indian tribes in a Land and Water Conservation Fund grant program, the bill does not address tribal capacity issues related to accessing grant programs or tribal concerns regarding mandates of public access for outdoor recreation on lands supported by this funding source.

## **3. Develop policies and practices through existing statutory authority that support the meaningful and equitable engagement of Indian tribes within Land and Water Conservation Fund grant programs.**

The federal government needs to reinforce the importance of Indian tribes serving as stewards and managers of America’s lands and waters by developing policies and practices through existing statutory authority that support the equitable involvement of Indian tribes within the Land and Water Conservation Fund. A current example of the federal government using existing statutory authority to

support more meaningful engagement of Indian tribes in the Land and Water Conservation Fund is the proposed policy directive for states to include Indian tribes in the development of their Statewide Comprehensive Outdoor Recreation Plans, which are used in the State Assistance Program.<sup>221</sup>

To effectively develop these new policies and practices that equitably engage Indian tribes in the conservation efforts within Land and Water Conservation Fund grant programs, the federal government must meaningfully and consistently consult Indian tribes in the development of these new policies and procedures. As expressed by Secretary of Interior Deb Haaland, “Tribes are not interest groups. Tribes are sovereign entities with indigenous perspectives and knowledge that can improve the quality of Federal decisions and result in better outcomes for all affected communities. Tribal consultation offers a means for weaving Tribal input into our decision-making processes.”<sup>222</sup>

The information shared by Indian tribes in government-to-government consultation and other means of engagement with the federal government is often offered based on knowledge gained from thousands of years of traditional cultural practices and the sacred teachings of that tribe. As such, it should be treated with due respect and tribes should be fairly compensated for sharing their valuable knowledge and time. Currently, Indian tribes are not compensated for their time or knowledge shared in thousands

of government-to-government consultations regarding the Land and Water Conservation Fund each year.

With new policies and procedures in place, the grant programs within the Land and Water Conservation Fund could be an important place where the federal government and Indian tribes can identify opportunities for co-stewardship, co-management, Indigenous management, and meaningful partnerships to conserve and protect America’s lands and waters for present and future generations. This would be in line with the federal government’s recent directive to increase co-stewardship opportunities for Indian tribes on public lands.<sup>223</sup> That directive acknowledged that the federal government’s stewardship of public lands is part of their trust responsibility to Indian tribes. If done successfully, this will greatly benefit the ongoing management of America’s lands and waters, the traditional homelands of Indian tribes.

*[W]e really want to just be a part of the process when it comes down to it, and we want to participate and we’re really trying to preserve what we have and make sure it’s not destroyed or forgotten about. And that’s our main goal. But we know that development is going happen, we know that things are changing, but we really want to preserve this stuff for our future generations. And that’s what we do it for, is for our young ones. And not just our young ones, but also for everybody, the public, the youth there.*<sup>224</sup>

—Crystal C’Bear, Northern Arapaho Tribe

## Concluding Remarks

The Land and Water Conservation Fund provides funding for an unparalleled set of conservation programs within the United States. Indian tribes are underrepresented in awards for Land and Water Conservation Fund grant programs, but now that permanent full funding of the Land and Water Conservation Fund has been established, there is an opportunity to make this funding source more accessible to tribes in the future. This can be accomplished by developing a new grant program solely for Indian tribes administered directly by the federal government, modifying existing grant programs to allow for Indian tribes to be direct applicants, and by developing practices that support the meaningful engagement of Indian tribes in Land and Water Conservation Fund programs. These actions could support the broader participation and more equitable access of tribes to the conservation ideals promoted through the Land and Water Conservation Fund Act.

*I think as the Land and Water Conservation Fund expands ... and figures out how to engage with tribes, it'll be very important. As it figures out its funding*

*mechanisms and the easier way to connect with tribes, to provide access, it could certainly be a powerful force for good. It'll benefit tribal communities, it'll benefit larger communities, it'll benefit the states and ultimately the goals and objectives of the Land and Water Conservation Fund, which is to conserve water, to bring native plants back, to bring healthy ecosystems. ... Especially here in California where the biodiversity is incredible. The landscapes are some of the most beautiful in the world and having these kinds of funds available is very important. And I think there's certainly a space for the Land and Water Conservation Fund would ... help lead, I hope. Especially with the \$900 million, that's certainly a leading force, that can do a lot of good. And there are a lot of tribes, Buena Vista included ... who would be interested in partnering and working using these funds to not only protect cultural sites and cultural significance, but to actually take care of and tend to the wild.<sup>225</sup>*

— Ivan Senock, Buena Vista Rancheria  
of Me-Wuk Indians





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## Appendix A: List of Tribes Contacted during the Study

<i>Tribe</i>	<i>Contact</i>
Agua Caliente Band of Cahuilla Indians	Patricia Garcia
Mi'kmaq Nation	Kendyl Reis
Bear River Band of Rohnerville Rancheria	Melanie McCavour
Big Pine Paiute Tribe of the Owens Valley	Danelle Gutierrez
Big Valley Band of Pomo Indians	Ronald Montez
Bishop Paiute Tribe	Monty Bengochia
Blackfeet Tribe	John Murray
Blue Lake Rancheria Tribe	Dan Holsapple
Bridgeport Indian Colony	Joseph Lent
Buena Vista Rancheria of Me-Wuk Indians of Me-Wuk Indians	Ivan Senock
Cahuilla Band of Indians	Anthony Madrigal, Sr.
Cher-Ae Heights Indian Community of the Trinidad Rancheria	Rachel Sundberg
Cherokee Nation	Elizabeth Toombs
Cheyenne and Arapaho Tribes of Oklahoma	Max Bear
Chickahominy Indian Tribe	Stephen Adkins; Lindsey Johnson
Coeur D'alene Tribe	Jill Wagner
Comanche Nation of Oklahoma	Martina Minthorn
Confederated Tribes of Grand Ronde	Briece Edwards
Confederated Tribes of the Colville Reservation	Guy Moura
Duckwater Shoshone Tribe	Warren Graham
Dry Creek Rancheria Band of Pomo Indians	Tieraney Giro
Eastern Band of Cherokee Indians	Russell Townsend; Tommy Cabe
Elem Indian Colony	Lamont Brown
Elk Valley Rancheria	Christa Stewart
Enterprise Rancheria of Maidu Indians	Reno Franklin
Federated Indians of Graton Rancheria	Buffy McQuillen
Fort Yuma Quechan Indian Tribe	Jill McCormick; Chase Choate
Gila River Indian Community	Barnaby Lewis
Habematolel Pomo of Upper Lake	Robert Geary
Hoopa Valley Tribe	Keduescha Lara-Colegrove
Hopland Band of Pomo Indians	Ramon Billy Jr.
Houlton Band of Maliseet	Susan Young; Sharri Venno
Jamestown S'Kllalam Tribe	Allie Taylor
Jamul Indian Village of California	Lisa Cumper
Jicarilla Apache Nation	Jeffrey Blythe
Karuk Tribe	Alex Watts-Tobin
Kiowa Tribe of Oklahoma	Phillip Dupoint
Monacan Indian Nation	Adrian Compton; Kenneth Branham

<i>Tribe</i>	<i>Contact</i>
Manzanita Band of the Kumeyaay Nation	Lisa Haws
Mechoopda Band of Chio Rancheria	Kyle McHenry
Menominee Indian Tribe of Wisconsin	Doug Cox
Mescalero Apache Tribe	Holly Houghton; Jacob Dukei
Metakatla Indian Community	Rick Anderson
Middletown Rancheria of Pomo Indians	James Rivera
Morongo Band of Mission Indians	Ann Brierty
Nansemond Indian Nation	Keith Anderson; Dr. Ellen Chapman
Nez Perce	Nakia Williamson
Northern Arapaho Tribe	Ben Ridgley; Crystal C' Bearing
Pala Band of Mission Indians	Shasta Gaughen
Pamunkey Indian Tribe	Robert Gray; Debra Hansen
Passamaquoddy Tribe	Donald Soctomah
Pawnee Nation of Oklahoma	Matt Reed
Pechanga Band of Luiseño Mission Indians	Gary DuBois
Penebscot Nation	Chris Sockalexis
Picayune Rancheria of Chukchansi Indians	Heather Airey
Pit River Tribe	Natalie Forest-Perez
Pueblo of Acoma	Steven Concho
Pueblo of Zuni	Kurt Dongoske
Rappahannock Tribe	Anne Richardson
Resighini Rancheria	Kathy Dowd
Rincon Band of Luiseño Mission Indians of the Rincon Reservation	Cheryl Madrigal
San Manuel Band of Indians	Lee Clauss
Southern Ute Indian Tribe	Mandy Eskelson
Stillaguamish Tribe of Indians	Jason Griffith
Swinomish Indian Tribal Community	Amy Trainer
Timbisha Shoshone Tribe	Barbara Durham
Tulalip Tribes	Libby Nelson
United Keetowah Band of Cherokee Indians	Kim Baker
Upper Mattaponi Indian	Reggie Tupponce; W. Frank Adams
Upper Skagit Indian Tribe	Scott Schuler
Ute Indian Tribe of the Uintah and Ouray Reservation	Betsy Chapoose
White Mountain Apache Tribe	Mark Altaha; Nick Laluk; Waylon Traux
Yakama Nation	Kate Valdez
Yakama Nation	Brandon Rogers
Yakutat Tlingit Tribe	Amanda Bremner; Andrew Gildersleeve
Yavapai-Apache Nation	Vincent Randall
Yavapai-Prescott Indian Tribe	Linda Ogo
Yurok Tribe	Rose Clayburn

# Endnotes

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