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Policy Paper

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# Protecting America's Public Lands

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## ABOUT THE NEW CENTER

American politics is broken, with the far left and far right making it increasingly impossible to govern. This will not change until a vibrant center emerges with an agenda that appeals to the vast majority of the American people. This is the mission of The New Center, which aims to establish the ideas and the community to create a powerful political center in today's America.

## THE NEW CENTER

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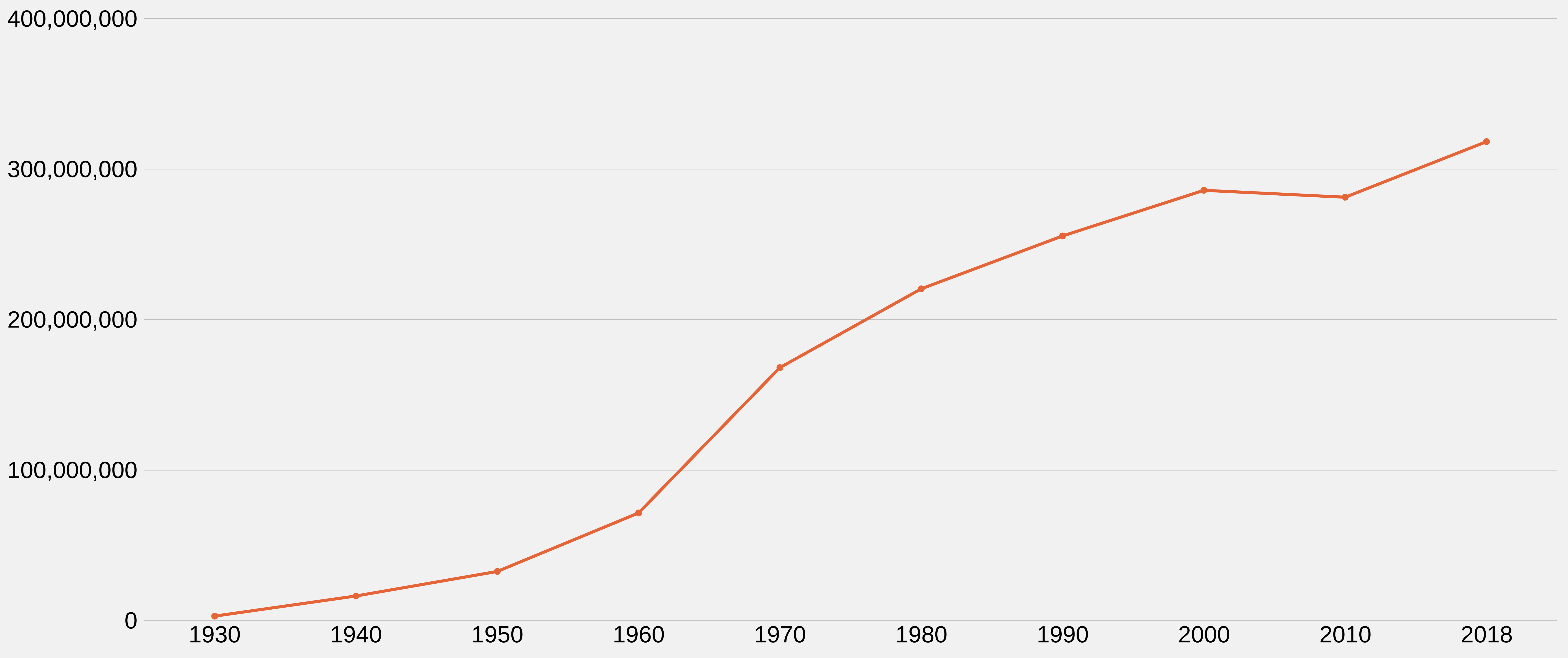
# Executive Summary

**"We have become great because of the lavish use of our resources. But the time has come to inquire seriously what will happen when our forests are gone, when the coal, the iron, the oil, and the gas are exhausted, when the soils have still further impoverished and washed into the streams, polluting the rivers, denuding the fields and obstructing navigation." —Theodore Roosevelt, 1908**

President Roosevelt, remembered fondly as the "conservation president," protected 230 million acres of land during his two terms in office. This amounted to 150 national forests, 51 federal bird reserves, four national game preserves, five national parks, and 18 national monuments.[1] Today, federally protected land has grown to account for 640 million acres—or about 14% of the landmass of the entire country. And the love Americans have for public lands has grown with it. A 2019 YouGov poll found that 90% of Americans considered the "conservation and preservation of U.S. National Parks" very or somewhat important. This same poll found that 56% of Americans believed there should be even more protected national land in the United States.[2]

And recreational visits to national parks are at an all-time high. In 2018, there were over 318 million recreational visits to National Park Service (NPS) sites, the third highest year behind 2016 and 2017.[3]

**Total National Park Service Recreation Visits per year, 1930—2018**




Source: National Park Service Visitation Numbers Data[4]

### Yet America's growing love for public lands isn't reflected in how we treat them.

- Federal agencies that manage public lands are underfunded, understaffed, and too frequently mismanaged.
- Companies that extract oil, gas, coal, and hardrock minerals from public lands get access to vast resources without fairly compensating American taxpayers.
- The Trump administration is proposing changes to long-standing environmental policies in favor of more “efficient” procedures that might not offer sufficient protection of public lands.
- Congress has made fighting wildfires a priority, but has not placed enough emphasis on preventing them in the first place.

### Safeguarding America's public lands is not, and should not be, a partisan issue.

The New Center believes that if policymakers want to ensure public lands and the resources they hold are protected for generations to come, they can align behind the following solutions:

**Increase Funding for the National Park Service and Forest Service:** NPS and FS staff are unable to conduct general forest and park management services due to chronic underfunding. This leads to more deferred maintenance, lower visitor satisfaction rates, and resources being pulled from critical accounts. Congress needs to fund NPS and FS at higher levels so they can properly manage places of historic and environmental importance.

**The Best Way to Fight Wildfires Is to Prevent Them:** Congress has provided the necessary funding for the Department of Agriculture (USDA) and the Department of the Interior (USDOI) to fight fires, but it hasn’t placed much emphasis on actually preventing them. Alongside increasing funding to USDA and USDOI accounts that focus on wildfire prevention, the Department of the Interior could create a division that promotes public-private partnerships—like the Forest Resilience Bond—to improve forest health, lessening the federal government’s financial burden while protecting public lands.

**Don't Legislate Blindly:** The Trump Administration is proposing changes to the National Environmental Protection Act (NEPA)—landmark legislation that governs conservation and development practices on government lands—to make conducting environmental analyses more efficient and cost effective. But government reports show that agencies are in the dark on how much NEPA analyses cost and how many are being conducted. Before making any changes to NEPA, the White House Council on Environmental Quality should work with federal agencies to ensure they are providing a full accounting of NEPA analyses and costs so future changes and reform recommendations are based on a rigorous accounting of costs and benefits.

**It's Time for Companies to Pay Up:** For too long, leaseholders have extracted natural resources from public lands without adequately compensating states and the federal government. To bring archaic resource extraction policies into the 21st century, Congress should increase federal onshore royalty rates for oil, gas, and coal; increase rental fees for resource extraction on public lands; and impose a federal royalty rate for hardrock locatable minerals.

# The Problem

# A Lack of Adequate Funding

The National Park Service (NPS), housed within the U.S. Department of the Interior, receives appropriations through the Interior, Environment, and Related Agencies appropriations bill. Between FY2002 and FY2018, Congress only funded the NPS at or above requested levels less than half the time, and this underfunding has an impact on how NPS is able to conduct basic operations.[5] For example, in its FY2018 budget, NPS officials expressed concern about the President's 2018 request:

**"The NPS faces several competing demands in addition to the significant and growing annual visitation, which include a substantial deferred facility maintenance backlog, requirements to establish and support new park units and the need to protect resources and visitors in existing parks. As responsibilities have grown while staffing and financial flexibility decline, NPS' ability to cover basic resource protection and visitor service needs has become increasingly challenging."[6]**

Amongst these concerns is NPS's ballooning deferred maintenance (DM) backlog. In FY2018, the Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), National Park Service (NPS), and the Forest Service (FS) had $19.38 billion in deferred maintenance. The National Park Service is responsible for 62% of the deferred maintenance between these four agencies, sitting on $11.92 billion in backlog.[7]

In testimony to the Senate Committee on Energy and Natural Resources, the Director of the National Park Service noted that "in order to merely hold the backlog at a steady level of $11.5 billion, we would need to spend nearly $700 million per year on deferred maintenance."[8]

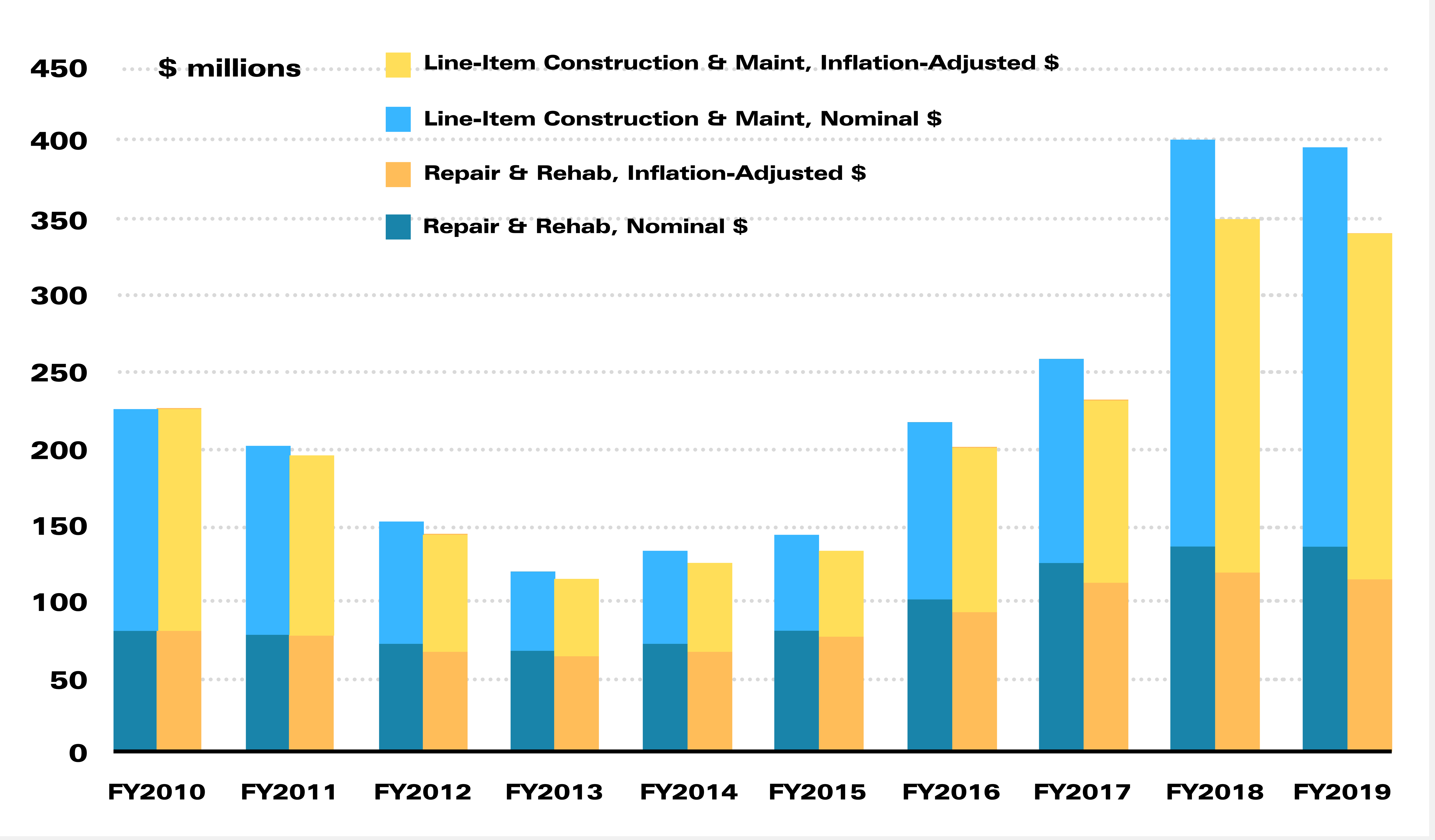
**Despite this, appropriations for "Line-Item Construction" and "Maintenance Activity"—the two NPS budget activities that primarily address deferred maintenance—have topped out at $400 million a year, barely half the bare minimum amount required to prevent the backlog from getting worse.[9]**

### WHAT IS DEFERRED MAINTENANCE?

Deferred maintenance refers to infrastructure projects or repairs that are delayed due to a lack of funding.

## Appropriations for Two NPS Budget Activities That Primarily Address Deferred Maintenance, FY 2010-FY2019

($ millions, in nominal and inflation-adjusted 2010 dollars)




Source: Annual House Appropriations Committee detailed tables for NPS, and NPS budget justifications for FY2012-FY2020. FY2019 data for Line-Item Construction are from CRS communication with NPS Budget Office, June 5, 2019.[10]

**Increased deferred maintenance, coupled with a lack of funding to address it, means that monuments, campgrounds, and general park facilities are falling into disrepair, posing a growing threat to historic sites and visitor satisfaction.**

- The 273-foot Lewis River Bridge in Yellowstone National Park, built in 1960, was labeled in “poor condition” by NPS and is set to be replaced.[11] Lewis River Bridge is one of 42 bridges that has been labeled as “structurally deficient.”[12]
- 40% of roads in national parks are in “poor” to “fair” condition.[13]

The USDA's Forest Service has its own funding issues. When adjusting for inflation, total appropriations for the Forest Service decreased by three percent between FY2011 and FY2015.

While appropriations (adjusted for inflation) have been decreasing, the percentage of requested discretionary appropriations dedicated to wildfire management has increased over the years. In FY2015, it ate up 56.4% of the budget, more than three times the 16% share of the budget it accounted for two decades ago.[14] An increase in appropriations for wildfire management affects all aspects of Forest Service operations by diverting staff and resources from other FS accounts.

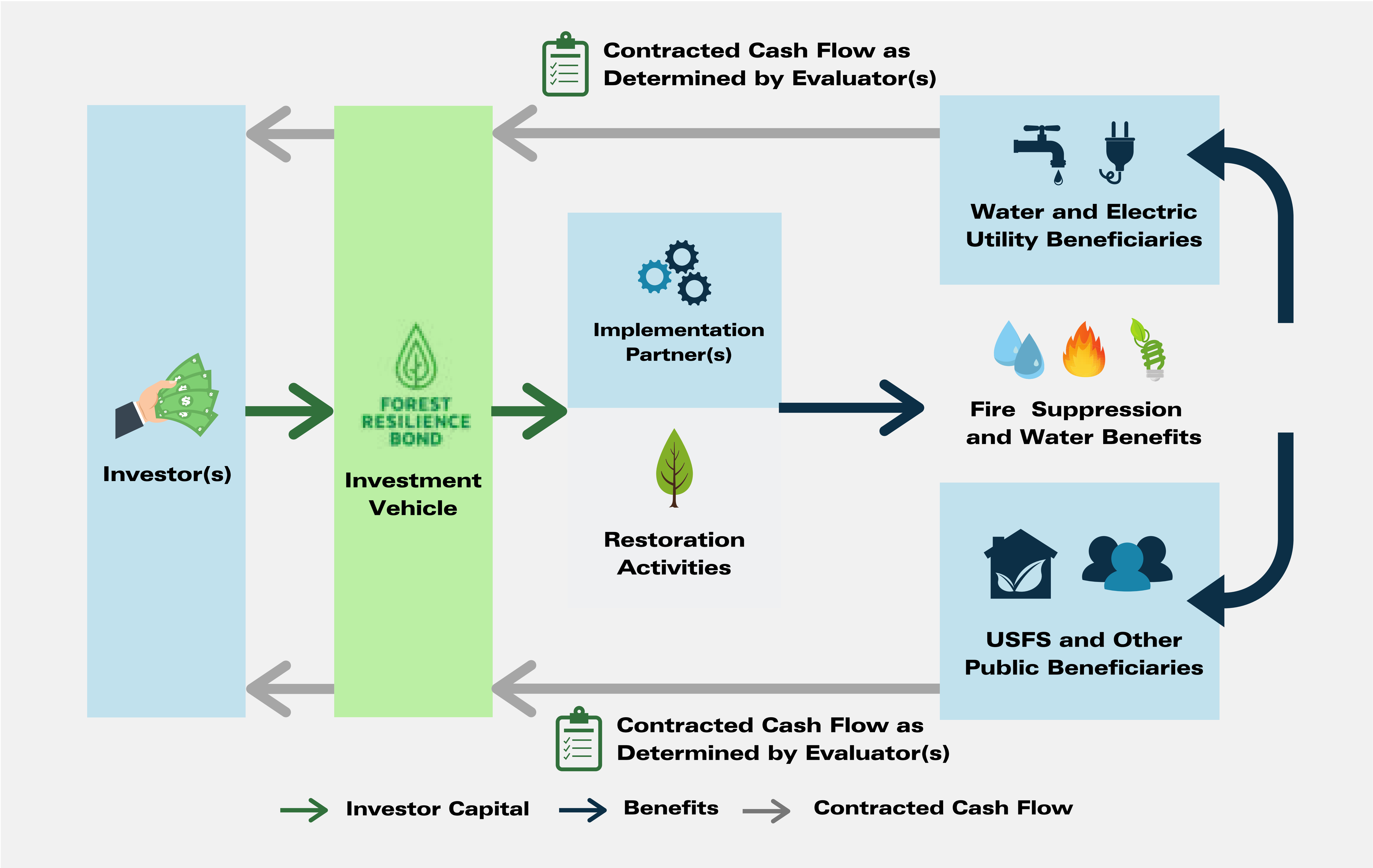
> **Between 1998 and 2015, there was a 114% increase in wildfire management staff, and a 39% decrease in staff levels for managing Forest Service lands in the same time period.[15]**

In order to fix this problem, referred to as "fire borrowing," Congress included a new budget authority in the FY2018 Omnibus Spending Package, which was signed into law by President Trump.

Through the spending package, the USDA and the Department of the Interior will receive $2.25 billion in FY2020, with the budget authority rising by $100 million each year thereafter, topping out at $2.95 billion in FY2027.[16]

Environmental groups have praised the funding increases as a necessary measure to fight wildfires across the United States. But some claim this funding does little to prevent wildfires from actually starting. Shawn Regan, a research fellow with the Property and Environment Research Center, notes that increasing disaster-related expenditures can actually encourage "more people to live in high-risk areas," and doesn't really solve the wildfire issue if there is "under-investment in pre-fire risk mitigation."[17]

# The Forest Resilience Bond: A Free Market Solution to Improve Forest Health




Source: Forest Resilience Bond [19]

In 2016, Blue Forest Conservation, Encourage Capital, and the World Resources Institute partnered to create the Forest Resilience Bond (FRB), a public-private partnership "that enables private capital to finance much-needed forest restoration across the western United States." [18]

The Forest Resilience Bond emphasizes cost-sharing by allowing investors to provide capital for projects up front, with beneficiaries—such as the federal government, state agencies, or utility companies—paying them back through contracted cash flows.

Government agencies have already begun to benefit from FRB's innovative model. For the inaugural launch of the FRB, the FRB development team secured $4.6 million from reimbursing investors to assist the Yuba Water Agency, State of California, and Forest Service with restoration activities and forest thinning in Northern California's North Yuba River watershed. [20]

## CAMP FIRE: THE MOST DESTRUCTIVE WILDFIRE IN CALIFORNIA'S HISTORY

In November 2018, PG&E power lines sparked a deadly wildfire in California. The fire, which burned over 153,000 acres, resulted in 85 casualties and 14,000 destroyed homes. [21] In the aftermath, PG&E expanded its Community Wildfire Safety Program, but this measure came too late for those who already lost their homes and lives. [22]

By expanding public-private partnerships through conduits like FRB and others, utilities and beneficiaries can play a greater role in wildfire prevention and forest health, increasing accountability and lowering the risk of catastrophic events like the Camp Fire from occurring again.

# Proposed Changes to the National Environmental Policy Act

The National Environmental Policy Act (NEPA) was signed into law by Republican President Richard Nixon on January 1st, 1970. NEPA requires federal agencies to conduct environmental assessments before undertaking or approving development or infrastructure projects. NEPA also established the White House Council on Environmental Quality, which assists federal agencies with integrating NEPA procedures into agency policy and ensures they are following through with implementation.[23]

But Trump Administration officials claim that NEPA slows down or stops vital infrastructure projects. In an effort to mitigate delays and costs, the Administration issued Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects."[24] Part of the E.O. directed the Council on Environmental Quality to take steps towards ensuring that "agencies apply NEPA in a manner that reduces unnecessary burdens and delays as much as possible."[25]

**However, reports from the Congressional Research Service and the U.S. Treasury have suggested that factors outside of NEPA regulations, such as underfunding, have been most responsible for infrastructure project delays.[26] In reality, there is sparse data available on NEPA to determine the validity of these claims.**

In 2014, the U.S. Government Accountability Office (GAO) published a report detailing how little information exists on NEPA analyses, concluding that agencies do not routinely track how many (or what type of) analyses they conduct, nor do they track the cost of completing NEPA analyses.

The GAO report also noted that "agency activities under NEPA are hard to separate from other environmental review tasks under federal laws, such as the Clean Water Act and the Endangered Species Act; executive orders; agency guidance; and state and local laws."[27]

In January 2020, the White House Council on Environmental Quality issued a new Notice of Proposed Rulemaking (NOPR) which would augment elements of the NEPA review process including: revising the definition of environmental effects, eliminating the requirement for agencies to analyze "cumulative effects," and establishing time and page limits for environmental assessments (EAs) and environmental impact statements (EISs), among other changes. Public comments on this NOPR will be due by March 10, 2020, and federal agencies will have one year from the time of rule publication to update their own NEPA procedures.[28]

# Archaic Resource Extraction Policies

**In 2018, the Office of Natural Resources Revenue (ONRR) collected $9.94 billion in revenue from companies extracting natural resources from federal lands and waters.[29]**

Yet the federal government and state governments are still deprived of billions of dollars worth of revenue because of outdated and archaic resource extraction policies that do not provide fair compensation to taxpayers.

The Mineral Leasing Act of 1920 (MLA) authorizes the Secretary of the Interior, through the Bureau of Land Management, to oversee the extraction of oil and gas on federal land.[30]

BLM royalty rates for new federal onshore oil, gas, and coal leases stand at 12.5% for oil and gas, 12.5% for coal surface, and 8% for coal underground.[31]

**These rates—save for the coal rate introduced in the 1970s—have not changed in almost a century.**

Even though federal onshore royalty rates remain unchanged, the George W. Bush administration raised offshore royalty rates up to 18.75%, which was "estimated to increase total government revenue by $8.8 billion over the next 30 years."[32]

In 2018, the Interior Department Royal Policy Committee recommended that offshore royalty rates be decreased significantly, though no action to date has been taken to follow through on this recommendation.[33]

Unlike the federal government, states have recognized that onshore resource extraction has evolved over the last 100 years, and that improved technologies allowed oil, gas, and coal companies to increase profits without a commensurate increase in tax contributions. In 2015, public lands in Colorado, Montana, New Mexico, North Dakota, Utah, and Wyoming represented more than 90% of total federal oil, gas, and coal production.[35]

**The oil, gas, and coal surface rates for these six states tend to be higher than the rates set by the federal government. For some states, oil and gas royalties are double the federal rate; 25% for onshore oil and gas in the case of Texas.[36]**

**Federal and State Royalty Rates for New Onshore Oil, Gas, and Coal Leases, as of March 2017[34]**

| Federal Rate | Oil and gas | Coal surface | Coal underground |
|---|---|---|---|
| Onshore | 12.5% | 12.5% | 8% |
| **Selected State Rates** | | | |
| Colorado | 20.0% | 12.5% | 8% |
| Montana | 16.67% | 12.5% | 10% |
| New Mexico | 12.5% to 20.0% | 12.5% | 8% |
| North Dakota | 16.67% or 18.75% | Varies | Varies |
| Utah | 12.5% to 16.67% | 8% | 8% |
| Wyoming | 12.5% or 16.67% | 12.5% | 8% |

## If states have upped their royalty rates to increase profits, why shouldn't the federal government?

When companies extract resources, they either pay royalties to the federal government or to the state, depending on who owns the land they drill. Half of all revenue collected by the federal government through onshore royalties for oil, gas, and coal production is redistributed back to the states in which these natural resources are drilled. The other half is distributed to six main funds, which include the U.S. Treasury, Reclamation Funds, Native American tribes and individuals, the Land and Water Conservation Fund, and the Historic Preservation Funds.[37] According to the Center for Western Priorities, this means that state taxpayers are losing out on up to $730 million in gross revenue every single year because of low federal rates.[38]

Low rental rates and a lack of incentives to efficiently extract resources is another unaddressed problem. Right now, an oil or gas company can put down a minimum bid on a parcel of federal land for just $2.00 per acre. Even though this is the minimum bid, 40% of federally auctioned oil and gas leases in 2015 were sold at that price. In order to retain rights to a lease, the company is only required to pay an annual rental fee of $1.50 per acre for the first five years of lease ownership, and $2.00 for every year thereafter.[39]

Furthermore, data from the Bureau of Land Management shows that while 26 million acres of federal land were leased out to private companies at the end of FY2018, only “about 12.8 million acres are producing oil and gas in economic quantities.” [41] This means that not only are companies renting out federal land for almost nothing, they are retaining rights to it for less than the price of a cup of coffee, with no incentives present to extract natural resources in a timely fashion.

### But the gross undervaluing of America’s public lands doesn’t stop there.

In the United States, hardrock mineral mining is governed by the 1872 Mining Law. Under the 1872 Mining Law, now almost 150 years old, the mining industry is:

- Not required to pay royalties for extracting on public lands; [42]
- Not accountable for cleaning up old mine sites; and
- Not subject to direct environmental controls. [43]

**This means that over $1 billion worth of hardrock minerals are extracted from public lands in the United States every single year, and the federal government loses out on millions in revenue in return.** [44]

Industry groups, such as the American Petroleum Institute, have claimed that increasing royalty rates will hurt consumers through higher energy prices and job losses. [45] But Headwaters Economics, an independent nonpartisan research group that has conducted extensive energy policy research, found that "changes in federal royalty policy could have substantial revenue benefits for federal and state governments with limited impact on production or prices on federal lands. [46]

# The Solutions

# The Solutions

## Increase Funding for the National Park Service and Forest Service

NPS and FS staff are unable to conduct general forest and park management services due to chronic underfunding. This leads to increased deferred maintenance, lower visitor satisfaction rates, and resources being pulled from critical accounts. Congress needs to fund NPS and FS at higher levels so they can properly manage places of historic and environmental importance.

A bipartisan appropriations bill (S. 2580), sponsored by Republican Senator Lisa Murkowski and supported by Interior Subcommittee Ranking Member Democratic Senator Tom Udall, recommends increasing funding to the National Park Service by $133 million and the Forest Service by $1.38 billion, with an additional $1.95 billion allocation for wildfire fighting. The bill has been placed on the Senate Legislative Calendar as of September 26th, 2019. [47]

## The Best Way to Fight Wildfires Is to Prevent Them

Congress has provided the necessary funding for the Department of Agriculture and the Department of the Interior to fight fires, but it hasn't placed much emphasis on actually preventing them. Alongside increasing funding to USDA and USDOI accounts that focus on wildfire prevention, the Department of the Interior could create a division that promotes public-private partnerships—like the Forest Resilience Bond—to improve forest health, lessening the federal government's financial burden while protecting public lands.

## Increase Federal Onshore Royalty Rates for Oil, Gas, and Coal

Federal onshore royalty rates for oil and gas fall well below offshore royalty rates and individual onshore state rates. They should be raised to 18.75% to be consistent with offshore royalties and average state rates.

# The Solutions

## Impose a Federal Royalty Rate for Hardrock Locatable Minerals

The federal government is losing out on millions in revenue because the mining industry is not subject to a federal royalty. Congress could subject the production of hard rock minerals to a royalty rate, with the revenue being split between the federal government and the state sources of production.

The Hardrock Leasing and Reclamation Act (H.R. 2579), introduced in the House on May 8th, 2019 by Representative Raul Grijalva (D-AZ), proposed an eight percent royalty rate for existing permits granted before the passage of the bill, and a 12.5% royalty rate for new operations permits granted thereafter. [48]

## Increase Rental Fees for Resource Extraction on Public Lands

Right now, an oil or gas company can rent public land for the price of a cup of coffee. The Bureau of Land Management should increase the minimum rental fee for resource extraction on public lands, particularly those that are of higher value. Rental fees should also be increased for each year that the land goes without resources being extracted from it to incentivize leaseholders to extract resources in a timely and efficient manner.

## Don't Legislate Blindly

The Trump Administration is proposing changes to the National Environmental Protection Act (NEPA) to make conducting environmental analyses more efficient and cost effective. But government reports show that agencies are in the dark on how much NEPA analyses cost and how many are being conducted. Before making any changes to NEPA, the White House Council on Environmental Quality should work with federal agencies to ensure they are providing a full accounting of NEPA analyses and costs so future changes and reform recommendations are based on a rigorous accounting of costs and benefits.

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