

June 30, 2014

Ms. Kim Elmore
Assistant Inspector General
Audits, Inspections & Evaluations
Office of Inspector General
U.S. Department of Interior
1849 C Street, NW, Mail Stop 4428
Washington, DC 20240

RE: Request for Audit of Ineligible Federal Aid Grants to Alaska Department of Fish & Game for Support of Predator Management

Dear Assistant Inspector General Elmore:

I am writing on behalf of Public Employees for Environmental Responsibility (PEER) to seek your office's involvement in ending misuse Federal-Aid funding under the Pittman-Robertson Wildlife Restoration Act (WRA) to support for Alaska's predator management program. Documents obtained by PEER under the Freedom of Information Act (FOIA) indicate that Federal Aid dollars provide critical financial support for activities needed to operate Alaska's predator control program (called "Intensive Management").

These activities violate federal guidelines in that they lack environmental reviews required by the National Environmental Policy Act (NEPA) and violate federal regulations requiring that the activities benefit "a diverse array of wildlife and associated habitats, including species that are not hunted or fished."

By this letter, PEER is requesting the Interior Office of Inspector General audit the use of Federal-Aid dollars by the Alaska Department of Fish & Game (ADFG) in order to identify non-compliant expenditures, obtain reimbursement of those non-complaint funds and disqualify ADFG from further Federal-Aid funding.

The details justifying this request are as follows:

I. Federal-Aid funding under the Pittman-Robertson Act is providing critical support for Alaska's predator management program.

The Alaska Board of Game (BOG) relies heavily on scientific research conducted using federal funds to develop any feasibility assessment for new management programs. Research is a significant and necessary aspect of the Intensive Management (IM) program. In their annual reports, three programs reported research as costing 86 cents, 94 cents, and 98 cents of every dollar spent on programs.¹

Eleven grantee studies for fiscal year 2014 financed with Federal Aid funds contribute knowledge to IM programs. Projects 1.73, 3.50, 4.0, 4.41, 5.20, 7.0, 13.0, 14.0, 14.26, 14.27, and 17.80 all have objectives and tasks relevant to predator control. Several studies explicitly reference helping “to refine management strategy,” or “review and revise population objectives.” Others study the different effects of wolf versus bear predation on prey populations, developing methods for predator census taking, monitoring harvest, or the effects of management on prey populations. These studies are all carried out at least partially in areas or on animal populations where IM is carried out. The studies themselves point to the value that they hold for IM guidance and evaluation.

All management reports of cost explicitly claimed research was “beneficial” but separate from implementing the IM program yet the costs of this research is included as part of their total IM program cost. This pretext has no basis in reality in that these research projects are unquestionably integral to conducting IM and furtherance of IM is their primary objective.

Indeed, the BOG is legally required to make decisions to conduct management activities and manage wildlife populations “based on scientific information.”² The BOG outlines feasibility assessments as important preliminary steps to intensive management.³ The BOG interprets the authorizing statutory provision to require it to use scientific information in making all Intensive Management decisions.⁴ Further, the Protocol states that the ADFG, the state agency receiving federal aid funds, has an IM role “to provide scientific information on biological sustainability”⁵ – the scientific information provided by these federally-financed studies using WRA grants.

II. Alaska's Use of these Grants to Further Predator Control Activities Violates Federal Requirements.

¹ DIVISION OF WILDLIFE CONSERVATION, Annual Report to the Alaska Board of Game on Intensive Management for Caribou with Wolf Predation Control in Game Management Units 9b, 17b & c, and 19a & b, the Mulchatna Caribou Herd (2014); DIVISION OF WILDLIFE CONSERVATION, Annual Report to the Alaska Board of Game on Intensive Management for Moose with Wolf Predation Control in Units 15A (2014); DIVISION OF WILDLIFE CONSERVATION, Annual Report to the Alaska Board of Game on Intensive Management for Moose with Wolf, Black Bear and Brown Bear Predation Control in Game Management Unit 16 (2014).

² ALASKA STAT. § 16.05.255(f)(1).

³ DIVISION OF WILDLIFE CONSERVATION, ALASKA DEPARTMENT OF FISH & GAME, Intensive Management Protocol, 7 (2011).

⁴ *Id.* at 7, 18-19.

⁵ *Id.* at 3

The above activities are not compliant with federal requirements governing the use of these funds:

- A. The Intensive Management program does not benefit “a diverse array of wildlife and associated habitats, including species that are not hunted or fished”

To obtain federal WRA aid, a state must submit a comprehensive conservation plan which includes “wildlife conservation projects that expand and support existing wildlife programs, *giving appropriate consideration to all wildlife.*”⁶ By its very nature, the Alaska IM program does not benefit predators nor is any consideration given to non-game animals. Instead, the projects themselves are meant to study species interactions, with the ultimate goal of decreasing moose and caribou deaths by predation. The IM program overall is justified with the ultimate goal of increasing opportunities for human moose and caribou hunting.⁷

- B. Granting these Intensive Management-supportive activities federal aid funding lack required compliance with NEPA.

One of the key conditions for federal-aid grants is that the activities supported comply with a variety of statutes, including NEPA.⁸ Moreover, independent of these requirements, significant federal funding of these projects establishes them as federal actions that required an environmental assessment and environmental impact statement under NEPA.⁹

Documents obtained under FOIA indicate that Alaska’s IM program relies upon one million, one hundred and fifty thousand dollars (\$1,150,000.00) of WRA aid. Of the research projects likely to support intensive management for fiscal year 2014, almost all used the federally-mandated maximum proportion of 75% funding from WRA aid.¹⁰ Alaska’s IM research relies on a large total amount and a significant proportion of federal aid. Since the federal government retains oversight over WRA-funded projects, Alaska’s IM-supportive research constitutes major federal action.

Further, these projects affect large areas of wildlife recovery and impact the human environment. Consequently, this is unarguably a significant federal action triggering review under NEPA. Yet, these environmental reviews have not been undertaken for Alaska IM funding. This failure by the U.S. Fish & Wildlife Service not only violates federal funding guidelines but it opens the federal government to liability in civil suits brought to enforce NEPA.¹¹

⁶ 16 U.S.C. § 669c(d)(1)(B)(i) (emphasis added).

⁷ Rodney D. Boertje et al., *Science and Values Influencing Predator Control for Alaska Moose Management*, 74 J. of Wildlife Mgmt. 917, 917 (2010).

⁸ See 50 C.F.R. § 80.90(a).

⁹ In *Sierra Club v. U.S. Fish & Wildlife Serv.*, citizens and the Sierra Club challenged WRA grants to a study in Oregon on bear and cougar effects on elk, which contributed to the management of bear and cougar populations. *Sierra Club v. U.S. Fish & Wildlife Serv.*, 235 F. Supp. 2d 1109, 1118. The court found that the project was a major federal action because it used a high amount of WRA aid, the proportion of funding it used from WRA aid was high, 75%, and the WRA granting gave the government continued oversight over the project. *Id.* at 1120-21. That research project relied upon over three million dollars of WRA aid.

¹⁰ ALASKA DEPT. OF FISH & GAME, *Wildlife Restoration Federal Assistance Project FY 2014 Allocation* (2013).

¹¹ Federal Aid grants under the Wildlife Restoration Act are reviewable under the Administrative Procedures Act (APA). *Scarborough Citizens Protecting Resources v. U.S. Fish & Wildlife Service*, 674 F.3d 97, 99 (1st Cir. 2012);

C. Carrying out the Intensive Management program uses federal funding for law enforcement activities.

The regulations and statute do not allow the funds to be used for law enforcement.¹² The manual also references this restriction, citing an older version of the regulation that specifically disallowed “law enforcement activities conducted by the State to enforce the fish and game regulations.”¹³

However, both ADFG and BOG implement the Intensive Management program through state regulations.¹⁴ Because carrying out the IM program involves the enforcement of regulations, it violates the terms of the WRA.

III. Penalties for non-complaint grants include reimbursement and debarment from future funding.

Under the statute and regulations, a state becomes ineligible for aid when they divert funds away from conservation programs eligible under the act.¹⁵ When found declared in diversion, the state must resolve the diversion before becoming eligible to receive funds again.¹⁶ To resolve a diversion of funds, “(a) if necessary, the State must enact adequate legislative prohibitions to prevent diversions of license revenue. (b) The State fish and wildlife agency **must replace all diverted cash derived from license revenue and the interest lost up to the date of repayment.**”¹⁷

States have been found to cure diversion only after repayment of funds.¹⁸ Unless and until diversion is cured, the state is ineligible for federal WRA aid.¹⁹

Conclusion

For the reasons outlined, PEER is requesting that your office confirm the precise amount of funds that the State of Alaska must reimburse to remedy this improper diversion. Further, the oversight of your office would be helpful in ensuring that such diversion does not recur.

In addition, we believe that the predator control programs in other Western states may also be improperly using federal WRA funding in a similar manner. To that end, your office may wish to widen the purview of its audit to include these potentially non-compliant programs.

Sierra Club v. U.S. Fish & Wildlife Serv., 189 F. Supp. 2d 684, 691 (W.D. Mich. 2002); cf. Earth Island Inst. V. U.S. Forest Serv., 697 F.3d 1010, 1013 (decisions implementing the National Forestry Management Act, without provision for a private cause of action, are reviewed under the APA).

¹² 16 U.S.C. § 669(g); 50 C.F.R. § 80.54(a).

¹³ 50 C.F.R. § 80.6 (replaced by § 80.54 in 2011); 521 FW § 1.8(D)

¹⁴ ALASKA ADMIN. CODE tit. 5, § 92.106.

¹⁵ 16 U.S.C. § 669; 50 C.F.R. §§ 80.11, 80.90(b)(1).

¹⁶ 50 C.F.R § 80.21.

¹⁷ *Id.* at § 80.22 (emphasis added).

¹⁸ Sportsmen’s Wildlife Defense Fund v. Romer, 73 F. Supp. 2d 1262, 1269 (D. Colo. 1999).

¹⁹ 50 C.F.R. § 80.21.

If we can provide you with additional information to support this request, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Jeff Ruch
Executive Director

Cc. FWS Director Dan Ashe
FWS Alaska Regional Director Geoffrey Haskett
ADFG Commissioner Cora Campbell