

Senate Bill 334
January 30, 2007
Presented by Jeff Hagener
Senate Fish and Game Committee

Mr. Chairman and committee members, for the record I am Jeff Hagener, Director for Montana Department of Fish, Wildlife & Parks (FWP).

I am here today to provide the committee with information regarding SB 334. Before addressing the bill directly, I want to provide some background on the Pittman-Robertson (PR) and Wallop-Breaux (WB) federal aid programs.

The federal government collects excise taxes on the manufacture of certain hunting, fishing and boating equipment at the wholesale level. These funds are apportioned to the states under the PR and WB programs for conservation and restoration of wildlife and fish, respectively. Apportionments are based on a complex formula that includes the total area of the state and the number of hunting and fishing licenses sold in the state each year, compared to national totals for area and license sales. Montana's apportionments in recent years have been about \$ 5.5 million for PR and \$ 6.2 million for WB.

To access these funds, the states submit a multi-year "application for federal aid" (AFA) that outlines, in general terms, programs or projects the state will undertake using the funds. The type of programs and projects that are eligible for these grants are limited, and the state must agree to restrict use of all hunting and fishing license dollars for the administration of its fish and wildlife agency to be eligible for grants. Once an AFA is approved, the state can initiate work on the project, and subsequently request reimbursement from the USFWS for up to 75% of eligible project costs. The balance of costs must be paid from non-federal "matching" sources.

All project expenditures are subject to audit by the federal government (USDOJ), and if the project involves the purchase of land or construction of facilities, the federal government will periodically audit use of the land or facilities to ensure the rigid terms of the grant programs continue to be met. If an audit reveals any inappropriate use of funds, land or facilities, the state is liable to return grant funds and could lose future access to this significant source of funding.

From time to time, there has been discussion at the federal level about providing an apportionment of these funds for Tribes. To date, however, only states can apply for and receive PR and WB funds.

The first effort to provide Tribes' with access to PR and WB funds in Montana was HB 107, introduced by Rep. Eggers during the 1999 session. Rep. Eggers' proposed transferring federal aid funds directly to the Tribes for their use. This approach was not viable or legal. During the 2001 session, Rep. Eggers reintroduced HB 107, and worked with FWP to revise his bill to authorize a sub-grant program for tribes, using up to 7% of the state's apportionment. This approach is legal, providing the tribes agree to meet all the federal requirements, including providing a non-federal match, appropriate use of the funds, auditing of project expenditures, and future use of lands or facilities.

The amended version of HB 107 passed the House in 2001. The Senate Fish and Game committee in 2001 determined that statutory language was not necessary for FWP to establish sub-grants with tribes, and decided not to pass HB 107. However, the Senate committee directed FWP to work with tribes to implement a program in the spirit of Rep. Eggers' bill.

In response to this direction, FWP contacted all tribes in the state and contracted with a former FWP employee familiar with Montana's tribes, to identify potential projects and facilitate agreements and sub-grants. In spite of considerable effort, no PR and WB sub-grants have been implemented. Among the roadblocks to implementing PR and WB sub-grants are the Federal limitations on use of PR and WB funds, the requirement for non-federal matching funds, and some tribes' reluctance to agree to the federal audit requirements.

FWP has issued sub-grants to tribes under a different federal aid program, the State Wildlife Grants (SWG) program. Similar in many ways to PR and WB, SWG provides funding to states for conservation of all species of concern, not just game or sport fish. Over \$100,000 has been allocated to tribal projects related to swift fox and grizzly bears with the Blackfeet; loons with the Salish-Kootenai and a proposed grant to develop a reservation wildlife management plan with the Ft. Belknap tribe. One reason SWG grants are easier to implement is that, unlike PR and WB grants, SWG grants do not require equal access to benefits for tribal and non-tribal members. In addition, in several cases private entities or the university system have provided the required non-federal matching funds on behalf of the tribes.

The need for SWG subgrants declined beginning in 2004, when Congress established a Tribal Wildlife Grant (TWG) program that provides funding directly to tribes. The TWG program does not have the same matching requirements that states face with SWG, PR or WB. Several Montana tribes have received allocations of Tribal Wildlife Grant funds since that time.

During the 2005 session, Rep. Jonathan Windy Boy introduced HB 378, which essentially mirrored the language of HB 107. The House Fish Wildlife & Parks Committee tabled HB 378 because they did not believe FWP and tribes would have any greater success in implementing subgrants than in the past.

SB 334, introduced this session by Senator Pease, is identical to HB 378, introduced in the 2005 session. As we testified in 2001 and 2005, as long as all federal requirements can be met, we have no objection to legislative direction to continue efforts to provide subgrants. It is important for all parties to understand, however, that it will remain difficult to implement this concept.

Thank you.



United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



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FISH, WILDLIFE PARKS
DIRECTOR'S OFFICE

Dear Mr. Hagener:

This letter is follow-up to the discussions on March 10, 2006, in Bozeman, Montana between our agencies for improved partnerships. We are providing this to clarify, in writing, the authorized uses of Federal Aid in Wildlife Restoration Act (Pittman-Robertson) and Dingell-Johnson Sport Fish Restoration Act grant funds.

These Acts provide for grant funding to States through annual apportionments from the U.S. Fish & Wildlife Service, for the purpose of conducting fish and wildlife conservation and management of wildlife populations. The Acts are specific in that only States, through their respective fish and wildlife agencies, may apply for and receive these grant funds, allocated based on formulas designed for all State's to participate. The specific language in each grant program is provided below:

- The Federal Aid in Wildlife Restoration Act of 1937, as amended, (16 U.S.C. 669-669i) authorizes the Secretary of the Interior "...to cooperate with the States, through their respective State fish and game departments, in wildlife-restoration projects as hereinafter set forth..." Section 1 concludes with "...all projects shall conform to the standards fixed by the Secretary of the Interior."
- The Federal Aid in Sport Fish Restoration Act of 1950, as amended, (16 U.S.C. 777-777k), directs the Secretary of the Interior "...to cooperate with the States through their respective State fish and game departments in fish restoration and management projects as hereinafter set forth..." Section 1(a) of the Act concludes with "...all projects shall conform to the standards fixed by the Secretary of Interior."

Additionally, the Fish and Wildlife Service Manual, in the Eligibility Standards for Wildlife Restoration (521 FW 1) and for Sport Fish Restoration (521 FW 2), states, "This chapter provides eligibility standards for the Federal Aid in Wildlife Restoration Program. As used in this chapter, the term "we" refers to the Fish and Wildlife Service and the term "State" refers to State fish and wildlife agencies.

M. Jeff Hagener, Director

The specificity of use of these funds by State's is also inherent in the requirements to participate. To be eligible, a State must have assented to the provisions of the Acts and passed laws for the conservation of wildlife and fish, that includes a prohibition against the diversion of license fees paid by hunters and anglers, for any other purpose than the administration of said State fish and game department [50 CFR 80.3].

Only the State Fish and Wildlife agency has the authority and discretion to propose how these grant funds will be utilized for wildlife conservation and management, and our office reviews those proposals and budgets through a federal grant management process (to insure those proposals meet federal requirements, including substantiality in character and design for all projects funded in-part through these grant programs). All applicable laws, regulations and policies must be met before approval. The ultimate responsibility for ensuring proper use of these funds lies with the State Fish and Wildlife agency.

State Fish and Wildlife agencies can, solely within their discretion, work with a variety of partners, e.g. other States, non-governmental organizations, Counties, Tribes, and private individuals, as sub-grantees, in an effort to achieve their management objectives. These partners must meet all the State and Federal laws, regulations and policies in order to qualify as sub-grantees; however, the ultimate responsibility for administration of grant funds remains that of the State Fish and Wildlife agency as the grantee.

If you have any questions, please let us know.

Sincerely,



David McGillivary
Chief, Division of Federal Assistance