EXHIBIT 5
DATE 2/14/2013
HB 407

RECEIVED
FISH WILDLIFE & PARKS
DIRECTOR'S OFFICE

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

IN REPLY REFER TO:
EO: FAP 401-04-72

Mr. Peter L. Cuffaro
102 Hunters Ridge Road
Wheeling, West Virginia 26003

SEP 0 2 2004

Dear Mr. Cuffaro:

You filed a complaint dated October 24, 2003, wherein you alleged that the Montana Fish, Wildlife and Parks Department (hereinafter, "MFWPD") discriminated against you on the basis of disability when it denied your request to use a crossbow during archery season. Specifically, you requested an accommodation to use a crossbow due to your alleged disability. We accept as fact that you are a person with a physical disability. Since the MFWPD receives Federal financial assistance from the Department of the Interior (hereinafter, "Department"), we reviewed your complaint under section 504 of the Rehabilitation Act of 1973, as amended, (hereinafter, "Act") and Title II of the Americans with Disabilities Act (hereinafter, "ADA").[1] The sole issue is whether the MFWPD violated the Act or the ADA when it denied your request for an accommodation to use a crossbow.

Based on the relevant information provided, we have determined that the MFWPD did not discriminate under the Act or ADA when it denied your request to use a crossbow. Since the MFWPD did not violate these statutes, there are no compliance issues that require enforcement. Accordingly, the Department is dismissing your complaint. The Department's analysis is provided below.

Analysis

In Montana, the State's fish and game regulations provide that crossbows may be used during the general hunting season and in most weapons restricted areas during the general season. The use of crossbows is prohibited during the archery season.[2] This restriction applies equally to members of the public. In Montana, any person including people with disabilities may hunt with a crossbow during the general hunting season and in most weapons restricted areas. However, during the State's archery season, it is illegal to hunt with a crossbow.

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[1] The Act prohibits discrimination on the basis of disability in programs or activities receiving Federal financial assistance. The ADA prohibits discrimination on the basis of disability in programs or activities conducted by public entities whether or not they receive Federal financial assistance. As a recipient of Federal financial assistance and as a public entity, the MFWPD's operations are covered by both statutes.

[2] "Methods and Means of Hunting," *2004 Montana Hunting Regulations, Deer-Elk-Antelope*: 15.

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Hunting with a crossbow in the State is not prohibited entirely; the weapon's use is merely restricted. During the general hunting season and in most weapons restricted areas any person, with an appropriate permit, may hunt with a crossbow. Additionally, in Montana, qualified disabled persons are eligible to secure a special permit from the MFWPD that allows them to use modified archery tackle. Since it is illegal to use the crossbow in the State's archery season, you are not authorized to use a crossbow as requested in your complaint.

In the instant case, there is no evidence that Montana's restrictions on the use of the crossbow during archery discriminate against persons on the basis of disability, particularly since such use is prohibited by regulation and applies equally to members of the public. Furthermore, there is no evidence that Montana's restrictions on the use of the crossbow deny qualified disabled persons an effective opportunity to participate in Montana's hunting program. In Montana, it is illegal to hunt with crossbows in certain restricted areas and during archery season. Neither the Act nor the ADA requires the State of Montana to eliminate restrictions on the use of the crossbow as a special accommodation for people with disabilities.

The Department recognizes that States have taken different positions on providing the crossbow as an accommodation for bowhunters with disabilities. However, the Department cannot mandate that a recipient or State agency provide a crossbow as an accommodation where the crossbow is prohibited. Accordingly, since there are no compliance issues that require the Department's review, we consider your complaint to be closed. The Department will take no further action to process your request for an accommodation to use a crossbow in Montana's hunting program.

If you disagree with the Department's decision, you may file a civil action in the appropriate U. S. District Court having jurisdiction over this matter. If you have any questions or desire any additional information regarding the nondiscrimination requirements of section 504 and Title II of the ADA, please do not hesitate to contact Melvin C. Fowler, Civil Rights Staff Assistant, of this Office at (202) 208-3455.

Sincerely,

Sharon D. Eller
Director
Office for Civil Rights

cc: Director MFWPD
Acting Chief, Division of Federal Assistance, FWS
FWS Civil Rights Coordinator