



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO  
FWS/ R6/WSFR

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M. Jeff Hagener, Director  
Montana Department of Fish,  
Wildlife & Parks  
P.O. Box 200701  
Helena, Montana 59620-0701

APR 11 2016

Dear Mr. Hagener:

This responds to your April 4, 2016, letter requesting guidance regarding requirements for the disposal or transfer of properties owned by the Montana Fish, Wildlife and Parks Department (Department) that were originally acquired through use of state hunting or fishing license revenues or with funding from the Wildlife and Sport Fish Restoration program (WSFR).

### Real Property Acquired with Funding from the WSFR Program

As you are aware, property acquired in part with WSFR grant funds must be used and managed in accordance with Federal regulations listed below. Excerpts from these regulations applicable to the disposal or exchange of WSFR-acquired property are included in Enclosure 1.

- 50 CFR 80 - Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts, Subpart J - Real Property
- Fish and Wildlife Service Manual, Part 522 Federal Aid Program Guidance - Chapter 6 - Land Acquisition, Chapter 20 - Loss of Control and Disposal of Real Property

Property acquired with WSFR grant funds must remain in the control of the State Fish and Wildlife Agency (Agency) and continue to be used for the purpose(s) stated in the WSFR grant. If control of the property passes to another State agency or private entity, either through a management decision or an unapproved legal transaction, control must be fully restored to the Agency or the real property must be replaced using non-Federal funds with other property that is of equal market value and serves the same purpose as the original property.

WSFR-funded property may be sold, exchanged, or transferred if the Agency and the Fish and Wildlife Service (Service) jointly decide that the property is no longer useful or needed for its

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Exhibit 6

original purpose under the grant, and the Service has provided approval for the disposal in writing. We emphasize the importance of this last point -- prior written approval from the Service is required before the Agency can proceed with disposing property.

The procedural steps and required documentation for disposing WSFR-acquired property is largely the same whether the Agency chooses to sell, exchange, or simply transfer title. The Agency must submit a grant amendment consisting of:

- An explanation for the need to dispose of the property;
- The required environmental compliance documentation, including an Environmental Assessment (EA); and
- An appraisal of the property prepared by a state certified appraiser in compliance with the *Uniform Standards for Professional Appraisal Practice* and *Uniform Appraisal Standards for Federal Land Acquisitions* accompanied by a review prepared by a separate state certified appraiser.

Once the current market value has been determined and the disposal has been approved by the Service, the property may be sold for the appraised value, and the appropriate share of the proceeds returned to the appropriate WSFR grant account for that Agency. The Agency may also transfer the property to another entity without payment; however, the Federal share of the current appraised market value of the property must still be provided to the Service for return to the Agency's WSFR grant account. Finally, the Agency may also elect to relinquish the property through an exchange. In this case, the property to be acquired by the Agency in the exchange must serve an eligible purpose pursuant to the WSFR program that funded the original acquisition, and the current market value of that property must be determined through the appraisal process described above. If the two properties subject to the exchange are found to be of disparate values, the difference must be equalized between the Agency and the participating entity through a monetary payment.

#### Real Property Acquired with State Hunting or Fishing License Revenue

Property acquired with state hunting or fishing license revenue by an Agency that participates in the WSFR Grant Program is also subject to Federal regulations in 50 CFR 80 *Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts*. Excerpts from these regulations applicable to real property acquired with state hunting or fishing license revenue are included in Enclosure 2.

To be eligible to participate in the benefits of the WSFR Program, a State Fish and Wildlife Agency (Agency) must ensure that revenue received from the sale of hunting and fishing licenses be controlled only by the State fish and wildlife agency; and used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law. Hunting and fishing license revenue includes "real or personal property acquired with license revenue." Consequently, an Agency must ensure that they maintain control of property acquired with state license revenue, and that the property is used for the purpose of managing its fish- and wildlife-related resources.

If an Agency loses control of license revenue, or if license revenue is used for purposes other than the administration of the Agency or management of fish- and wildlife-related resources, either through a legal transaction or management decision, the Service Director may formally declare the Agency "in diversion," and the Agency would become ineligible to participate in the WSFR Program until the diversion is resolved.

A diversion due to the loss of control of state license revenue-acquired property must be resolved by:

- Regaining management control of the property;
- Obtaining replacement property that meets specific criteria; or
- Receiving a monetary payment at least equal to the current market value of the state license revenue-acquired property.

The Service Director evaluates the resolution and, if it is found to be satisfactory, can rescind the declaration of diversion.

If property acquired with state license revenue is no longer needed for the administration of the Agency or for managing fish- and wildlife-related resources, the Agency may dispose of the land. The Agency must determine the value of the property by an acceptable method (e.g., preparation of an appraisal), and must ensure that value is received as part of the disposal transaction in the form of goods, services, or a monetary payment. Service evaluation and approval of the disposal of license-acquired property is not required; however, such a transaction may be subject to audit by the Department of Interior Office of Inspector General.

We appreciate this opportunity to be of service. If you need further assistance, please do not hesitate to contact Jacquie Trout or me at (303) 236-8157 or (303) 236-4411 respectively.

Sincerely,



Stephen H. Jose  
Chief, Wildlife and  
Sport Fish Restoration Program

Enclosures (2)

cc: Adam Brooks, Montana Department of Fish, Wildlife and Parks

## **ENCLOSURE 1**

### **50 CFR Part 80 Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts**

#### **Subpart J—Real Property**

##### **§ 80.134 How must an agency use real property?**

(a) If a grant funds acquisition of an interest in a parcel of land or water, the State fish and wildlife agency must use it for the purpose authorized in the grant.

##### **§ 80.135 What if an agency allows a use of real property that interferes with its authorized purpose?**

- (a) When a State fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose.
- (b) If the agency cannot fully restore the real property to its authorized purpose, it must replace the real property using non-Federal funds.
- (c) The agency must determine that the replacement property: (1) Is of at least equal value at current market prices; and (2) Has fish, wildlife, and public-use benefits consistent with the purposes of the original grant.
- (d) The Regional Director may require the agency to obtain an appraisal and appraisal review to estimate the value of the replacement property at current market prices if the agency cannot support its assessment of value.
- (e) The agency must obtain the Regional Director's approval of: (1) Its determination of the value and benefits of the replacement property; and (2) The documentation supporting this determination.
- (f) The agency may have a reasonable time, up to 3 years from the date of notification by the Regional Director, to restore the real property to its authorized purpose or acquire replacement property. If the agency does not restore the real property to its authorized purpose or acquire replacement property within 3 years, the Director may declare the agency ineligible to receive new grants in the program or programs that funded the original acquisition.

##### **§ 80.136 Is it a diversion if an agency does not use grant-acquired real property for its authorized purpose?**

If a State fish and wildlife agency does not use grant-acquired real property for its authorized purpose, a diversion occurs only if both of the following conditions apply:

- (a) The agency used license revenue as match for the grant; and
- (b) The unauthorized use is for a purpose other than management of the fish- and wildlife-related resources for which the agency has authority under State law.

##### **§ 80.137 What if real property is no longer useful or needed for its original purpose?**

If the director of the State fish and wildlife agency and the Regional Director jointly decide that grant-funded real property is no longer useful or needed for its original purpose under the grant, the director of the agency must:

- (a) Propose another eligible purpose for the real property under the grant program and ask the Regional Director to approve this proposed purpose, or
- (b) Request disposition instructions for the real property under the process described at 43 CFR 12.71, "Administrative and Audit Requirements and Cost Principles for Assistance Programs."

## **U.S. Fish and Wildlife Service Manual, Part 522 Federal Aid Program Guidance**

### **522 FW 20 Loss of Control and Disposal of Real Property**

#### **20.4 What happens when the State fish and wildlife agency loses control of real property acquired with Sport Fish or Wildlife Restoration Program funds (for example, through a State taking, State Department of Transportation condemnation, etc.)?**

- A. When such property passes from management control of the State fish and wildlife agency, the control must be fully restored to the State fish and wildlife agency or the real property must be replaced using non-Federal Assistance funds. Replacement property must be of equal value at current market prices and have equal benefits as the original property. The State may have a reasonable time, up to 3 years from the date of notification by the Service Regional Director or Manager, California/Nevada Operations Office (CNO), to acquire replacement property before becoming ineligible to participate in the Sport Fish and/or Wildlife Restoration Programs (50 CFR 80.14(b)(1)).
- B. Replacement of real property cannot be funded with license revenues. [20.4(B) does not apply to situations where the loss of control is due to the sale of real property or property rights purchased with Federal Assistance funding.]
- C. We require written documentation that the State replaced real property as described in section 20.4A. We must keep the documentation in our administrative record to demonstrate compliance with the Federal regulations applicable to the Wildlife and Sport Fish Restoration Programs.
- D. Except as noted in section 20.4E below, any action we take under this section is not a Federal action under the National Environmental Policy Act (NEPA) or for other Federal compliance purposes.
- E. If a grant used to acquire the real property is still open and replacement of the real property requires an amendment to the grant, then the amendment is a Federal action.

#### **20.5 What happens when the State fish and wildlife agency wants to dispose of real property acquired with Sport Fish or Wildlife Restoration Program funds?**

Prior to disposing of real property, we require the following:

- A. The State fish and wildlife agency must determine that it no longer needs the real property or find that the real property is no longer useful for its original purpose.
- B. The Service Regional Director must approve this determination and the State fish and wildlife agency and Service Regional Director must agree to one of the three disposal methods described in 43 CFR 12.71(c).
- C. The approval of the Service Regional Director to dispose of such real property and the method for disposing of the real property constitute a Federal action under NEPA or for other Federal compliance purposes.

## ENCLOSURE 2

### **50 CFR Part 80 Administrative Requirements, Pittman-Robertson Wildlife Restoration and Dingell-Johnson Sport Fish Restoration Acts**

#### **§ 80.2 What terms do I need to know?**

*Diversion* means any use of revenue from hunting and fishing licenses for a purpose other than administration of the State fish and wildlife agency.

#### **§ 80.10 Who is eligible to receive the benefits of the Acts?**

States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:

(c) Requires that revenue from hunting and fishing licenses be:

- (1) Controlled only by the State fish and wildlife agency; and
- (2) Used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law.

#### **§ 80.11 How does a State become ineligible to receive the benefits of the Acts?**

A State becomes ineligible to receive the benefits of the Acts if it:

(c) Diverts hunting and fishing license revenue from:

- (1) The control of the State fish and wildlife agency; or
- (2) Purposes other than the agency's administration.

#### **§ 80.20 What does revenue from hunting and fishing licenses include?**

Hunting and fishing license revenue includes:

(b) Real or personal property acquired with license revenue.

#### **§ 80.21 What if a State diverts license revenue from the control of its fish and wildlife agency?**

The Director may declare a State to be in diversion if it violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration. The State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the State resolves the diversion. Only the Director may declare a State to be in diversion, and only the Director may rescind the declaration.

#### **§ 80.22 What must a State do to resolve a declaration of diversion?**

The State must complete the actions in paragraphs (a) through (e) of this section to resolve a declaration of diversion. The State must use a source of funds other than license revenue to fund the replacement of license revenue.

(d) The agency must take one of the following actions to resolve a diversion of real, personal, or intellectual property:

- (1) Regain management control of the property, which must be in about the same condition as before diversion;
  - (2) Receive replacement property that meets the criteria in paragraph (e) of this section; or
  - (3) Receive a cash amount at least equal to the current market value of the diverted property only if the Director agrees that the actions described in paragraphs (d)(1) and (d)(2) of this section are impractical.
- (e) To be acceptable under paragraph (d)(2) of this section:
- (1) Replacement property must have both:
    - (i) Market value that at least equals the current market value of the diverted property; and
    - (ii) Fish or wildlife benefits that at least equal those of the property diverted.
  - (2) The Director must agree that the replacement property meets the requirements of paragraph (e)(1) of this section.

## **U.S. Fish and Wildlife Service Manual, Part 522 Federal Aid Program Guidance**

### **522 FW 20 Loss of Control and Disposal of Real Property**

#### **20.6 What happens when the State fish and wildlife agency loses control or disposes of real property acquired with license revenue (no Federal funding involved)?**

- A. The State fish and wildlife agency is required either to regain management control of the lands or replace such lands with lands of equal values and equal benefits as those originally acquired, or the license revenues must be restored to the State agency.
- B. To avoid diversion, replacement of real property cannot be funded with license revenues.
- C. The State is required to document in writing and enter into State records the replacement of real property or restoration of license revenues as described in section 20.6A to demonstrate that there has been no diversion of license revenues.
- D. Any action we take under this section is not a Federal action under NEPA or for other Federal compliance purposes.