



## Montana Fish, Wildlife & Parks

TO: Joe Maurier, Art Noonan, Chas Van Genderen, Dave Risley and Sue Daly  
FROM: Paul Sihler, Land and Outreach Section Supervisor   
RE: State Parks Purchased with Hunting and License Funding  
DATE: March 21, 2011

Based upon a review of the land acquisition files and the department's asset management system, I have identified 16 state parks and one parks affiliated land that appear to have been purchased, at least in part, with some form of hunting and fish license funding. This includes federal P-R and D-J funding, general license funding and fishing access site funding. The specific parks are listed below, with a synopsis of the information for each site following later in the memo.

Spring Meadow SP	Smith River SP – Camp Baker and Eden Bridge
Beavertail Hill SP	Brush Lake SP
Giant Springs SP	Lake Elmo SP
Logan SP	Lone Pine SP
Missouri Headwaters SP	Prairie Dog Town SP
Wayfarers SP	West Shore SP
	Finley Point SP
	Lake May Ronan SP
	Lost Creek SP
	Sluice Boxes SP
	Little Bitterroot Affiliated Lands

With one exception, I believe that all of the remaining state parks were purchased with some form of parks funding. The one park I am uncertain about is Cooney State Park. At one point there was a combined Cooney State Park/Wildlife Management Area. I suspect that the wildlife management area component may have been a 1,000 acre DNRC lease that was subsequently dropped. There is a note in the file indicating that wildlife no longer has any interest in the site, but I have not been able to track down any other conclusive information.

There is a fairly consistent (but not exclusive) pattern to these acquisitions with two general scenarios for how state parks were acquired with hunting and fishing license funding. In one scenario, the property was acquired with license funding as a fishing access site, often as match for LWCF funding. Many of these properties were acquired in either the 1960's or early 1970's. At some later point the name of the site was then changed from a fishing access site to a state park, sometimes through a motion by the Fish and Game Commission and other times through an administrative change that shows up in the department's old lands books. Under the second scenario, the department acquired state parks through a land exchange that involved trading department land acquired with fish and wildlife funding for a state park. This happened as recently as 2002 with the acquisition of the Stedman Foundry addition to Spring Meadow SP and the acquisition of Lost Creek SP in 2003.

In reaching these determinations, I've reviewed information from the land transaction files, the asset management system, and in several instances either LWCF or federal aid files. Nonetheless, there may be additional information that I have not discovered that either supports or contradicts what I have found. I recommend that others in the department review the information I have found and scour their records to determine if there is additional evidence that can help inform these conclusions.

#### **Brush Lake State Park**

Brush Lake SP was acquired on December 29, 2004 from the Jensen Revocable Trust. This transaction was a part of a 3-way land exchange facilitated by The Conservation Fund that involved FWP disposing of Chief Joseph Battlefield to the National Park Service and acquiring Brush Lake.

The acquisition of the 450 acre property was funded by \$89,000 of Wallop-Breaux funding (motorboat program), \$25,000 of land exchange value and \$41,910 of state park acquisition funding for a total of \$129,000. The WB funding constitutes a federal aid encumbrance on the property.

#### **Wayfarer's State Park**

The Montana Fish and Game Commission purchased the 48.42 acre "Wayfarer's Recreation Area" on September 2, 1969 from the Big Fork Masonic Lodge for \$158,800. Lands files show that half of the purchase price (\$79,400) was paid by LWCF and that the remainder seems to have been purchased from the "State Fish and Game Earmarked Revenue Account" (some bonding was involved). FWP's asset management system corroborates that the acquisition was funded half by funding categorized as "State Parks Federal and Private," which would be the LWCF, with the other half funded by general license dollars.

#### **West Shore State Park**

The initial 67.3 acre parcel of land that became West Shore SP was acquired in 1955 as a donation with the requirement that it only be used as a state park. The second parcel totaling 73.55 acres was subsequently acquired on April 11, 1966, apparently at least in part in order to resolve an encroachment issue resulting from the department building a toilet and some tables 40 feet across the property boundary on the neighboring property.

The 73 acre addition to the park was acquired through a land exchange where the department traded 285 acres of surplus property at the Blackfoot-Clearwater Game Range plus a \$14,000 cash payment for the West Shore land. The surplus Blackfoot-Clearwater property had been purchased with Pittman-Robertson funding so that encumbrance transferred with the exchange to the West Shore SP parcel.

#### **Smith River State Park (Eden Bridge)**

The 4.23 acres that FWP owns at Eden Bridge was purchased as an FAS on July 21, 1994. The funding for the acquisition was all license dollars through the FAS program. There is a memo in the file dated March 1, 2005 that transfer's administration of the site from the Fisheries Division to the Parks Division. This site is encumbered by FWP license funding.

#### **Smith River State Park (Camp Baker)**

The 50 acre "Fort Baker" public fishing access site was acquired on February 10, 1970. The funding for the purchase was split between LWCF and general license dollars. The 1988 Land Book lists the property as the Camp Baker FAS. The 2009 Land Book lists the property as "Smith River/Camp Baker SP."

### **Finley Point State Park**

The Fish and Game Commission purchased 23.83 acres that became Finley Point SP on July 12, 1965 for \$68,000. The property was purchased with \$54,000 of fishing access site funding plus \$14,000 in value from a land exchange where F&G disposed of the Polson Fish Hatchery. There is a memo in the file to F&G director Wes Woodgerd dated February 4, 1966 requesting that \$68,000 of funding from a parks account be transferred to the F&G budget so that the site would be owned by parks. A handwritten note on the memo says the request was denied on February 8, 1966. This asset management system shows this site as encumbered by FWP general license revenue. This parcel constitutes 23.83 acres of the 27.83 acre state park.

### **Lone Pine State Park**

The 269.44 acre Lone Pine State Park was purchased in multiple transactions over time. One 41.023 acre parcel is encumbered by FWP license funding. Purchased on September 17, 2002 for \$204,250, the funding was split between LWCF and general License funding according to the lands file for the project. This is corroborated by the FWP's asset management system.

### **Logan State Park**

Logan State Park consists of a 16 acre permanent park easement (originally acquired by MDT) plus 1.4 acres owned in fee. The fee title land was purchased by FWP in March 1986 in order to allow the department to site a septic drain field. FWP paid Champion International \$427 for the 1.4 acre parcel. The department intended to cost share the purchase of the parcel with LWCF funds, but a memo in the file indicates that the department failed to meet some LWCF eligibility requirements during the acquisition so that didn't happen. The source of the funding for the purchase is not clear from the lands file but the asset management system shows the \$427 was general license funding.

### **Lake Elmo State Park**

The initial 80.67 acres of Lake Elmo State Park was acquired on June 27, 1983. (The total current fee title acreage for the park is 183.37 acres.) The purchase price for the 80.67 acres was \$950,000, which included FWP trading the Juniper Beach FAS on Flathead Lake, valued at \$144,000, to the seller as part of the transaction. There is a note in the file that indicates that the Juniper Beach property was encumbered with DJ funding, and says that a replacement property could be acquired in the future, but I've found no evidence that this happened. Without a replacement project, the Juniper Beach DJ encumbrance would have transferred to Lake Elmo SP. The asset management system indicates that Juniper Beach (also known as Cedar Beach) was acquired using 75% federal funding and 25% general license funding and that the property was traded to Lloyd Kimble (who sold us the 80.67 acres at Lake Elmo).

### **Missouri Headwaters State Park**

The core 505 acre parcel of Missouri River Headwaters State Monument (which in total is 527 acres) was acquired on August 17, 1966 for \$37,425. Lands records indicate that this acquisition was cost-shared with LWCF funds but are not clear as to the source of the F&G Commission match funding. FWP's asset management system indicates that the source of matching funds for the LWCF funding was general license dollars. This is reinforced by a motion passed by the Fish and Game Commission on November 14, 1966 that says "*I move to declare the following fishing access site as state parks: Lake Mary Ronan and Woods Bay State Parks in Lake County and Ashley Lake State Park in Flathead County, and that the recently-acquired addition be included in the Missouri River Headwaters State Monument in Gallatin County*" (emphasis added). As a side note, I spoke with Don Hyppa who was the assistant parks

administrator during this era, and Don said fishing access sites were acquired during this period using FAS dollars as match for LWCF.

#### **Beavertail Hill State Park**

The 65 acre Beavertail Hill SP was acquired on September 21, 1968 for \$13,000. Lands files indicate the property was purchased with LWCF funding but do not specify how the 50% match was funded. FWP's asset management system indicates that the match was general license funding. Walt Timmerman checked the LWCF files and found no information about how the LWCF funding was matched.

#### **Greycliff Prairie Dog State Park**

The 97.91 acre Greycliff Prairie Dog SP was acquired from The Nature Conservancy for \$11,670 on January 7, 1974. The property was appraised to federal standards but the lands file contains no information about how the acquisition was funded. LWCF files show that the property was acquired with an LWCF grant but there is no information regarding the match. FWP's asset management system indicates the funding was split between general license funding and federal funding.

#### **Sluice Boxes State Park**

The 1400 acre Sluice Boxes SP was all or mostly acquired with fishing and hunting license funding, was an FAS before being re-classified as a state park, and a portion of it at one time was federal aid encumbered.

The core 1100 acre parcel of the park was acquired from the Anaconda Co. on August 29, 1974 as a result of a land exchange for 461.07 acres of land at the Blackfoot-Clearwater Game Range plus a \$4,000 payment. Presumably this was license funded because all of the land we owned at the BC Game Range at that time was acquired between 1948 and 1965. One 176.39 acre parcel was federal aid encumbered. That encumbrance was transferred to Sluice Boxes and then subsequently transferred to Issac Homestead WMA.

An 8.172 acre parcel was purchased on September 3, 1982 with fishing access site funding. There is extensive documentation in the lands files regarding this funding source that is corroborated by the asset management system, which also shows other parcels encumbered with general license funding.

These conclusions are supported by 1970's era land books. The 1974 lands book lists 1,090 acres at "Belt Creek" as a public fishing access site. In 1976, the lands book refers to the site (with some additional acreage) as "Sluice Boxes State Monument" but still lists it under the "Public Fishing Access" category. Then the 1978 lands book lists "Sluice Boxes State Monument" in the "Parks, Monuments and Recreation Areas" category of the lands book instead of the "Public Fishing Access" category.

#### **Lake Mary Ronan State Park**

The initial 76.08 acres of Lake Mary Ronan were acquired by the Montana Fish and Game Commission on January 14, 1965 prior to the passage of the legislation transferring State Parks to the Fish and Game Commission. There is a decade of correspondence starting in the mid-1950's regarding interest and efforts by F&G to acquire access at Lake Mary Ronan. F&G acquired the 76.08 acre parcel from the Glacier Park Company in exchange for land the department owned at Ashley Lake. The Ashley Lake property was purchased by the department on July 4, 1937 for a fish hatchery and spawning operation. Apparently hatchery operations were discontinued making the Ashley Lake property available for disposal. FWP's asset management system shows Lake Mary Ronan as having been purchased with

general license funding. On November 14, 1966, the Fish and Game Commission passed a motion (see Missouri Headwaters SP section above) declaring that the Lake Mary Ronan FAS was now a state park.

Montana's license funding ascension act that says license fees may only be used for department purposes was enacted in 1941, four years after the Ashley Lake property was acquired by F&G. That may be relevant to determining whether this property is encumbered by license dollars, but there is little question that F&G funding acquired the site.

52.65 acres were subsequently added to Lake Mary Ronan in 1997 and this acreage does not appear to be encumbered by fish and wildlife funding.

#### **Little Bitterroot Affiliated Lands**

FWP owns 0.73 acres of land in fee title at Little Bitterroot Lake and the remaining 36.8 acres at the site are leased. The 0.73 acres of fee title land was acquired as a part of the same land exchange through which Lake Mary Ronan was acquired in return for department land at Ashley Lake. There is a memo to the file that says "We plan to grant an easement to the State Parks Division to operate the Little Bitterroot Lake property; however, we will retain ownership of it." FWP's asset management system shows the funding source for Little Bitterroot Lake as "Non-Budgeted Private funding," but in light of the clear documentation in the lands file that this property was acquired through exchange for Ashley Lake, I believe the asset management system is incorrect (see Lake Mary Ronan description and comments above).

#### **Lost Creek State Park**

The 502.09 acres Lost Creek SP was acquired through a land exchange with the USFS on January 28, 2003. The 107.26 acres Welcome Creek FAS on Rock Creek was one of the properties that FWP exchanged out of in order to acquire Lost Creek SP.

The Welcome Creek FAS was acquired by the Montana Fish & Game Commission for \$10,726 on May 19, 1959, which is prior to the date that state parks were moved to the F&G department. The appraisal for the acquisition was completed by the Bureau of Sport Fisheries and Wildlife, a bureau of the USFWS. Old lands books list Welcome Creek as a public fishing access site. A memo in the file from Don Malasani, FWP Land Agent, dated 1981 indicates that "*Through a process of elimination, I have determined that the funding source for Welcome Creek was totally state money. I was unable to find any documents indicating that federal funding was used to purchase the property.*" The asset management system indicates this property was encumbered with \$10,726 of general license funding.

Two other FAS sites were also disposed of by FWP to the USFS as a part of this exchange. The remaining 31.56 acres parcel at Ashley Lake was transferred to the USFS. As described in the Lake Mary Ronan section above, Ashley Lake was acquired by the Montana F&G Commission in 1937 and then designated a state park in 1966. This property may not be encumbered with license dollars, however, because it was acquired before the 1941 enactment of the license ascension act. FWP also traded out of the Ray Kuhns FAS. This 82.59 acre site was acquired in 1971 through a donation for the purpose of public fishing access. However, because this site was donated it is not considered encumbered by the USFWS.

#### **Giant Springs State Park**

Two parcels of the 675 acre Giant Springs SP were acquired in part with general license funding. A 5.18 acre parcel was acquired from the Kunesh Family on November 29, 1972 for \$21,000. Lands records

indicate the funding for the acquisition was \$11,130 of LWCF funding and \$9,870 of license funding. The asset management system indicates \$10,500 of license funding in this parcel.

The second parcel encumbered with general license funding was acquired on January 31, 1977. This 48 acres parcel was also acquired from the Kunesh Family through a combination of a land exchange and purchase. FWP exchanged its 680 acres Muddy Creek property plus \$74,340 for the 48 acres addition to Giant Springs SP. The Muddy Creek property was PR encumbered. While the Parks Division got the Giant Springs/Heritage Park Committee to reimburse the USFWS for the \$21,375 PR encumbrance, the general license match of \$7,125 was transferred into Giant Springs State Park. In addition, \$6,267 of general license funding was used as part of the match for the LWCF funding. The asset management system indicates this parcel is encumbered with \$43,832 of license funding. There is a note in the file that 3 acres of the parcel was retained for a regional headquarters but the headquarters was built elsewhere.

#### **Spring Meadow State Park**

The Stedman Foundry portion of Spring Meadow Lake SP (5.3 acres) was acquired through a land exchange for two parcels of property at FWP's Custer Avenue warehouse with a combined acreage of 8.127 acres. There are memos in the land exchange file indicating that (1) the warehouse property was acquired using license funding, (2) any property acquired through an exchange of the warehouse property must be used for fish and wildlife purposes and remain under the control of the department and (3) the proposed use of the Stedman property seems to meet the criteria in #2. The asset management system indicates that the Stedman property is encumbered by \$292,647 of FAS funding.

The core 55.8 acre parcel of Spring Meadow Lake SP was acquired by FWP in 1981 using Coal Tax funding.

c: Adam Brooks  
Hugh Zackheim  
David Clark-Snustad

<u>State Park</u>	<u># Acres</u>	<u>P-R Funding</u>	<u>License Funding</u>	<u>FAS Funding</u>	<u>D-J/WB Funding</u>	<u>LWCF Funding</u>	<u>Parks Donate</u>	<u>Total</u>			<u>Rationale</u>
								<u>Purchase Price</u>	<u>Estimated Current Land Value</u>		
Brush Lake	450				\$89,000			\$129,000	\$ 129,000.00		
Wayfarers	48.42		\$79,400			\$79,400		\$158,800	\$ 9,110,000.00	What we paid in 2004	
Westshore	73.55	\$85,000	\$14,000					\$99,000	\$ 7,302,450.00	\$5,000/ff	
Eden Bridge	4.23		\$70,000					\$70,000	\$ 250,000.00	\$5,000/ff	
Camp Baker	50		\$3,500			\$3,500		\$7,000	\$ 250,000.00	road, river, Great Falls	
Finley Point	23.83		\$68,000					\$68,000	\$ 3,689,360.00	isolated, more acres than Eden Bridge	
Lone Pine	41.023		\$102,125			\$102,125		\$204,250	\$ 500,000.00	\$5,000/ff	
Logan	1.424		\$427					\$427	\$ 75,000.00	\$204,000 for 41 acres in 2002	
Lake Elmo	3.4		\$36,000			\$108,000		\$144,000	\$ 1,440,000	1.4 acres on lake with road & public land	
Missouri HW	505		\$18,712.50			\$18,712.50		\$37,425	\$ 1,500,000.00	Ten fold increase since 1983?	
Beavertail Hill	65		\$6,500			\$6,500		\$13,000	\$ 650,000.00	500 acres X \$3,000/ac	
Greycliffe PDT	97.91		\$5,850			\$5,850		\$11,670	\$ 100,000.00	65 acres X \$1000/ac	
Sluice Boxes	1241.172	(1)	\$3,710	\$29,260					\$ 6,205,860.00	97 acres x 1000/ac	
Lake Mary Ronan	76.08		\$7,790	(2)					\$ 760,000.00	1241.172 acres X \$5,000/ac	
Lost Creek	502.09		\$808,365	(2)					\$ 1,255,225.00	76 acres X \$10,000/ac	
Giant Springs	53.18		23,262.50	(3)		\$79,202.50	\$21,375	\$123,840	\$ 530,000.00	502.09 acres X \$2500/ac	
Spring Meadow	5.3		\$292,647					\$292,647	\$ 450,000.00	53 acres X \$10,000/ac	
Little Bitterroot	0.73									\$292,000 purchase price about 10 years ago	
<b>SUMS</b>	<b>3,242.34</b>	<b>85,000</b>	<b>1,540,289</b>	<b>29,260</b>	<b>89,000</b>	<b>403,290</b>	<b>21,375</b>	<b><del>\$1,255,225</del></b>	<b>\$ 34,196,895.00</b>		

(1) Compilation of acres and \$ from multiple acquisitions -- see asset management summary

(2) \$ figure from asset management system

(3) Compilation of acres and \$ from multiple acquisitions -- See parcel data sheets

Changes in Administrative Designation over Time  
Of Sluice Boxes State Park:

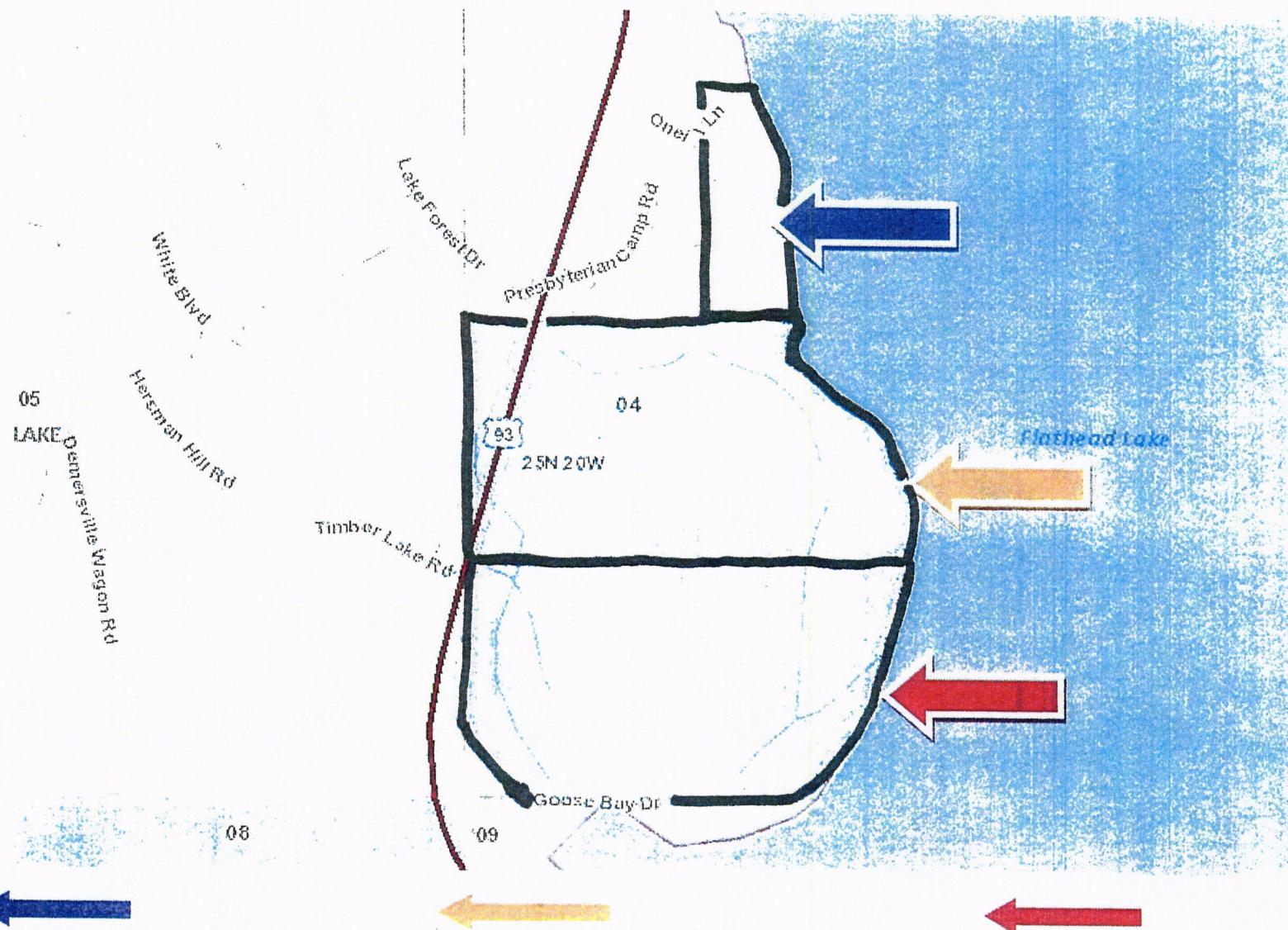
An Example

April 2016

<u>Date</u>	<u>Acres</u>	<u>Site Name</u>	<u>Administrative Designation</u>
1972	1,070	Belt Creek	Public Fish Access
1976	1,081	Sluice Boxes State Monument	Public Fishing Access
1978	1,223	Sluice Boxes State Monument	Parks, Monuments & Recreation Areas
2015	1,431	Sluice Boxes State Park	State Park

Prepared 2013  
(Zackheim)

FLATHEAD LAKE STATE PARK – WEST SHORE  
Parcel Acquisition Map



Traded to Presbyterian in 1993 for  
Finley Pt. parcel; File #1529.5(02)

P-R encumbered!

Acquired for cash & Blackfoot WMA land exch. 1966  
File #1529.1(02) (originally included the ← parcel)  
This parcel is P-R encumbered because of land exchange.

Acquired by donation in 1955; file #1529.1(01)  
By deed, this parcel must be used for state park.



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO  
FWS/ /R6/WSFR

MAILING ADDRESS: Post Office Box 25486  
Denver Federal Center  
Denver, Colorado 80225-0486

STREET LOCATION:  
134 Union Blvd.  
Lakewood, Colorado 80228-1807

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

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:

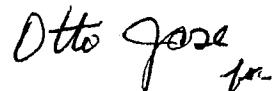
- Regaining management control of the property;
- Obtaining replacement property that meets specific criteria; or
- Receiving a monetary payment at least equal to the current market value of the state license revenue-acquired property.

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.