

Committee on Resources

Witness Statement

Testimony of
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to
House Resources Committee
Oversight Hearing on Federal Aid Programs
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Mr. Chairman, I am Rob Gordon, Director of the National Wilderness Institute. I would like to commend you for holding this hearing and your staff for the research that they have conducted into the mismanagement of the Pittman - Robertson and Dingell - Johnson Acts by the US Fish and Wildlife Service.

NWI began researching problems at the Division of Federal Aid about this time last summer when we were informed that huge sums of money could not be accounted for. Given that the P - R and D - J programs are two of the most successful conservation programs ever established we were concerned by these reports. After some discussions with current and former FWS officials we came into touch with Jim Beers. We met with Jim and interviewed him at length. We learned that officials within the Service had pushed Jim and another colleague to change their determination that grant requests from an animal rights group failed to meet the criteria necessary for Federal Aid funding. We learned of sloppy management and mismanagement and the improper use of PR-DJ funds within the US Fish and Wildlife Service. In what became a long and exhaustive research project we found that Jim was an invaluable source of information and expertise about this program. We interviewed numerous other FWS officials and found that the problems of the Federal Aid Division were not superficial but deep and reached outside of the Federal Aid Division itself.

Jim Beers Experience

Soon after we met Jim his case took a dramatic turn. One Sunday in August an envelope was left in his door with letters threatening him with loss of retirement benefits and health care if he did not retire by the end of the week and warning him that he was not allowed on government property. That Monday police were checking IDs of all who entered the Arlington Headquarters of FWS and employees of the Federal Aid Division were called together and warned not to give Jim information. The locks on federal aid's doors were changed.

I spoke with Jim soon after he received this envelope. I remember his call and his voice. It was clearly deeply upsetting for him and his wife. We advised him that he should retain an attorney which he did and then began the Department's long drawn out campaign to wear Jim out and to get him to resign in disgust.

Jim was at home, given no work, just getting a check in the mail with no idea what the future held and nothing but months of delay, avoidance and disingenuous offers.

Eventually, the publicity Jim received through editorials written by Ken Smith of the Washington Times and the threat that Office of the Special Counsel, which had been investigating Jim's case, would go to the Merit Systems Protection Board forced the Department to settle. The Office of the Special Counsel which was not bound by any non-disclosure agreement released the details of the settlement.

USFWS did and Secretary Barry may repeat here today that they settled with Jim Beers but "expressly disavow any fault or wrongdoing." Any such assertion is absurd. The day that the editorial entitled "Agency Out of Control" hit the papers, months after Jim received a letter stuck in his door telling him his career was over, the Department ended up paying Jim \$150,000, plus attorneys fees, back leave, full retirement and a letter of apology. Those are hardly the actions of an agency that can honestly 'expressly disavow any wrongdoing.'

Bonnie Kline's Experience

Jim has not been the only victim of corruption at USFWS. Another FWS employee in the Information Resources Management Division is being mistreated by superiors seemingly just because she was a family friend of Jim's. In an administrative court hearing Bonnie Kline has testified that her superiors told her not to cooperate with federal investigators looking into Jim's case and that doing so would put her job in jeopardy. After Bonnie did assist federal investigators she lost her security clearance, the code to her safe was changed as were her email access codes and her career fell apart with constantly changing position descriptions, being moved to a desk in the corridor and having to fight to get her pay.

From what we can surmise it was the fact that Bonnie was a friend of Jim's and because she had worked as a computer security specialist and archived all the agencies email that led to her hardships at the hands of her supervisors. Bonnie had the means to access just about any document. After being threatened at a meeting with her boss, her Division Chief and a high ranking finance official which took place on a balcony at FWS HQ, Bonnie's career began to fall apart. She retained an attorney and, in the course of successfully disputing a reprimand, was eventually able to explain her strange story in detail and on the record. In the proceeding a witness for FWS tried to talk over the judge and tried to object from the witness stand. In his opinion the judge said he found the removal of Bonnie's security clearance suspicious and ruled that the Agency rescind the reprimand, remove it from her files and provide her with a safe work environment. That ruling was in March. As of this hearing the Agency has failed to comply. Bonnie is dry-desked, and being worn down by an agency that truly is "out of control" as one of her superiors was described in the Administrative hearing. Bonnie's attorneys can get next to nothing in terms of a response from the Interior Department. Recently they wrote William Leshy to determine whether the attorney Horace Clark who was handling this case was in fact still with the Solicitor's Office. They could get no response from him. Bonnie, a single mother, cannot afford this endless legal battle and, knowing this, the Department is bleeding her financially and emotionally.

Refusal to Abide by FOIA / FACA

In the course of researching the mismanagement of the P-R and D-J funds a number of other interesting events took place. One was the Department's dramatic reaction to our questioning of FWS employees. Shortly after we began sending emails to several dozen FWS and Department officials aware of, involved in or somehow related to the experiences of Jim Beers, Bonnie Kline or the Federal Aid Division, Solicitor

Leshy sent out a six page Department wide memorandum entitled "Openess and Confidentiality: A Primer on Privileges." The memo warns employees that certain things they might do or say might cause the claim that a document or information was exempt from FOIA to be lost. Doing seems contrary to the spirit of the President's statement that his Administration would generally opt for disclosure even in cases in which the government could claim privilege unless there was some pressing reason for confidentiality. About the same time a Division Chief responded to our email in which we asked him for comment. He stated that our efforts to "incite public officials to engage in discussions on matters such as this are inappropriate and unethical." Never mind the strange choice of putting the words 'incite' and 'discussion' in the same sentence but since when is asking public servants about the administration of public programs "inciting" and "unethical."

While the Department and Agency were putting little effort into resolving the situations of Jim and Bonnie they were putting a lot of effort into preventing the public from accessing FWS and Interior documents through the Freedom of Information Act.

NWI has used FOIAs for years and government agencies have always provided material responsive to our FOIAs free of charge recognizing that we are a non-profit educational organization which, based on our use of the material, meets the criteria for fee waiver. We have, for example, just recently received hundreds of pages of material from the National Park Service without any fee.

However, since we began this investigation of financial and other problems at FWS, the Agency and Department have begun to stonewall our FOIAs. Months after failing to comply with numerous requests they have begun to demand fees. Their new demand for fees pooled six separate NWI FOIAs submitted over a several month time frame and denied waiver for all of them. We are currently waiting for documents in response to FOIA's sent as long ago as November of 1998. One of them requested the travel records of several officials. In the testimony submitted by the GAO, the agency reveals that one of the individuals for whom we sought travel records billed over \$30,000 of travel in a year and a half period and that subordinates approved the travel. Another FOIA requested the monthly management reports which detail the expenditures of the Federal Aid Division.

Additionally, other FOIA'd material we have obtained shows that FWS officials have spent tremendous time and energy talking with the Solicitor's Office, Justice Department, and others within the Agency in an attempt to find grounds to deny our FOIAs. FOIA officials have informed us that one FWS official directed that all our FOIAs be sent to her, Karen Malkin, and that the process of her handling our FOIAs continued even after that was not part of her job description. Documents we have obtained also show that other FOIA officers refused to sign letters to be sent to NWI regarding the Department's (mis)handling of our FOIAs because they were 'uncomfortable' with the letters and sent them back to Ms. Malkin for her signature.

We have followed all the rules of FOIA and acted in good faith. We have allowed the Department time way beyond what statute and regulation calls for. We have offered to take material in media (CD, disk, microfiche, etc.) that are more convenient for the Department and to limit requests but we have gotten no response other than another request to wait and the strange statement that Ms. Malkin is no longer handles FOIAs for the agency.

It seems reasonable to assume that FWS has chosen not to provide this material because we have a reputation of exposing serious mismanagement at the Department and Agency and/or because the specific documents we have requested would expose questionable activities. The aforementioned, however, are not suitable exemptions but the very reason FOIA exists. Let me also stress that we have not been submitting FOIAs in a haphazard manner. We have very specific requests, things we are researching that we use in our

efforts to educate the public in a manner that benefits the general public.

Similarly, the GAO has pointed out that the grant review practice may have been in violation of the Federal Advisory Committee Act. We agree that the current program is probably in violation of FACA and immediate review of this is necessary. The Agency's and Department's total disregard for these openness laws is extremely disturbing and merits attention, especially by those with some authority over the Department.

Looting Conservation Funds

More than any single specific event of mismanagement, employee abuse or obstructionism, the thing which drove our interest in continuing to research the handling of the P-R and D-J funds was that the Department would not do all these contemptible and even illegal things for no reason. There had to be an explanation for this Agency and Department being "out of control." In the end, I think we are discovering that it - the thing driving this horrendous behavior - is described well by the infamous scandal statement "follow the money."

To some degree every administration tries to change the behavior of agencies to be politically beneficial but no administration has so politicized the US Fish and Wildlife Service as the current one. They have so politicized the day-to-day management of this Department and Agency that they are trying to divert excise taxes paid by hunters and fisherman to animal rights interests. This is not just wasting money but revealing a contempt and disregard for those who have provided this money - hunters and anglers - the real conservation backbone of this country.

And despite claims of being so deeply dedicated to the environment, this Administration with Secretary Babbitt at the helm of the Interior Department has been systematically looting conservation fund dollars for everything but their intended purpose - a Director's slush fund, employee moving expenses, extravagant travel, personnel offices, human resources, public affairs, regional director's salaries, administrative expenses and none of it related to the mission of the P-R and D-J funds. We have heard an estimate of at least 20 million unaccounted for from the P-R fund and that does not include expenditures which were diversions from this fund. We don't even have a guess at this point as to the total which has been pilfered from these accounts. The Service knows they have been caught red-handed and has begun some damage control efforts like canceling the "Director's Fund," the MAT operation in Ft. Collins and other activities as outlined in a letter from FWS Director Jamie Rappaport Clark to a state game official.

Through the course of discovering the many problems at the Federal Aid Division, the USFWS and Interior Department, one comes to get the feeling that the very name of the Division of Federal Aid reveals a large part of the problem. This money has been treated as if it is something that belongs to that Division and to those who have authority over it. Well it doesn't. It belongs to the members of the public - those hunters and fishermen - who trusted that it would go to on-the-ground programs in the states. The Division, Agency and Department violated the trust invested in them through this fund and no one less than the Secretary should be held culpable.

Recommendations

To begin the process of restoring the Pittman - Robertson and Dingell - Johnson conservation programs to where they need to be I offer the following suggestions.

- Oversight should continue until every nickel can be accounted for and those who have diverted

conservation dollars provided by sportsmen should be held accountable, reprimanded or removed from government service and prosecuted if possible.

- Agency efforts to stonewall FOIA requests should be examined and halted and practices which are contrary to FACA should be immediately halted.
- Any and all PR-DJ funds which are missing or which have been inappropriately expended by the Service should come from cuts in USFWS's budget.
- Consider transferring administration of P-R and D-J Acts to an office that is less likely to be tempted to skim funds because their fundamental mission is dissimilar to that of the USFWS (i.e. Treasury or Agriculture.)
- Administrative fees if any should be reduced to no more than 4%. You have suggestions from others that they be eliminated. Eliminating an administrative charge would reduce the opportunity to skim off funds and perhaps give an incentive to keep costs down and may be preferable to simply reducing charges especially if this function is kept within USFWS.
- Prohibit use of P-R money for any species which states do not allow to be harvested.
- Require that all P-R and D-J funds are "matched" before any license money can be used for non-game fund matching.
- Define a P-R "wildlife restoration project" as "one designed to benefit a species or the habitat of a species that sportsmen are permitted to harvest during legal seasons."

These suggestions may not be popular with the Department, Agency, Federal Aid Division or with some of the institutional powers in Washington but that is not where real conservation takes place. These are suggestions for the back 40 where we can make a real difference.

For the record I have attached a statement by Ms. Kline, the written opinion of Judge Johnson, the Office of the Special Counsel's press release regarding the Department's settlement with Jim Beers and articles relating to this matter entitled "Free Jim Beers" and "Out of Control." Again, thank you for holding this hearing and for the opportunity to testify.

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