

# Committee on Resources

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## Witness Statement

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### **STATEMENT OF DONALD BARRY, ASSISTANT SECRETARY FOR FISH AND WILDLIFE AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE COMMITTEE ON RESOURCES, U.S. HOUSE OF REPRESENTATIVES, REGARDING ADMINISTRATION OF THE FEDERAL AID PROGRAM**

**October 26, 1999**

I appreciate the opportunity to discuss the Fish and Wildlife Service's administration of the Federal Aid in Wildlife Restoration Program (Pittman-Robertson Program) and the Federal Aid in Sport Fish Restoration Program (Dingell-Johnson or Wallop-Breaux Program). I am accompanied by Jamie Clark, the Director of the Fish and Wildlife Service, Tom Melius, Assistant Director for External Affairs, David Holland, Chief of the Division of Finance, and Scott Dalzell, Budget Officer for Budget Administration, all of the Fish and Wildlife Service.

Before I begin, Mr. Chairman, I want to state for the record that I was not seeking to avoid appearing before the Committee when I did not appear at the September 29 hearing. I had a long-standing commitment to meet with Governor Racicot of Montana and my counterparts at the Agriculture Department regarding the bison-brucellosis issue, and agreed to a last-minute request from the Governor to change the date of the meeting in order to accommodate his schedule. I have attached to my testimony a copy of a letter from Governor Racicot to the Chairman which confirms this.

I did not leave for my meeting in Montana with any sense that my inability to appear at the hearing, and the presence of Director Clark as the witness in my place, was unacceptable to the Committee. It has always been my experience, both while serving as Deputy and now Assistant Secretary, and during my years as counsel with the former Merchant Marine and Fisheries Committee, that legitimate scheduling differences between Congressional Committees and Administration witnesses can inevitably be accommodated, particularly when the substitute witness is the Director of the agency responsible for the programs under Committee scrutiny. If for any reason my absence was interpreted as a personal rebuke to the Chairman or a lack of willingness to cooperate with the Committee on this important matter, I deeply regret that unintended impression.

I would also like to state for the record that I am not expert in the Pittman-Robertson or Dingell-Johnson/Wallop-Breaux Federal Aid programs, nor have I had any direct involvement in the day-to-day operations of these programs since I returned to the Department in the Office of the Assistant Secretary in 1993. Moreover, although I served for 12 years in the Department of Interior Solicitor's Office as a staff attorney and then Assistant Solicitor for Fish and Wildlife, I never had expertise or drafted legal opinions in the Federal Aid program area. The three-page legal opinion on Federal Aid that I signed almost 15 years ago as the Assistant Solicitor for Fish and Wildlife dealt with a minor Federal Aid issue and had been drafted by the staff attorney who was the Federal Aid specialist in the Solicitor's Office.

Thus, I bring neither subject matter expertise nor years of direct personal management experience with the

particular Federal Aid grant fund issues before this Committee. Having said that, I am nevertheless pleased to be with you here today, although I plan to turn to Jamie Clark and others for answers to any specific technical questions that go beyond my present knowledge of Federal Aid grant fund operations.

As the Fish and Wildlife Service witnesses had planned to state at the July 20 and September 29, 1999, hearings before this Committee, we acknowledge many of the management concerns the General Accounting Office had pointed out and agree with most of the issues they have highlighted for reform. The Service started its review of the Federal Aid program several years ago; however, the reviews by the GAO and Resources Committee have been beneficial and have prompted us to take an even more critical examination of our administration of these two important programs. We are cooperating with the GAO and Resources Committee staff as well as with our State partners and welcome the assistance of this Committee in our efforts to improve management of our program. Where there are problems--and there have been problems--we are working aggressively to resolve them.

I would like to provide for the record the testimony that Deputy Director Rogers had prepared for the July 20 hearing, which addresses many of the reform initiatives the Service has undertaken to address these problems, and an August 1999 letter from the Fish and Wildlife Service to the GAO which further expands on these issues. These are attached to my statement, along with a year-by-year summary of actions the Service has taken to improve management of the Federal Aid program, starting with its responses to the 1993 GAO report.

Well before the beginning of the current GAO audit, the Service initiated several corrective measures to improve Federal Aid's management of administrative funds. In September of 1998, the Service published a Federal Register query to solicit public input to identify better ways to manage administrative grants; one of the alternatives identified in that notice included the termination of administrative grants altogether. Subsequently, the agency decided to terminate the administrative grants program. In a May 12, 1999, letter to the International Association of Fish and Wildlife Agencies (IAFWA), the Service announced its plans to eliminate the grants program, due in part to concerns received in response to the Federal Register notice regarding the management of these grants. In July, another Federal Register notice was published terminating future Federal Aid administrative grants.

During the Fall of 1998, in the agency's review of the uses of administrative funds, the agency became concerned about the Director's Conservation Fund. While these funds supported many worthwhile conservation projects, it was decided to reduce the funding available during Fiscal Year 1999 and to terminate the program for future years. Notification of this decision took place in March 1999. Thus, the two grant programs which have been at the heart of the Federal Aid controversy have been terminated due to the prompt and decisive action by Director Clark.

Another initiative of the Service was the establishment of a State/Federal Review Team to review administration of the Federal Aid program. During a meeting with the IAFWA this past March, the Service initiated an oversight evaluation of Washington and regional-level administration of the Federal Aid program to be conducted in cooperation with our State partners. The State/Federal Review Team met formally for the first time on July 27 and 28, 1999, and then again on August 4, 5 and 6. The Team identified ways in which the Federal Aid program can be more efficient, effective and responsive. During this evaluation, the Review Team will also carefully consider current and previous GAO findings and recommendations to improve program management.

The GAO testimony points out concerns in several areas that are already being addressed by the Service.

First, GAO's testimony refers to an \$85 million accounting discrepancy due to administrative errors, such as clerical mistakes, as the Service attempts to reconcile accounts in its new grant financial management and information system. However, this figure is not accurate, and the nature of the actual discrepancy must be put in context.

For at least the last 10 years, the Division of Federal Aid has maintained its own records rather than rely upon the Service-wide Federal Financial System (FFS) as the primary system to track its funds. The primary difference is that the Division of Federal Aid kept track of amounts obligated for transfers to the States, while the FFS system tracked actual expenditures (i.e. the transfer of the funds to the States). The obligations and expenditures did not occur at the same time, leading to apparent discrepancies in the bookkeeping when records from one system were compared to the other.

In 1998, as the Division prepared for its new Federal Aid Management System (FAIMS) to become operational, to address this and other problems, the Federal Aid Office and the Service's Division of Finance commenced a joint effort to reconcile the specific grant records, correct data errors, and most importantly, ensure that the new FAIMS system will be able to keep track of both obligations and expenditures.

This reconciliation has been a time and labor intensive effort, but much progress has been made. In fact, as of October 1, the purported discrepancy between the two sets of records has been reduced to less than \$7.5 million, and we expect to have full reconciliation before the end of the calendar year. We are also confident that we will complete implementation of the new FAIMS management system this fall, and it will eliminate recurrence of this problem. It is important to note here that the error is in how Federal Aid maintained its own set of books which were not reflective of how money was actually expended by the financial arm of the Service, and that no funds have been lost.

To address the financial management weaknesses within the Federal Aid program we have established six working teams and a management structure to guide the efforts of the teams. The structure and approach are based upon discussions held with Federal Aid representatives and auditors for both GAO and the Inspector General. The primary responsibilities of these teams will be to make sure Federal Aid information systems comply with applicable statutes, develop a financial system interface between FAIMS (Federal Aid Information Management System) and the Service's Federal Financial System, test and ensure that these systems are operating correctly, and address the Service's response to the individual State audit findings. This project is being jointly managed by the Assistant Directors for External Affairs and Administration. In addition, another group is reviewing the management structure of the Washington Federal Aid office.

A national training and education program for state and Service staff who review the State grant proposals has also been developed. Funds in the grant programs, particularly the Sport Fish account, have increased rapidly in recent years, and many employees were new in the program. In addition, financial activity was becoming more complex, and state and federal staffs needed consistency in program administration from Region to Region and state to state.

Over 200 individuals from almost all states and the Pacific islands have participated in these courses. We believe we will be administering the programs better and more consistently because of this training.

Another of our program initiatives is a new audit program of grant funds in all the states. The first five year cycle will complete in depth audits of all states by the end of Fiscal Year 2000. The audits are being conducted independently by the Defense Contract Audit Agency. These audits are coordinated fully with the Office of Inspector General and they cover only audit areas not covered by state auditors under the Single

Audit Act. Many state departments of natural resources have had little or no audit coverage in over 15 years. As the Service and DCAA have gained experience in this new program, the audit process has become more consistent.

GAO's testimony also identified a "missed opportunity to earn over \$400,000 in interest income." GAO is referring to an advance payment of \$9.7 million the Service transferred to the Bureau of Census for work on the National Survey of Hunting, Fishing and Wildlife Associated Recreation. The advance payment represented the amount the Service believed at the time was necessary for the Bureau of the Census to ensure on-schedule completion of the survey. The Service recognizes, however, that potential interest income was lost. To avoid similar future losses, the agency will make only those payments essential for incremental progress in carrying out the survey. We would note that the Service was cost-conscious in its planning for the 1996 Survey and was able to complete this project at a cost almost \$5 million less than the 1991 National Survey.

I would like to point out here that additional funds have been made available for the allocations to the States as a result of other initiatives of the Service. In 1998, the Service initiated a Working Group, comprised of representatives from the office of Senator John Breaux, office of Congressman John Tanner, IAFWA, Wildlife Management Institute, Archery Merchants and Manufacturers Organization, Internal Revenue Service, and Bureau of Alcohol Tobacco and Firearms, to review the accuracy and timing of excise tax collections and deposits in the Wildlife Restoration Account. As a result of this Working Group's efforts, more than \$20 million was recovered, transferred to the Account, and allocated to the States in fiscal year 1999. Another \$20 million was recovered for the Migratory Bird Conservation Fund.

GAO's testimony notes travel discrepancies in the Office of Federal Aid. Concurring that this problem warranted immediate attention, the Service has rescinded the Limited Open Travel Authorization for the entire office and re-apprised all staff of Service travel rules and regulations. In addition, the Chief of the office was directed to submit all future travel vouchers to his supervisor, the Assistant Director for External Affairs, for appropriate review.

GAO's testimony notes that the Service does not have a routine audit program for the review of the use of administrative funds. In 1998, the Service initiated efforts with the Defense Contract Audit Agency (DCAA) to establish such an audit program, but DCAA ultimately advised us they would be unable to develop this program. The Service agrees that an audit program for administrative funds is important. They are currently in the process of engaging a private Certified Public Accounting firm to audit the expenditure of administrative funds by the Office of Federal Aid, and are presently considering bids to provide for a technical, professional, independent audit containing detailed management recommendations. After two years the contract auditors will audit the program again to verify improvements and identify shortcomings. Thereafter, audits will be repeated on a 5 year cycle.

Another issue discussed in the GAO written statement and the Service's earlier testimony is a lack of uniformity of guidance with respect to Service regional office uses of administrative funds. GAO states that there is neither uniformity nor guidance concerning regional office uses of administrative funds. Although direct administrative support services constitute a legitimate use of administrative funds, the Service has sought to provide a workable degree of consistency – recognizing that our State clients and their needs vary dramatically from Region to Region. As part of its annual budget guidance, the Service has directed Regional Directors as follows: "No assessments may be levied against any program, budget activity, subactivity, or project funded by the [Federal Aid in Wildlife Restoration] Act unless advance notice of such assessments and the basis therefore are presented to the Committee on Appropriations and are

approved by such Committee."

The Service acknowledges that not all Regions have followed this guidance. In order to assure accountability and adherence to budget guidance, the Service will identify and adopt specific steps to help ensure consistency and uniformity in the future. Additionally, the Service will seek guidance in this area from the State/Service Federal Aid Review Team.

GAO made a number of points in their testimony we believe were based on incomplete or erroneous information or assumptions. GAO's testimony refers to an accumulation of "over \$100,000 in contract generated fees, the disposition of which is unclear." The Service has thoroughly reviewed the contract in question and finds no ambiguity whatever regarding the "fees" generated under this contract. The contract specifically states that the Government pays to the contractor the costs of providing services to cooperators. The contractor is allowed to charge non-cooperators, primarily non-government organizations and private researchers, costs for copying, compiling, and mailing information they request. Thus, the "generated funds" are not "profits" to the contractor, but are fees the contractor collects to offset its costs. Nonetheless, the Service's contracting officer will make necessary modifications to clarify language to avoid possible future misinterpretation.

GAO also notes that the Service has completed audit reports on how grant funds are being used in 22 States, and that the resolution in the case of two states may not comply with the program's legal requirements. In the view of the Solicitor's office, these resolutions are consistent with legal requirements and the Service may decide these matters within its policy-making authority.

News stories and other witnesses at the hearing have made misleading or inaccurate statements about Federal Aid awarding grants to animal rights or anti-hunting groups. This mis-information has caused considerable confusion. It is important to clarify that none of the Federal Aid grant funds have been directed to animal rights or anti-hunting groups. During the hearing, GAO was asked to provide information to the Committee specifying the recipients of the Director's former Administrative Grants and the Director's Conservation Fund monies. Their response to this Committee will help to verify that the Service has issued grants only to groups representing the recipients authorized by law – hunters, anglers, and boaters – or to projects of benefit to State wildlife agencies and managers.

Now, I would like to address the Service's use of administrative funds to provide grants. The Federal Aid in Wildlife Restoration Act authorizes the Service to use up to 8 percent of the funds in the program for administration and execution of the program. The Federal Aid in Sport Fish Restoration statute authorizes the Service to use up to 6 percent of funds (after making certain deductions) for necessary investigations, administration and execution of that program. Congress gave the Secretary and the States considerable flexibility to determine within the parameters of the law which programs or projects to fund.

The Service acknowledges that management processes for overseeing these administrative funds have shown some deficiencies in the past, and the agency is working diligently to correct those. But the Solicitor's office believe the Service enjoys considerable leeway in identifying and funding timely and important conservation opportunities with these funds consistent with the spirit of the laws. We have requested a new Solicitor's opinion to more definitively address this issue, and will provide it to the Committee as soon as we receive it.

We would point out that the concept of awarding of grants utilizing administrative funding from the Sport Fish and Wildlife Restoration programs to provide information and assistance to the Service and the State fish and wildlife agencies has been an ongoing process, over many years, withstanding legal scrutiny from

the Department's Solicitor's Office, and has been supported by State agencies.

As far back as 1955, the Solicitor's office issued an opinion recognizing that administrative funds could be utilized to fund a project aimed at surveying the expenditures of boaters and anglers. In 1986, acting in my capacity as the Assistant Solicitor for Fish and Wildlife, I affirmed the 1955 opinion, and endorsed the concept that the funding of administrative grants was justified where the information developed from such projects would be valuable in administering the Federal Aid Program, and would be useful to States in determining the types of restoration projects for which Federal assistance was being sought.

Acquiring such information serves the administration of the Federal Aid program, and the authority for the Service to enter grant agreements for this purpose is delegated from the Secretary's authority under the Fish and Wildlife Coordination Act (16 U.S.C. 661), which authorizes the Secretary to provide assistance to and cooperate with Federal, State and public or private agencies or organizations for a broad range of fish and wildlife purposes.

The States, which are the direct beneficiaries of the Federal Aid program, have played an integral role in the process of selecting the special projects to be funded through administrative grants. The Service has worked in close partnership with the International Association of Fish and Wildlife Agencies to ensure that funding priorities specifically address the administrative needs of the Federal Aid program.

The Chairman of a subcommittee of the International's Grants-In-Aid Committee assigned to review policy and procedures for the Federal Aid Administrative Funds, in an October 25, 1990, memorandum, reported the subcommittee's finding that the "use of Administrative Funds to do special projects is in the best interests of the states."

Former Service Director John Turner issued a memorandum on May 17, 1991, during the Bush Administration, setting the policies and procedures to be used for funding special projects with Administrative Funds. The policy stated that the administrative funds available for special project grants were to be used for purposes "necessary for the Service's administration of the (Federal Aid) programs or to facilitate the States in their execution of the programs."

While the Service recognized that corrective measures were needed to improve management of the Administrative Grant program, and began to identify better ways of managing the program more than a year ago, the Service maintains that use of administrative grants to fund special projects served a valuable function to both the Service and the States in administering the Federal Aid program.

The oldest Federal Aid program-- the Pittman-Robertson Program-- is more than 60 years old. The Dingell-Johnson or Wallop-Breaux program will celebrate its 50<sup>th</sup> year during the year 2000. Since their inception, these programs have contributed more than \$6 billion to the States and territories for their fish, wildlife, wetlands, and boating projects. Without these programs, many states would not have the fish and wildlife resources they now enjoy. Successful administration of this program requires a complex management system. Over the past several years, the Service has been working in good faith to improve this so we can keep pace with the evolving needs of the States. These ongoing improvements, and others which we will develop as a result of recommendations from this Committee, the GAO, and the States, will enable us to continue to keep our Federal Aid Programs at the forefront of fish and wildlife conservation in the new millennium.

That concludes my formal statement. I will please to respond to any question you may have.

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## **ATTACHMENTS TO TESTIMONY OF ASSISTANT SECRETARY DON BARRY**

- 1. Letter from Governor Racicot of Montana to Chairman Young**
- 2. Prepared Statement of John Rogers, Deputy Director, Fish and Wildlife Service, for the July 20, 1999 hearing**
- 3. Letter of August 10, 1999 from Fish and Wildlife Service to GAO**
- 4. Summary of Fish and Wildlife Service actions to improve management of the Federal Aid programs, 1993 to present**

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