

Item 4A

Meeting Date: March 2010
Title: Update on Compliance Effort and Progress with WDFW
Prepared By: Jim Anest, Compliance Specialist

Approved by the Director:

Proposed Action: Briefing

Summary

The purpose of this memo is to brief the board on:

- Recent progress in the area of long-term grant compliance; and
- Recent efforts in working with the Washington State Department of Fish and Wildlife (WDFW). These efforts will illustrate our approach with sponsors who have a large number of compliance issues.

Strategic Plan Link

The Recreation and Conservation Funding Board (board) has a strategy to “evaluate and develop strategic investment policies and plans...” This strategy specifically mentions compliance and conversion policies. Further, strategy 2.1.A states that the board will provide clear policies for post-completion compliance (e.g., conversions), and that staff will track and report on the success rate.

Background

At the July 2009 board meeting, Recreation and Conservation Office (RCO) staff presented our initial analysis of the compliance challenge, including its scope and the agency’s plan to respond.

As noted at the meeting, “compliance” is a general term used to describe the extent to which the use, function, or management of a grant-funded facility or site is consistent with what was intended by the grant itself (including the application, contract, and deed restrictions). “Out of compliance” or “non-compliance” is the extent to which actual facilities, uses, or lands differ from the original intent.

General progress in grant compliance

RCO staff has identified several hundred grants as either out of compliance or in need of significant investigation. Both the complexity and the quality of the data available vary widely from grant to grant. RCO staff is working to resolve individual project issues. This process involves research, evaluation, negotiation, and documentation of the essential purposes of the grant and how subsequent changes affect those purposes.

At the same time, we are working to establish and improve the general procedures, forms, and standards of decision-making to address compliance and non-compliance issues.

While RCO staff is working with a wide range of grantees from across the state, we have initially prioritized work with WDFW, State Parks, the Department of Natural Resources, and King County. Since these sponsors are among those with the largest number of grants and compliance issues, we believe this approach is the most effective use of our limited compliance resources at this time. We also are working very closely with the National Park Service.

Conversions Completed

“Conversion” refers to the most serious forms of non-compliance where a sponsor must replace all or some of the land or facilities.

During calendar year 2009, RCO staff completed three conversions: Meadowbrook Farm Park in Snoqualmie, the May Creek Trail in Renton, and Lynnwood Athletic Fields in Snohomish County. The latter is widely recognized as one of the most complex and contentious Land and Water Conservation Fund (LWCF) grant conversions in the history of the national program. Thirty- nine additional grant conversions are in progress.

Inspections

During 2009, RCO staff inspected 500 sites, including 425 for completed grants. One-hundred and fifty-nine were federal Land and Water Conservation Fund grants, which constitute some of the oldest and largest RCO grants, and therefore the most likely to have compliance issues. RCO conducted the following number of inspections on state agency sites: 30 WDFW, 30 DNR, and 33 State Parks sites.

Other compliance issues resolved

RCO staff investigated many other grants of concern and determined that they were either in compliance or noncompliant in a manner less serious than a conversion. This would typically involve an element change¹, a sponsor or name change, or inaccurate maps. These compliance

¹ An “element change” is distinguished from a conversion in that although a particular element of a project fails to meet the terms of the agreement, the project as operating still fulfills the essential uses of the grant.

issues are typically brought to RCO attention through inspections, a request from a sponsor or through a report from another interested party. Twenty-two of these have been resolved satisfactorily, while several other issues are in various stages of resolution.

Working with WDFW to improve grant compliance

WDFW assigned staff to lead their effort to bring their RCO and LWCF grants into compliance. WDFW and RCO staff has met regularly over the past several months and have made good progress. In particular, we have prioritized the issues and chosen about a dozen grants to address immediately (Attachment A). Most are Land and Water Conservation Fund grants.

We have found that there are common situations that tend to create WDFW compliance issues (not in any particular order):

- Highway and bridge projects such as improved interchanges and parking;
- Land exchanges used to resolve private inholding problems;
- Disputes with adjacent landowners over property boundaries ;
- Competing public priorities such as wind energy, fish hatcheries and dam removal; and
- Sponsor changes such as where property operation and maintenance is being turned over to a local government

At the March board meeting, staff will present two specific examples to illustrate what we are finding with WDFW grants and how we are approaching such compliance issues together.

Number	Name and Location	Project Description	Compliance Issue Type
02-1109	Western Pond Turtle, Phase 3	In 2006, WDFW acquired 32 acres of habitat and buffer to expand the WDFW Klickitat Wildlife Area near the Columbia River. The funding source is WWRP-Critical Habitat. One-third of an acre on the far eastern edge of WDFW property is proposed for conversion.	Adverse possession claim by adjacent landowner
68-603 A	Yakima River Public Access, Kittitas County	In 1968, WDFW acquired 13-acre site on State Highway 821 in the Yakima River Canyon between Ellensburg and Yakima. Nine acres are proposed for conversion. The purpose of the grant was to be an undeveloped public fishing access site. The funding source was the Land and Water Conservation Fund.	Adverse possession claim by adjacent landowner

Attachments

- A. List of prioritized WDFW compliance issues

List of prioritized WDFW compliance issues

First Priority WDFW Grants- All in Progress

Priority	RCO Grant #	Project Name	County
1	66-602 A	Whiskey Dick wind farm	Kittitas
2	66-604 A	Pilchuck River bridge replacement Smith Rock highway widening Wallace River easement exchange	Snohomish Clark Snohomish
3	68-603 A	Yakima River agreement with Benton City Yakima River boundary dispute	Benton Kittitas
4	68-604 A	Wiser Lake highway widening	Whatcom
5	69-609 A	Elk Heights exchange for Wenas inholding Gibson Road exchange for elk feeding site	Kittitas Yakima
6	69-610 A	Big Quilcene River exchange to facilitate US Fish and Wildlife building a pollution abatement pond for its nearby hatchery	Jefferson
7	74-606 A	Mt Vale exchange for Wenas inholding	Yakima
8	00-1885 A	Morse Creek conversion to assist the National Park Service with the Elwha dam removal project	Clallam
9	02-1109 A	Sondino Ponds boundary dispute	Klickitat