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In Reply Refer To:
FWS/AMBS/FA/00691

Memorandum

To: Regional Directors, Regions 1-7

From: Director **Steve Williams**

JUN 6 - 2002

Subject: Policy - Federal Aid Timber Sales

The purpose of this memorandum is to issue policy guidance to be implemented uniformly throughout the Regions regarding the appropriate treatment of revenues generated by States from the sale of timber harvested on Federal Aid lands in accordance with a State's accepted wildlife management practices. This policy reflects the legal conclusions reached in a December 5, 2000 opinion issued jointly by the Associate Solicitor, General Law and the Acting Associate Solicitor, Parks and Wildlife, which concluded that in the context of the Federal Aid statutes and Departmental regulations, timber revenues generated as a result of accepted wildlife management practices on lands purchased in part with Federal Aid funding constitutes "program income," rather than transfer of real property. Such income, therefore should be handled in a manner consistent with the Federal grant regulations at 43 C.F.R. 12.65, dealing with program income.

Background Information

In the Federal Aid State audit process, a recurring issue has been the means by which States account for revenues generated from the sale of timber on Federal Aid lands, harvested in a manner consistent with accepted wildlife management practices. Controversy ensued when auditors interpreted the Federal Aid statutes and implementing regulations to require such timber sales to be treated as the sale of real property, in accordance with 43 C.F.R. 12.71. Such an interpretation would require that a State either reimburse the FWS with a pro rata share of the revenue from the sale of such property or, with the permission of the FWS, purchase real property of equal value to the property sold. Furthermore, treating the sale of timber as the transfer of real property would require that a State get permission from the FWS, with such approval constituting a Federal action.

In September 2000, the Assistant Secretary, Policy, Management and Budget, issued an audit decision memorandum, which, among other conclusions, based his findings relative to the sale of timber on an interpretation that the sale of timber was the transfer of real property. This

conclusion prompted the December 5, 2000 Solicitors' opinion, cited above, which clearly sets forth the legal rationale, in the context of the Federal Aid statutes and regulations, why the sale of timber harvested on Federal Aid lands incidental to accepted management practices is not the transfer of real property and that revenues from such sales should be treated as program income. A copy of the Associate Solicitors' Memorandum is attached for your reference.

In treating timber revenues as program income, an issue of particular concern to both State wildlife agencies and the FWS is the ability of the FWS to ensure that income generated from the sale of timber on Federal Aid lands perpetually continues to support the administration of State wildlife agencies. As pointed out in the Associate Solicitors' memorandum, the FWS has authority under the grant regulations to stipulate within grant agreements the future disposition of all such timber revenues. Additionally, the FWS can incorporate such a restrictive provision into its Federal Aid regulations, which would govern all appropriate grants, without necessitating restrictive language being written into each individual grant.

Timber Policy

Grantees shall recognize the revenue from the sale of timber harvested on Federal Aid lands incidental to accepted wildlife management practices as "program income," subject to the Federal assistance regulations at 43 C.F.R. 12.65. Until such time as 50 CFR Part 80 is amended to ensure that all revenues generated from the sale of such timber continues to be utilized in perpetuity for the administration of State wildlife agencies, each appropriate grant agreement shall contain language requiring such a permanent restriction.

cc: Assistant Secretary Policy - Management and Budget
Assistant Inspector General for Audits
3012MIB - Directorate Reading File
3012MIB - CCU
3250MIB - AMBS
140 ArlSq

FWS:\PMcH:cmm:358-2156:S\McHugh\Timber Sales Revised Decision
minor correction:jal 3/19/02 Revisions:05/28/02



**United States Department of the
Interior
FISH AND WILDLIFE SERVICE**

Washington, D.C. 20240

FWS/AMBS/FA/008426

JUL – 5 2002

Memorandum

To: Regional Directors
From: Acting Assistant Director Migratory Birds and State Programs
Subject: Implementation of the Director's Timber Policy

Based upon the Director's Timber Policy memorandum dated June 6, 2002, grants that have potential timber sale income will include the following conditional statement in the grant agreement.

Timber Policy Conditional Statement:

Revenue generated by the State from the sale of timber on federal aid lands during the grant period shall be treated as program income. Program income is subject to the Federal assistance regulations at 43 C.F.R. 12.65. Timber revenues realized after the grant period are required to be fully used in perpetuity for the administration of the applicable State fish and wildlife agency and may not be diverted to other purposes.

To insure regional consistency, please assure that grants that have the potential for timber sale income have the conditional statement included. If you have any questions please contact Kris LaMontagne at 703 358 2156

/s/ Paul R. Schmidt