



Date:

Memorandum

To: Thomas Bennett, President, International Association of Fish and Wildlife Agencies  
Steven Williams, Director, Fish and Wildlife Service

From: Terry Crawford, Co-chair, Joint State/Federal Task Force on Federal Assistance Policy  
Clint Riley, Co-chair, Joint State/Federal Task Force on Federal Assistance Policy

Subject: Policy Recommendation of the Joint State/Federal Task Force on Federal Assistance Policy - The Establishment of and Use of Land Value as Match

The Joint State/Federal Task Force on Federal Assistance Policy (JTF) submits the attached recommendation concerning, "The Establishment of and Use of Land Value as Match" for your review and consideration. We suggest that the guidance be implemented in the form of a Director's Order, with future codification within the U.S. Fish and Wildlife Service Manual.

The substance of the policy recommendation is detailed within the body of the recommendation itself. It was developed by the JTF over the course of three meetings (in Shepherdstown, WV on May 13-15, 2003, in Madison, WI on October 22-24, 2003, and in Las Vegas, NV on January 13-15, 2004), as well as a JTF workgroup who submitted information to the JTF at the Las Vegas meeting. As designated by each of you, the members of the JTF represent both State fish and wildlife agencies and the Service, and are listed at the end of the memorandum.

Following the JTF meeting in October, a draft recommendation was provided to all grantees of the Wildlife and Sport Fish Restoration Programs, and to all Service Regional Offices and relevant Service Programs, requesting comment. Comments were received from eighteen grantee agencies, and from seven Service offices. *Roughly summarized*, the most substantial comments received are listed below in italics.

Believe title of Director's Order would be more appropriately titled "Use of Land Values as State Cost Share (Match) on Federal Assistance Grants." The title of residual value is too narrow in scope. The JTF agreed that use of the term "residual" was confusing and deleted this term from the Order.

The draft recommendation should be expanded beyond the Wildlife and Sport Fish Restoration Programs to other programs. The JTF reaffirmed that its mandate is to make policy recommendations specific to the Wildlife and Sport Fish Restoration Programs, but noted the need to communicate to various offices that programs such as Boating Infrastructure and Clean Vessel Pumpout are funded through the Sport Fish Restoration Program and as such are covered by this Order.

"...maintain that the proposed policy is not in noncompliance with OMB Circular A-87, Attachment A, Paragraph C.3.c. which states that, "Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons." The JTF does not believe this Order in any way authorizes a cost to be charged to multiple grants, sometimes referred to as "double-dipping." The JTF added language to Section 7 to clarify that the remaining value is only available for match if it has not been used for any other Federal grants.

"Approved appraisal"--approved by whom? Please specify federal review appraiser. The JTF felt this Order was not intended to discuss the land appraisal process as proposed by this and similar comments received.

More clarification is needed to explain when and how the residual value is established. Is it during the initial appraisal for the grant or in subsequent years after the original grant is approved and when the residual value will be used? The JTF modified wording in Section 4 of the Order to make clear that the fair market value of the land is established at the time it is incorporated into the grant proposal.

The statement "... and the remainder becomes the residual value available for match in future grant agreements," should be rewritten to specify that it must be used for the same program (i.e. Sport Fish or Wildlife Restoration) and the original grant objective. Currently, the broad language leaves open the question of whether the original grant objective can be subsequently modified to accommodate broader objectives and/or whether the residual value could be used as match for other grant programs with differing eligibility criteria. The JTF addressed this and many similar concerns by rewording Section 5 and making clear the remaining value of land can be used as match for subsequent grants subject to the conditions stated in a new section (Section 7) of the Order.

Disagree with the 10 year deadline to use residual value of parcels. After discussion, the JTF agreed that setting a time frame for use of remaining land match was not necessary and removed this restriction from the Order.

The DCAA explained that 43 CFR 12.64 does not allow in-kind match used in satisfying the match requirements on one project to be used to satisfy the matching requirements on another project. In instances where land is used on a project as in-kind contribution and its value exceeds the required State match, the excess cannot be used (Banked) for future projects. The one exception is where the excess value of the land can be used to match purchases of contiguous parcels of land. The JTF determined that there is no basis in regulation regarding the provision

for "contiguous parcels of land". Also, based on review of applicable laws, regulations, and advice from legal counsel, the JTF believes there is no prohibition against using this excess value as described and limited by the terms of the Order on other future projects that do not conflict with the scope and purpose of the original grant proposal.

*The proposed policy also generates the issue of out-of-period costs when the residual is used in subsequent grant agreements and periods. The Code (43 CFR 12.63(a)) states that: "...where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period."* Based on review of applicable laws, regulations, and advice of legal counsel, the JTF believes the unused match discussed in this Order does not represent a "cost" to the State and therefore cannot be considered "out-of-period costs".

The actual comments received could be provided to you at your request.

The recommendation presented to you at this time reflects the JTF's consideration of all of these comments, and our consensus opinion after this review. If you have any questions about this recommendation, or the process used by the JTF to arrive at this recommendation, please contact either of us, or any member of the JTF.

Members of the Joint State/Federal Task Force on Federal Assistance Policy (in alphabetical order):

• Eld Barnhart, Director, New York Division of Fish, Wildlife and Marine Resources  
Lisa Evans, Federal Funds Manager, New Mexico Department of Game and Fish (current member)  
John Frampton, Director, South Carolina Department of Natural Resources  
Don Friberg, Chief, Division of Federal Assistance, FWS Region 1  
Dale Hall, Regional Director, FWS Region 2  
Kelly Hepler, Director, Sport Fish Division, Alaska Department of Fish and Game  
Bobbi Keeler, (JTF member during discussions of the issue)  
Mitch King, Deputy Regional Director, FWS Region 4  
Kris LaMontagne, Chief, Division of Federal Assistance, FWS Washington Office  
Tom Niebauer, Federal Policy Advisor, Wisconsin Department of Natural Resources  
Gary Reinitz, Branch Chief, Grant Operations and Policy, FWS Washington Office  
Glen Salmon, Director, Division of Fish and Wildlife, Indiana DNR  
Paul Schmidt, Assistant Director, Migratory Birds and State Programs, FWS

Attachment