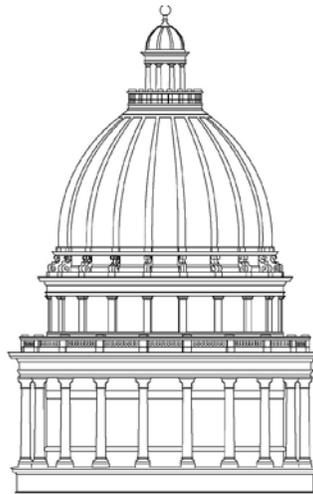


REPORT TO THE
UTAH LEGISLATURE
Number 2013-11



**A Review of Appropriated
Wolf Management Funds**

October 2013

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

Audit Subcommittee of the Legislative Management Committee
President Wayne L. Niederhauser, Co-Chair • Speaker Rebecca D. Lockhart, Co-Chair
Senator Gene Davis • Representative Jennifer M. Seelig

JOHN M. SCHAFF, CIA
AUDITOR GENERAL

October 2013

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Review of Appropriated Wolf Management Funds** (Report #2013-11). We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

A handwritten signature in black ink that reads "John M. Schaff". The signature is stylized and written in a cursive-like font.

John M. Schaff, CIA

Auditor General

JMS/lm

REPORT TO THE UTAH LEGISLATURE

Report No. 2013-11

A Review of Appropriated Wolf Management Funds

October 2013

Audit Performed By:

Audit Manager

Tim Osterstock

Audit Lead

Karleen Capell

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

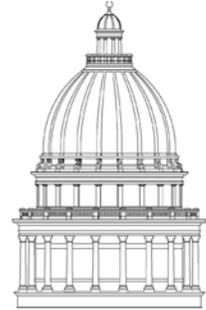
**REPORT NUMBER 2013-11
October 2013**

**A Review of Appropriated
Wolf Management Funds**

Since fiscal year 2011, the State of Utah has appropriated \$800,000 for wolf delisting efforts. The appropriations came after legislation directing the Division of Wildlife Resources (DWR) to advocate for and facilitate the delisting of wolves in Utah under the Endangered Species Act and the return of wolf management authority to the state. The Legislature appropriated the funds through DWR without specific directions on how the money should be spent.

DWR provided the first two appropriations as grants to third-party organizations and charged them with the task of working toward solutions to bring wolves under state control. When the appropriation rose from \$100,000 in fiscal years 2011 and 2012 to \$300,000 in fiscal year 2013, the appropriation was provided as a contract. The contract payment was given upfront and lacked sufficient safeguards to track and assure that the funds' use followed state requirements.

While the purpose of these funds addresses the controversial issue of management of grey wolves, wolf management is not at issue in this report. This report addresses the oversight and accounting of funds appropriated by the State Legislature toward these goals.



We were directed to look specifically at the following:

- The way state funds have been spent
- The possible comingling of state and private funds
- Funding participation of other states with Utah's contractor
- The plans for future spending of wolf delisting funds

Appropriation Process Offered Little Direction For the Use of State Funds

Utah's legislative involvement in wolf management began with the passage of Senate Bill 36 in the 2010 General Session (*Utah Code 23-29-103(10)*), which directed DWR to request that the federal government delist wolves as an endangered species in Utah and return wolf management to the state. Funding for DWR's efforts for state wolf management began the following fiscal year after a presentation by Sportsmen for Fish and Wildlife (SFW) at a Senate caucus meeting attended by a representative from the Department of Natural Resources (DNR). DNR made it clear that the funding was not part of DNR's budget request, but that they supported the wolf delisting cause. We could not identify any written documentation of legislative direction for the funds' use; rather, legislative direction was provided through informal discussions. Utah's financial support for delisting of wolves includes:

- \$100,000 grant to Sportsmen for Fish and Wildlife for fiscal year 2011
- \$100,000 grant to Big Game Forever for fiscal year 2012
- \$300,000 contract with Big Game Forever for fiscal year 2013
- \$300,000 contract with Big Game Forever for fiscal year 2014

DWR Grants Required Maintenance Of Accounting Records

All funds were appropriated by the Legislature as pass-through funding for advocating for and facilitating wolf delisting and state wolf management. DWR was verbally directed to give the funds to SFW the first year. The division elected to provide the funds in the form of a grant and used language in the statute to develop the scope of work, which was to "work with state and federal agencies to pursue legal and

legislative solutions to achieve legal and management authority over wolves.” This grant, and that of the subsequent year, required the vendor to maintain accounting records to be available for state review.

DWR was directed to provide the initial \$100,000 appropriation to SFW, a private organization that had worked with legislators to obtain state support for addressing wolf management issues. SFW had been active with DWR in a variety of wildlife management projects, including trying to bring wolf management under state control. The appropriation was directed through DWR as the state’s oversight agency. DWR passed the funds through to SFW. That year, SFW continued to track lawsuits regarding wolf management in surrounding states and worked on gaining support for congressional delisting. DWR accepted feedback from SFW but did not exercise its right to an accounting review.

The following year, SFW, along with the attorney they hired with the first wolf delisting grant, continued its focus on congressional lobbying. SFW did not want to continue their involvement in wolf-delisting lobbying, believing their increased amount of lobbying was outside SFW’s 501(c)(3) tax structure. SFW supported their attorney when he left SFW to work full time on congressional lobbying through Big Game Forever (BGF), the self-declared 501(c)(4) organization he started after the first wolf management appropriation.

DWR, maintaining the language of the first grant, provided the second \$100,000 non-competitive grant directly to BGF in fiscal year 2012. The only formal direction given was the scope of work which was again taken from the statute language. The division relied on informal updates through phone conversations. The following figure shows the breakdown of the two grants from fiscal years 2011 and 2012.

Figure 1 FY 2011 and FY 2012 Wolf Management Grants Spending Breakdown. Grant funds were primarily given as consulting fees to the SFW attorney who also formed BGF.

Expense	FY 2011 - SFW	FY 2012 - BGF
Consulting Fees	\$87,453	\$50,000
Federal Lobbyist	0	30,000
Video Production	0	20,000
Travel	12,547	0
Total	\$100,000	\$100,000

Division of Wildlife Resources Management of Contracts Lacking

By the third year (fiscal year 2013), the appropriation for wolf delisting rose to \$300,000 and DWR decided that, for greater transparency, the issuance should be released as a contract rather than a grant. The request for proposals specifically asked for a vendor who:

1. Had experience in pursuing legal, legislative and political actions to work toward the delisting of wolves in Utah and,
2. Was a licensed attorney in the state of Utah who demonstrated legal understanding of both federal and state laws and court actions related to wolves in the western United States

BGF, the sole applicant, was awarded the contract. In our opinion, this language specifically describes BGF and gives the appearance that it was tailored to meet their experience and expertise. DWR management said they did this because of their desire to maintain BGF's expertise and continue the work they had started two years prior. Because BGF brought wolf management specific expertise (earned through work funded by the two prior years' grants) and extra funding from private sources, we believe a sole-source contract would have been a more appropriate method for procuring the contract.

The contract allowed for four annual renewals and a summary report at the end of the year. The executive director requested that the full \$300,000 be paid up front. The Division of Purchasing was concerned with the lack of safeguards in the contract and therefore asked the executive director of DNR to write a letter requesting the upfront payment to have on file.

Immediate payment of the contract amount concerns us because the disbursement of funds was not based on performance, rather on the hope of progressing toward the desired outcome.

Also, DWR did not include in the contract the requirement cited in the grants that the vendor maintain accounting records available for review. We believe the contract should clearly stipulate the State's right to review accounting records for state funds.

For the current year, the contract has been renewed and an additional \$300,000 has been paid to BGF upfront. DWR accepted BGF's fiscal year 2013 proposal as a plan for how the provider would implement the contract and our review of the proposal indicates it provides sufficient direction for the contract. However, DWR also accepted the fiscal year 2013 proposal as the plan for the fiscal year 2014 contract, even with major changes with wolf delisting.

The division believes the funds will likely be spent following up on the national delisting of grey wolves and addressing state management issues surrounding the Mexican wolf subspecies. DWR amended the contract for the current year to require a summary of expenditures in four general categories at year end. However, without an updated fiscal year 2014 plan, we are unable to determine in more exact terms how the money will be spent this year before their report to DWR in June 2014.

The upfront payment, lack of accounting review, and lack of a current-year plan leads us to believe that the contract lacks sufficient safeguards.

Tracking BGF Use of Funds Is Difficult

The fiscal year 2013 contract was conceived without an expectation of fully identifying the vendor's state-related expenses; as a result, state and private funds were comingled. It is difficult to differentiate between BGF's state-contracted funds and private donations because BGF sees itself as a private-public partnership with two revenue streams used for the same purpose. To address how state funds were expended, BGF provided a list of expenditures relating to wolf management, totaling approximately the amount of state funding.

Figure 2 below shows the major spending categories identified by BGF for the fiscal year 2013 \$300,000 contract.

Figure 2 FY 2013 Big Game Forever Contract Breakdown. The amount spent in this chart is not the total amount spent by BGF in these categories; it is only the portion they attribute to the state's \$300,000 grant.

Expense	Amount Spent	Percent of Contract
Consulting Fees	\$194,337	65%
Federal Lobbyist	40,000	13%
Video Production	30,227	10%
Software	15,538	5%
Travel and Trade Shows	11,405	4%
Other	8,543	3%
Total	\$300,050	100%

For the fiscal year 2013 contract, BGF reported that about two-thirds of the state funding was paid to the BGF director's private business and reported as his consulting fees. Expense breakdowns of this consulting business were not supplied.

In total, \$70,000 (\$30,000 in grants and \$40,000 in a contract) of state funding was spent on a Washington D.C. lobbyist, primarily to gain congressional support for the U. S. Fish and Wildlife Service's delisting document. BGF is also listed with the Lieutenant Governor as having hired a state lobbyist. The cost for this lobbyist was not identified as being paid by state-supplied funds. However, BGF stated in an early discussion that breaking down their expenses between federal and state activities was not possible as there was too much crossover between the two. This comingling of state and private funds could be an issue if BGF, using state funds appropriated to a state agency for a purpose delineated in state statute, is viewed as an extension of a state agency. *Utah Code 63J-1-210* does not allow state funds to be used by a state agency to lobby the State Legislature. With comingling, we cannot ensure that state funds were used appropriately.

While national wolf delisting efforts appear to be successful, it is not possible to determine the extent of the State of Utah's or BGF's contributions. Wolf management is a national issue with multiple states and private groups involved. Utah began its financial

participation in a critical moment in the national wolf delisting effort. BGF has been Utah's lead in this effort and has not received funding from other states, but other states have been part of the larger group working toward wolf delisting.

Recommendations

1. We recommend that the Division of Wildlife Resources amend the BGF contract to:
 - Include a more current plan
 - Replace the upfront contract payment with payments based on agreed upon performance standards
 - Include the original requirement of maintaining accounting records available for state review

2. We recommend that the division work with State Purchasing to address vendor comingling of funds without separate accounting of state funds.

This Page Left Blank Intentionally



State of Utah
DEPARTMENT OF NATURAL RESOURCES
MICHAEL R. STYLER
Executive Director
Division of Wildlife Resources
GREGORY J. SHEEHAN
Division Director

October 8, 2013

John M. Schaff, Auditor General
PO Box 145315
W315 State Capitol Complex
Salt Lake City, UT 84114-5315

Subject: Legislative Report Number 2013-11 “A Review of Appropriated Wolf Management Funds”

Thank you for providing us an opportunity to respond to the subject audit. We have enjoyed working with the Office of Legislative Auditor General over the past several years. We have found the audits beneficial in assisting us to improve our operations in many ways. The subject audit has some areas identified that we may not fully agree upon. Conversely there are recommendations in the audit that we believe to be solid and will be implemented. Notably absent from the audit is the favorable results of the contractors success in achieving legislative objectives.

On Page 4 paragraph 3 it indicates that the Division of Purchasing was concerned with the lack of safeguards and therefore asked the Department for a letter requesting upfront payment. As stated before State Purchasing policy allows upfront payments, and it is not an uncommon practice. The Administrative Rule at that time, and Utah Code currently, requires a letter from the Executive Director before advance payments are made. Letters from the Executive Director are required on many issues throughout the Department of Administrative Services divisions. There still seems to be an implication that this was a practice that required a letter because it was not allowed through normal purchasing processes.

Recommendations Section:

Recommendation 1a: We concur.

Recommendation 1b: We do not completely concur. We can distribute future payments in scheduled increments such as months or quarters. State law precludes us from paying on performance based outcomes where lobbying efforts are involved.

Recommendation 1c: We have already required additional accounting data to be provided in an amendment to the FY 2014 contract. We could ask for additional data in future years.

Recommendation 2: We will pass this recommendation on to State Purchasing for their consideration in future contracts.



Thank you and please contact me with additional questions or comments.

Sincerely,

Greg Sheehan, Director
Division of Wildlife Resources
(801) 538-4702