UNITED STATES GOVERNMENT

Memorandum

GENERAL ACCOUNTING OFFICE

January 23, 1986

TO : Director, AFMD - Frederick D. Wolf

LIMITED DISTRIBUTION

FROM : General Counsel - Harry R. Van Cleve

SUBJECT: Propriety of U.S. Fish and Wildlife Service procedures for recording and reporting obligations against fiscal year 1983 Resources Management Appropriations Account. (Job Code 905098) B-114841.2-O.M.

This memorandum is in response to an inquiry dated November 20, 1985, submitted by Andrew Killgore, Accounting Systems Audit Group, seeking clarification of a number of issues raised as a result of a review of the accounting practices followed by the U.S. Fish and Wildlife Service (FWS) Finance Center in Denver Colorado when recording and reporting obligations against the fiscal year 1983 Resources Management (RM) appropriation account. The review of the Finance Center's operations was undertaken at the request of the House Government Operations Committee. An earlier review by the Department of the Interior Office of Inspector General (OIG) concluded that the Antideficiency Act had been violated.

BACKGROUND

In order to prepare and submit required year-end closing reports to OMB and Treasury,[1] a deadline of October 17, 1983, was set for operating offices to file documents to be recorded as obligations in the automated accounting system.[2] On October 17 and 18, 1983, the Chief of the Finance Center directed her staff to return 37 valid fiscal year 1983 obligation documents (mostly purchase orders) to their originating offices with the instructions that they cancel them because of the possibility that the fiscal year 1983 RM appropriation account was overobligated. However, the originating offices returned the documents to the Finance Center without canceling them. Two of the returned documents were recorded as obligations against the 1983 RM account and were included in

1/ SF 133, report of Budget Execution (See OMB Cir. A-34 revised, July 15, 1976) and TFS Form 2108, Year-End Closing Statement (Treas. Fiscal Requirements Manual, vol. 1, ch. 2-4200 (T.L. No. 465)).

2/ The automated accounting system is also used to process payments on invoices received from contractors or suppliers, etc.

the totals for the year-end reports that were filed. The remaining 35 documents representing about $421,000, were received at the Finance Center after the year-end statements were filed (for the most part between November 4, 1983, and December 6, 1983). Since they had not been canceled and were received too late to be reported as fiscal year 1983 obligations, they were recorded as undisclosed fiscal year 1983 obligations.

Also around October 17, 1983, the Chief of the Finance Center had two modifications (numbers 14 and 15) to a contract with Martel Laboratories, Inc., deleted from the automated accounting system without having any supporting documentation evidencing that they had been terminated or canceled.[3/] The Chief of the Finance Center indicates that this was done because she expected that these modifications would be cancelled or terminated. However, none of the persons who might have been contacted to implement a cancellation (that is, the contracting officer or the program officer) have indicated that they were contacted to cancel or terminate the contract. Furthermore, Edward Davis, the Assistant Director for Administration for FWS, who is the single allottee[4/] of the RM appropriation account and who was at the Finance Center just prior to the deletion of the Martel modifications from the accounting system, indicates that he was not aware of any request by the Chief of the Finance Center that these modifications be canceled or terminated.

In any event, Martel continued to perform work under these modifications and billed the Government for work performed in late October and early November. Modification 18 was subsequently issued in January 1984 and used to obligate the tasks already covered by modifications 14 and 15 against the 1984 RM

[3/] Various questions surrounding the effect of this action were addressed in our prior memorandum to you, B-114841-O.M., December 12, 1985, in which we held that these modifications were proper for recording as fiscal year 1983 obligations.

[4/] The single allottee under FWS Accounting Principles and Guidelines is the person expressly made legally liable for overobligations of the RM appropriation account.

appropriation account.5/ However, as discussed in our earlier memorandum, there is nothing indicating that modifications 14 and 15 were ever terminated or canceled.

Question No. 1:

"Was the OIG's premise sufficient to determine if the Antideficiency Act had been violated, or is it necessary to perform a complete reconciliation/verification of the appropriation accounts?"

Answer: No, the OIG's premise was not sufficient. Various questions surrounding the effect of this action were addressed in our prior memorandum to you, B-114841-O.M., December 12, 1985, in which we held that these modifications were properly for recording as fiscal year 1983 obligations.

The OIG should have considered the status of the RM account following final reconciliation and adjustment.6/ However, the OIG did not consider the status of the 1983 RM account at the point at which it made its determination in December 1984. Instead, the OIG merely added the amounts of the various unrecorded fiscal year 1983 obligations to the year-end statements that were filed and concluded that the account was overobligated. For the OIG's determination to have been valid, we would have to assume that:

5/ Apparently this was done to accomplish the intent of a memorandum prepared by Davis' office and signed by Harrold J. O'Connor, Associate Director, FWS Habitat Resources, on Dec. 7, 1983 agreeing to let the contracts office take whatever actions were appropriate to obligate the majority of the work under modifications 14 and 15 against FY 1984 RM funds. However, even modification 18 does not purport to cancel modifications 14 and 15. Furthermore, any implication that it did is countered by the fact that modification 18 continued to apply labor hour rates in effect for fiscal year 1983 and not the higher fiscal year 1984 rates.

6/ See for example B-95136, August 8, 1979, where we pointed out that where alterations costs to leased premises had been charged to the rental appropriation rather than the Alterations and Major Repairs Appropriation for 1977, GSA should audit the transaction between the two accounts, making appropriate adjustments before reporting a violation of the law to the President and the Congress.

a. Only valid obligations had been recorded against the 1983 RM appropration account;

b. That the amounts recorded were accurate and not subject to change;

c. That all amounts which were properly for transfer, refund or reimbursement to the 1983 RM appropriation account, either from other appropriation or fund accounts or from the public had been previously properly identified and the total amount disclosed by the closing date; and,

d. That all the amounts were accurately reflected in the closing statements.

There are, however, many variables beyond an agency's control which require adjustments as to amounts of obligations previously recorded and reported. Therefore, a year-end closing report, standing alone, is not sufficient for purposes of disclosing appropriation deficiencies. For example, interagency reimbursements under 31 U.S.C. § 1535/ are based upon actual costs which can only be determined upon completion of the work. Some contracts are obligated in amounts which are subsequently adjusted to reflect actual costs. See 55 Comp. Gen. 812 (1976); 34 Comp. Gen. 812 (1976). Additionally, litigation not completed until after the close of the fiscal year may result in adjustments to obligations against the appropriation. 62 Comp. Gen. 527 (1983) and 58 Comp. Gen. 116 (1978). Also, reimbursable expenses of an employee transferred in the interest of the Government must be charged against the appropriation current when the travel orders are issued even though the costs may not be known until later. 64 Comp. Gen. 45 (1984).

Thus, before the OIG determined that the 1983 RM appropriation account was overobligated and 31 U.S.C. §§ 1341 and 1517(a) were violated, it should have had the account reconciled and adjusted to reflect the change in the status of the amounts obligated against the account.

Question Number 2:

"What are FWS's/Interior's reporting responsibilities?

"--Is there a requirement for any conditional or pending Anti-Deficiency violation report

"--What is the intent of the law when it requires immediate reporting?

"--OMB Circular A-34 indicates that violation of an administrative allocation is sufficient to require reporting. Is this so? If so, is FWS in violation for not reporting in prior years, because it routinely appears to exceed several administrative allocations annually?"

Most of this question has been answered in our response to question number 1, set forth above. The law is concerned only with actual overobligations of appropriations, apportionments or allotments. Once these are known, they are to be immediately reported to the President and the Congress. However, where information available to the agency indicates a potential overobligation, it should immediately undertake to reconcile its accounts to determine if a violation has occurred and should take whatever steps it is legally authorized to take to prevent or mitigate the effect of the overobligation.

Finally, an agency is authorized by 31 U.S.C. § 1514 to prescribe in a regulation approved by OMB a system for administrative control of appropriations and apportionments. This should include a simplified system for administratively dividing (allotting) appropriations with the objective of placing the responsibility for financing each operating unit at the highest practical level, designating no more than one administrative allottee for each appropriation affecting the unit. Violation of an allotment is a reportable violation. 31 U.S.C. § 1517(a)(2). This is reflected in OMB Circular A-34, Instruction on Budget Execution, Transmittal No. 7, July 15, 1976, Secs. 31.1--31.4 and 71.1(e).

The Accounting Principles and Standards promulgated by FWS, ch. I, sec. 2 entitled Fund Control, reflect these principles. They provide, among other things, for a single allottee, the Assistant Director-Administration, to establish fund authorizations within the amount apportioned. The Standards further provide:

"The allottee is legally responsible and accountable for assuring that obligations are not in excess of the amount allotted or apportioned at the established level, i.e., activity, subactivity, etc.

> "The allottee is responsible for verifying that the amount of funds controlled scheduled to the various Regional and Washington Offices do not exceed the amount apportioned and allotted. All funds, including donations and contributed funds are subject to the fund control system."

The single allottee transfers obligational authority to the Regions, research centers, and Washington offices by means of control schedules. The recipients in turn control the funds by means of "work plans." However, the standards specifically provide that:

> "Obligations incurred in excess of work plan amounts by the field stations are not statutory violations, but the employees responsible are subject to administrative discipline. It is the responsibility of project leaders to ensure that amounts obligated do not exceed work plan budgets."

In summary, it is clear that under the approved FWS Accounting Principles and Standards, the Assistant Director for Administration is made legally responsible as single allottee for overobligations of apportionments or allotments within FWS. While recipients of obligational authority by virtue of execution of control schedules are required to remain within the program amount when entering into obligations, there is nothing in the FWS Standards indicating that the FWS considered failure to remain within the authorized suballotment to be a reportable violation. Thus, our report should not imply that it was reportable since the Congress specifically amended the law to reduce the number of reportable violations under the act which did not involve actually exceeding of the amount in the appropriation or apportionment. See 37 Comp. Gen. 224 (1957). Moreover, the FWS accounting standards make it clear that exceeding the annual work plans does not constitute a reportable violation of the law.

Question No. 3:

> "Is the single allottee solely responsible under the law, even in a situation where responsibility is not supported with authority?
>
> "--Under these circumstances can blame be pushed up to a level where authority and responsibility merge in the organization?
>
> "--Should blame be shared with those regional directors and program managers who exceeded their assigned allotments?"

Most of this question was addressed in our response to Question No. 2. However, where a single allotee is made legally accountable for actions taken at the regional or field level by persons over whom he exercises no direct authority, we doubt whether there is a basis for holding him either administratively responsible or criminally liable for violations of the Act since he is neither the party entering into nor authorizing others to create the obligations. In addition, as your staff has indicated informally, he is not authorized to undertake directly any corrective action when the persons authorized to enter into obligations exceed their authority, but must, instead, go to his superior in order to request that corrective action be taken (for example, cancellation of a contract). Furthermore, he does not evaluate the performance of the persons actually entering into obligations. This system appears to hold liable a party neither responsible nor in control of the actions for which he is made responsible.

We agree with your observation that responsibility should rest with a person who has some actual control over actions which may result in deficiencies. Furthermore, some practical administrative controls should be in place to assure compliance with the requirement that the appropriation, allocation, allotment or suballotment not be exceeded.

Question No. 4:

> "Explain what is necessary to conclude criminal intent under the Act and whether there appears to be any in this situation."

For a person to be held criminally liable for violating 31 U.S.C. § 1341(a) or 1517(a) he or she must be found to have "knowingly" and "willfully" made or authorized an expenditure or obligation exceeding the amount available in an appropriation or fund, an apportionment, or an administrative allotment. These terms would require at a minimum that a person acted voluntarily and intentionally, and not because of mistake or inadvertence or other similar reason. It therefore would be difficult to prosecute a person for either entering into, or authorizing, an obligation in excess of an appropriation, apportionment or allotment when at the time the questioned obligation was entered into, it was not known that it would result in an overobligation.

Question No. 5

"FWS has attempted to deobligate funds when it realized it might be in an antideficiency situation. Is this a violation of the Act?

"--Are there legal ways to do this?

"--If so, how has FWS violated the Anti-Deficiency Act, or other laws?"

This question was answered by our memorandum of December 12, 1985, to you. The answer generally is that not only is the attempt to deobligate in such circumstances not culpable, it is expected that the agency will do everything in its power to prevent the violation from occurring. Of course, the agency must accomplish the deobligation in a timely and proper fashion.

Question No. 6:

"Justice declined prosecution of a case against the Chief of the FWS Finance Center (letter attached). Is there a requirement for management to take punitive action, and can their decision be challenged or overruled? If so, by whom?"

If the agency determines that a violation of the law has occurred, resulting from an overobligation of an appropriation, apportionment or allotment, it is within the agency's discretion to determine the appropriate administrative discipline to impose on the officer or employee who made or authorized the expenditure or obligation in excess of the appropriation, apportionment or allotment. Any discipline imposed would be subject to controlling statutes or regulations and subject to the same judicial review that governs similar discipline for other employee actions. (For suspensions or removals, e.g., see 5 U.S.C. §§ 7501-7504, 7511-7514, and 7541-7543, relating to adverse actions.)

Question No. 7:

"Can FWS/Interior go on indefinitely working at, but not reconciling the appropriation in question, and not determining if a need to report exists?

"--Is there a reasonable time this can go on? If so, what it it?

"--Is there any interim report required or implied by law?"

Answer. We don't think the reconciliation period can go on indefinitely but we cannot point to a specific time limit. When a problem indicating a possible violation of the law has been identified, it is incumbent upon the FWS to undertake to reconcile the account to determine whether in fact a violation has occurred. Once it becomes apparent that a violation has occurred, FWS should report it as required by law. How long this will take will depend upon the potential for future adjustments of previously recorded obligations that could free up sufficient obligational authority to cover the unrecorded obligations.

We are not aware of any interim report required by law. However, if the agency's Congressional oversight or appropriations committees are made aware of the potential problem, through your report or otherwise, they may well request such an interim report.

1. APPROPRIATIONS
   Deficiencies
     Antideficiency Act
       Violations
         Overobligations

2. APPROPRIATIONS
   Deficiencies
     Antideficiency Act
       Violations
         Possibility
           Understanding obligations

APPRORPIATIONS
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3. APPROPRIATIONS
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APPROPRIATIONS
  Apportionment
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4. APPROPRIATIONS
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5. APPROPRIATIONS
   Deficiencies
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