

March 16, 1993  
ILR 93-G

Speaker, Rob W. Bishop, Chairman  
House of Representatives  
State Capitol Building  
Salt Lake City UT 84114

Subject: **Wildlife Resources**

Dear Speaker Bishop:

As requested, our office has conducted a review of the following issues pertaining to the Division of Wildlife Resources (DWR) that were outlined in an audit request by former Senator Dix H. McMullin: (1) Are funds collected from the sale of the upland game stamp being used in accordance with provisions of the statute? (2) Are the procedures employed by the division in the seizure of equipment used in the illegal taking of wildlife appropriate? (3) Did negligence on the part of the division result in the poisoning of the Price River below Scofield Reservoir following the chemical treatment of the reservoir? (4) Has the quality of fishing on the Green River below Flaming Gorge Reservoir declined due to mismanagement by the division?

Overall, our review found no evidence of negligence or mismanagement pertaining to the above issues. Specifically, our review concluded: (1) the Legislature granted the division a \$108,400 supplemental appropriation for fiscal year 1993; however, the program is too new to evaluate; (2) procedures used by the division in the seizure of equipment and other items used in the illegal taking of wildlife appear to be appropriate; (3) the fish kill on the Price River appears to have resulted from the division's detoxification treatment being diluted by higher than normal water releases from the dam and also from the de-watering of the river when flows were shut off at the dam for winter storage; and (4) the Green River experienced a decline in the quality of fishing from 1990 through 1991 primarily because of the die-off of a dominant group of fish stocked in 1985; however, the quality of fishing is reported to have improved during the 1992 season.

## **Funds From The Upland Game Stamp**

The Legislature has granted the division a supplemental appropriation of \$108,400 for fiscal year 1993 from the upland game stamp account. Another \$108,400 appropriation is appropriated for fiscal year 1994. Upland game is defined as pheasant, quail, chukar, partridge, grouse, morning dove, and rabbit. Hunters 16 years of age or older may not hunt upland game without first obtaining an upland game habitat stamp at a cost of \$5.00. **Utah Code 23-17-11** indicates that revenue collected from the sale of upland game stamps shall be used for control of predators, development and acquisition of upland game habitat, landowner education, and obtaining public access to private lands.

According to DWR officials, plans are in place to use funds from the supplemental appropriation for land acquisitions, public access, habitat development, predator control, and landowner education. Landowners desiring to participate in the program will receive fees for developing nesting cover, winter habitat, food plots, and opening their land to public hunting. The division's plans appear reasonable; however, because the program is so new, no contracts have been signed with landowners at the present time; therefore, we are not able to evaluate the effectiveness of the program.

## **Procedures For Seizing Equipment Appear Appropriate**

Procedures used by the division in the seizure of equipment and other items used in the illegal taking of wildlife appear to be appropriate. We reviewed the divisions procedures for seizing equipment and other items used in the illegal taking of wildlife in light of the requirements of **Utah Code 23-20-1** which states,

Materials and devices used for the unlawful taking or possession of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possession of protected wildlife, the materials and devices shall be: (i) confiscated by the court; (ii) conveyed to the division; and (iii) upon the expiration of time for appeal, sold at a public auction or otherwise disposed of by the division.

Our review of cases involving seized equipment found that conservation officers appear to act in accordance with the statute. According to the director of DWR law enforcement, officers seize equipment and other items used in the illegal taking of wildlife. The items are held by the division pending court proceedings and are often used as evidence in court. The court rules whether the items are to be returned to the owner or awarded to the division. Conservation officers often exercise discretion as to whether or not to seize equipment. Some courts require equipment to be brought in while other courts do not. For example, juvenile courts have stated that they do not want fishing poles brought into court. Juvenile courts accept officer's testimony that a juvenile was engaged in illegal fishing activity.

In order to determine whether DWR maintains adequate records and proper control procedures on items seized by officers, we randomly selected 20 cases involving seized items from DWR's files at their administrative office in Salt Lake City. We attempted to document the division's records tracking the items from the time they were seized, through court proceedings,

and on to their final disposition---confiscated by the court, awarded to the division, or returned to the owner. In most cases, we found adequate documentation and controls for tracking seized items. However, in five cases, we were unable to locate copies of citations signed by violators. Two of the missing citations were old and had been destroyed in accordance with DWR's document retention policy. Officials could not explain the absence of the other three citations except that they may have been included in a group of citations waiting to be filed.

We also investigated a complaint filed by an individual who claimed that the DWR had seized his snowmobiles and were inappropriately using them. The individual also claimed that the snowmobiles were never presented for sale at public auction. Our review of this case found that the individual who filed the complaint was arrested for illegally taking a mountain lion and that his snowmobiles were seized by the division as evidence in the case. Court records show that the individual was found guilty of the charges and that he voluntarily forfeited his snowmobiles in lieu of serving jail time or paying a fine. The court awarded the snowmobiles to the division. According to DWR officials, items that are awarded to the division by the court become the division's property. The items may be used for whatever purpose the division deems appropriate and do not necessarily have to be sold at public auction. In this particular case, DWR officials stated that the snowmobiles were used as a trade-in on the purchase of a new snowmobile to be used in the wildlife enforcement division. From our review, it appears the division's actions in this case were in accordance with statute. In our opinion, the complaint filed by the above individual is without merit.

Finally, we were unable to track items seized and held in DWR regional offices from the administrative office in Salt Lake because the final disposition of these items is not entered onto the division's computer system. In our opinion, it is of critical importance that the DWR keep accurate records of all seized items from the time they are seized through final disposition. In order to assist in tracking and centralize information at the administrative office in Salt Lake, we recommend that regional offices enter the final disposition of seized items onto DWR's computer system.

## **Fish Kill On Price River**

The fish kill on the Price River appears to have resulted from the division's detoxification treatment being diluted by higher than normal water releases from the dam and also from the de-watering of the river when flows were shut off at the dam for winter storage. In the fall of 1991, DWR poisoned Scofield Reservoir to remove unwanted fish (Carp, Walleye, and Chubs). In conjunction with the treatment of the reservoir, the division attempted to detoxify water released into the Price River below the dam. However, beginning in the spring of 1992, complaints were filed by anglers claiming that fishing success was so poor that the DWR must have poisoned the entire river.

According to DWR officials, the detoxification treatment on the river met with problems. Officials stated that, based on historical water release records and oral conversations with the water users association, they anticipated flows in the river to be no greater than 20 CFS (cubic feet per second). As a safeguard, DWR purchased enough chemical to detoxify flows up to 30 CFS. However, on the day of the treatment, the Water Users Association increased releases at the dam to 60 CFS. DWR officials stated that the high flows diluted the time-release effect of the chemical used in the detoxification process and extended the kill zone further down stream. DWR's project leader estimates that fish may have been killed two to three miles below the dam.

It is important to note that DWR has no legal control over water releases from Scofield Reservoir. Water rights are owned by cities and landowners down stream. Flows released from the dam are based upon the demand for water by owners of water rights. Stream flow reports from the Utah Division of Water Rights for 1991 confirm that flows on the Price River near Heiner averaged between 60 to 70 CFS from September 19th through October 15th. Reports from the previous year (1990) show that flows during the fall averaged between six to 22 CFS. An official from the Price River Water Users Association reported that DWR officials contacted them prior to the project regarding expected flows but that there was no guarantees or commitments for low flows. The official stated that the association tried to cooperate with the DWR, but they received several calls for water at the time of the treatment.

In order to monitor the detoxification process, the division kept live, caged fish at a location one mile down stream and at another location ten miles down stream. Over an eight week period, caged fish died at the one mile site from time to time but no caged fish died at the eight miles station. When fish at the one mile station would begin showing signs of stress due to poisoning, increased levels of the detoxification chemical were added. It is difficult to determine how far downstream fish were killed below the one mile station, but according to DWR officials, it is certain that no fish were killed below the eight mile mark.

Shortly after the completion of the detoxification treatment in the river, water flows were shut off at the dam by the water users association. Historically, stream flows on the Price River are shut off at the dam during winter by the water users association for water storage purposes. Downstream from the dam, the river is de-watered for a number of miles until natural springs, groundwater seepage, and small streams enter the river. In most years, the water entering the river from these sources is enough water to maintain fish life on the river. However, because of drought conditions over the past several years, these water sources have been severely reduced. As a result, according to DWR officials, higher than normal fish kill occurred over the winter of 1991-1992. DWR's project leader reported that spring surveys on the river found low fish counts in all sections of the river. In his opinion, it is impossible to know if the lost fish were

due to the chemical treatment or the loss of flows when the water from the reservoir was shut off.

In order to restore the stream, the DWR planted 9,000 ten- inch Brown Trout plus 30,000 three-inch Brown Trout during the spring of 1992. Unfortunately, the DWR reported that a fish kill occurred in the first mile immediately below the dam during the fall of 1992 when flows were cut off at the dam for about a week. Since that time, however, flows from the dam have been maintained at about five CFS throughout the winter and DWR officials are hopeful that these flows will be sufficient to maintain fish life. It should be noted that DWR stocks this river each year with three-inch Brown Trout. Typically, most of these trout migrate to lower sections of the river where water reenters the river and a number of beaver ponds provide winter habitat after sections below the dam are de-watered when flows are shut off at the dam. Some trout are lost each year immediately below the dam due to de-watering but a good number migrate to lower sections. Trout Unlimited, a nationally sponsored conservation group, is working with the division to raise funds to purchase water rights on the river that will be used to ensure minimum flows throughout the winter. The DWR is optimistic about this project.

### **Fishing On Green River Declined From 1990 Through 1991, But Improved During 1992**

According to DWR officials, fishing on the Green River below Flaming Gorge Reservoir declined from 1990 through 1991 mainly due to the die-off of a dominant group of rainbow trout stocked in 1985. Officials stated that prior to 1985, stocking success on the Green had been poor for a number of years. However, in 1985, two things occurred that resulted in a very successful stocking. First, the size of the fish stocked was increased from approximately three inches to over six inches enabling the fish to reach nearly 13 inches by winter. Through their analysis, DWR found that fish under 13 inches experienced an extremely low survival rate during the winter. Stocking larger fish enabled more of the 1985 class to survive the winter. Second, a protective slot limit was introduced on the river which allowed anglers to keep only two fish under 13 inches and one fish over 20 inches. DWR surveys found that hardly any of the fish under 13 inches were being kept by anglers. Under these favorable conditions the 1985 class of stocked fish (114,662 Rainbow Trout) enjoyed excellent success and became the dominant class of fish in the river.

Basically, the poor stocking success in earlier years meant there was little competition for the 1985 class and the protective slot limit allowed the fish to reach the protected category (13-20 inches) within one year from the stocking date. The 1985 class grew large over the next four to five years and provided the backbone for the excellent fishing reported on the Green River. Subsequent stockings did not enjoy the success of the 1985 class primarily because the 1985 class were so successful that they occupied most of the usable territory and feeding stations in the river. The 1985 class became the dominant 1985 class of fish in the river for about the next five years.

Beginning around 1990, many of the 1985 class began reaching old age. Rainbow Trout typically live five to seven years on the Green River. During the later years of a trout's life, they tend to deteriorate in condition. Through 1990 and 1991 many anglers complained of catching haggard, skinny, poor fighting fish. DWR officials stated that these were the 1985 class of fish that had reached old age and were starting to die. By 1992, nearly all of the 1985 class had died. According to DWR fish survey statistics for 1992, the majority of the fish in the river are again fat and healthy. Fishing guides we talked to also reported better fishing on the Green during

1992.

DWR officials stated that trout populations and the health of fish on the Green River will continue to vary from year to year because the river is constantly changing. For example, DWR officials reported that drought conditions over the past several years have severely impacted flows on the river. Lower flows impact aquatic insect populations which impact the trout's food source. In addition, power generation at the dam causes drastic fluctuations in flows below the dam on a daily basis. All of these factors make managing trout population on a river difficult. Finally, by mandate from the Federal Bureau of Reclamation, river flows will be strictly controlled over the next five years for an environmental impact study dealing with endangered fish (Colorado Squaw Fish, Hump Back Sucker) in the Colorado River drainage. DWR officials stated that the Bureau of Reclamation has indicated that flows will be raised to high flows during the spring, dropped to medium flows during the summer, and finally be reduced to low flows during the fall in order to simulate natural river conditions before dams were built to control flows.

In recent years, the DWR has reduced the number of trout stocked in the river because they felt trout populations were overcrowded. They are also trying to prevent the establishment of another dominant class of trout in order to avoid the boom and bust syndrome that occurred with the 1985 class. Ideally, they would like to reach the point

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where the number of fish stocked each year replaced the number of fish that die from old age. However, DWR officials caution that stream management is extremely difficult and are subject to a number of variables many of which are out of their control.

This concludes our review of the issues raised in your audit request. We hope this letter has provided the information you need on these issues. If you have any questions or need additional information, please contact our office.

Sincerely,

Wayne L. Welsh  
Auditor General

WLW:KDB/lm