

Forest Service Grant for Roadless Area Management in the State of Alaska



Inspection Report

08801-0001-24

December 2020

OFFICE OF INSPECTOR GENERAL

Forest Service Grant for Roadless Area Management in the State of Alaska

Inspection Report 08801-0001-24

We determined if FS had the proper authority and followed Federal laws and regulations when awarding a \$2 million grant to the State of Alaska.

OBJECTIVE

Our objectives were to:

- (1) determine if FS had the proper authority and followed Federal regulations when awarding a \$2 million grant to the State of Alaska;
- (2) determine if the funds were used for allowable purposes;
- (3) determine if other stakeholders were aware that Federal funding was available for the purpose of the grant; and (4) determine what consideration, factors, or decisions led FS to award the \$2 million grant.

REVIEWED

We reviewed: (1) applicable laws and regulations relating to the Roadless Rule, as well as Federal regulations relating to the grant award process; (2) grant documentation to assess compliance with Federal regulations; and (3) documentation supporting FS' and Alaska's actions related to the grant between January 2018 and September 2020.

RECOMMENDS

We recommend that FS work with the Office of the General Counsel to develop and implement a plan to use the funding in compliance with Federal laws and regulations, and pending OGC's review, cease all payments related to this grant.

WHAT OIG FOUND

On January 12, 2001, the U.S. Department of Agriculture's (USDA) Forest Service (FS) published the Roadless Area Conservation Rule (Roadless Rule) in an effort to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. The Roadless Rule established prohibitions on certain activities, including the construction of roads in inventoried roadless areas on National Forest System lands. Certain National Forest System lands in Alaska, including areas located in the Tongass National Forest, are subject to the Roadless Rule. In August 2018, FS issued a \$2 million grant to Alaska so that Alaska could complete actions needed to develop a State-specific Roadless Rule exemption within the Tongass National Forest. These actions included facilitating an advisory committee to provide Alaska with input during the rulemaking process. FS awarded this funding through its State and Private Forestry—State Fire Assistance Program, which is used to provide assistance to State and privately owned lands outside of National Forests.

We found that FS had authority under the National Environmental Policy Act to provide funding to facilitate Alaska's participation in the State-specific rulemaking, as a cooperating agency. However, the processes FS used to award the \$2 million grant to Alaska did not comply with Federal laws and regulations. Specifically, FS modified an existing Cooperative Forestry Assistance Act of 1978 grant between FS and Alaska. FS officials stated that they needed to quickly award this grant to Alaska to facilitate its efforts to develop a State-specific Roadless Rule exemption. The Cooperative Forestry Assistance Act of 1978 was an Act designated for Federal assistance to State and private forests, not Federal forests such as the Tongass National Forest. Further, FS' decision to issue this grant by modifying an existing grant did not comply with Federal laws and regulations related to competition for discretionary program funding. As a result, we found that stakeholders were unaware that Federal funding was available for the purposes of this grant. In addition, FS should not issue funding to Alaska under the August 2018 grant agreement.



OFFICE OF INSPECTOR GENERAL

United States Department of Agriculture



DATE: December 15, 2020

INSPECTION

NUMBER: 08801-0001-24

TO: Vicki Christiansen
Chief
Forest Service

ATTN: Antoine Dixon
Chief Financial Officer
Forest Service

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Forest Service Grant for Roadless Area Management in the State of Alaska

This report presents the results of the subject review. Your written response to the official draft is included in its entirety at the end of the report. We have incorporated excerpts from your response, and the Office of Inspector General's (OIG) position, into the relevant sections of the report. Based on your written response, we are accepting management decision for all inspection recommendations in the report, and no further response to this office is necessary. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer (OCFO).

In accordance with Departmental Regulation 1720-1, final action needs to be taken within 1 year of each management decision to prevent being listed in the Department's annual Agency Financial Report. For agencies other than OCFO, please follow your internal agency procedures in forwarding final action correspondence to OCFO.

We appreciate the courtesies and cooperation extended to us by members of your staff during our inspection fieldwork and subsequent discussions. This report contains publicly available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

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Background and Objectives

Background

On January 12, 2001, the U.S. Department of Agriculture's (USDA) Forest Service (FS) published the Roadless Area Conservation Rule (Roadless Rule) in an effort to sustain the health, diversity, and productivity of the Nation's forests and grasslands.^{1,2} The Roadless Rule established prohibitions on construction, road reconstruction, and timber harvesting on inventoried roadless areas on National Forest System (NFS) lands. The Roadless Rule applied to all National Forests, including the Tongass National Forest located in southeast Alaska. The Tongass National Forest is the largest National Forest, measured by land area, within the NFS.

On January 19, 2018, Alaska requested full exemption from the rule through a petition to the Secretary of Agriculture.³ In this petition, Alaska requested that USDA permanently exempt the Tongass National Forest from the Roadless Rule. Alaska stated that an exemption from the Roadless Rule would provide opportunities to rebuild the timber industry and create jobs for the rural communities in the Tongass National Forest. On June 21, 2018, the Secretary of Agriculture responded to Alaska's petition by directing FS to work with Alaska to develop a State-specific exemption to the Roadless Rule under the Administrative Procedures Act.⁴ On August 2, 2018, FS and Alaska entered into a memorandum of understanding (MOU) to document responsibilities as cooperating agencies throughout the efforts to develop a State-specific exemption.

In August 2018, FS awarded the State a \$2 million grant to help Alaska and FS complete the specific actions needed to develop a State-specific exemption to the Roadless Rule.⁵ These actions included facilitating an advisory committee, which was comprised of a diverse mix of organizations and individuals representing State-specific interests, to provide Alaska with input during the rulemaking process.

In a September 24, 2019 article, an Alaska-based news organization reported on the decision facing FS related to the Tongass exemption, as well as concerns expressed by various parties about the allowability of this \$2 million grant.⁶ According to this article, Alaska was awarded \$2 million in funding under a State fire assistance grant, which is typically used to help communities prevent and suppress wildfires. The news report also indicated that Alaska awarded some of the funds from the \$2 million grant to the Alaska Forest Association, a timber industry group, while other stakeholders in the Roadless Rule, like Tribal Governments, were not granted any Federal funding to help make their case.

¹ 36 C.F.R. § 294.

² The Roadless Area Conservation Rule went into effect on March 13, 2001.

³ Petitions by interested persons in accordance with 5 U.S.C. 553(e) for the issuance, amendment, or repeal of a rule may be filed with the official that issued or is authorized to issue the rule.

⁴ 5 U.S.C. § 551.

⁵ On February 19, 2020, FS approved a modification to the \$2 million grant that redistributed \$1.3 million away from the Roadless Rule project to mitigate hazardous fuels in south central and interior Alaska.

⁶ Alaska Public Media, *Records Show Federal Government, Tasked with Rewriting Tongass Rules, also Funded Alaska Timber Group* (Sept. 24, 2019).

Federal regulations require agencies that issue competitive grants and cooperative agreements to announce specific funding opportunities via a public notice.⁷ Additionally, the Government Accountability Office (GAO) provides guidance on distinguishing between mandatory and discretionary grants. GAO states that grant programs are either mandatory or discretionary.⁸ In mandatory grant programs, Congress directs awards to one or more classes of prospective recipients who meet specific criteria for eligibility, in specified amounts. Discretionary grants should be subject to a competitive process, which includes notifying the public when funding opportunities are available. OIG found no mandatory grant language which directed FS to provide funding to Alaska, or any other State, in order to facilitate participation as a cooperating agency under the National Environmental Policy Act (NEPA).⁹

On November 18, 2019, the Office of Inspector General (OIG) received a Congressional request from two Congressional Representatives to examine the potential misuse of the \$2 million FS grant to Alaska.¹⁰ Based on this request, we initiated an inspection related to this grant in March 2020.

Objectives

Our objectives were to: (1) determine if FS had the proper authority and followed Federal regulations when awarding a \$2 million grant to the State of Alaska; (2) determine if the funds were used for allowable purposes; (3) determine if other stakeholders were aware that Federal funding was available for the purpose of the grant; and (4) determine what considerations, factors, or decisions led Forest Service to award the \$2 million grant.

We answered each of these four objectives in Finding 1 below.

⁷ 2 C.F.R. § 200.203.

⁸ GAO, Principles of Federal Appropriation Law, 3d ed., 2006 rev., ch.10, §B.3, GAO-06-382SP (Washington, D.C.: Feb. 2006).

⁹ 40 C.F.R. § 1501.8; and 40 C.F.R. § 1508.1.

¹⁰ The Honorable Debbie Stabenow and the Honorable Raul M. Grijalva, Letter to the Honorable Phyllis K. Fong (Nov. 18, 2019).

Finding 1: FS Did Not Award the \$2 Million Roadless Rule Grant to Alaska in Accordance with Federal Laws and Regulations

Although FS had authority to award grant funding to Alaska to assist in State-specific rulemaking, the processes FS used to award the funding to Alaska did not comply with Federal laws and regulations. Specifically, FS awarded a \$2 million grant to Alaska that related to National Forests by modifying an existing, unrelated grant for State and private forest assistance in Alaska. Furthermore, FS' decision to issue this grant by modifying an existing grant did not comply with Federal grant requirements for competition in discretionary programs. This occurred because FS officials stated that they needed to quickly award this grant to Alaska to facilitate its efforts to develop a State-specific Roadless Rule exemption. As a result, stakeholders were unaware that funding was available for the purposes of this grant. In addition, FS should not issue any funding to Alaska under the August 2018 grant agreement.

On August 22, 2018, FS awarded the \$2 million grant to Alaska by approving a modification to an existing \$1.75 million May 2018 grant awarded under the authority of the Cooperative Forestry Assistance Act of 1978. The authority used to award this \$2 million grant, the Cooperative Forestry Assistance Act of 1978, allows the Secretary of Agriculture to provide assistance, including grants, with respect to non-Federal forest lands in the United States.¹¹ FS had the authority to provide funding to Alaska to fulfill its cooperating agency responsibilities. Specifically, NEPA permits Federal agencies to designate States, Tribes, or local agencies of similar qualifications as cooperating agencies in a rulemaking,¹² and to provide those cooperating agencies with funding.¹³ Furthermore, the Administrative Procedures Act grants interested parties the right to petition for the issuance, amendment, or repeal of a rule.

However, activities related to the Tongass National Forest were not eligible under the grant FS awarded. The Cooperative Forestry Assistance Act of 1978 allows FS to provide assistance only to State and private forests, not to National Forests such as the Tongass National Forest. Therefore, it was improper to award the \$2 million to Alaska using the authority granted by the Cooperative Forestry Assistance Act of 1978.

Funding for this \$2 million grant was discretionary because this grant was not required by Federal statutes, and therefore should have been subject to competition. Federal regulations require agencies that issue competitive grants and cooperative agreements to announce specific funding opportunities via a public notice. Additionally, regulations specify that awarding agencies shall enter into non-mandatory, or discretionary, grants and cooperative agreements only after competition.¹⁴ We found that because FS awarded the \$2 million to Alaska by modifying an already-existing grant, there was no public notice of the grant and the award was not opened up to competition.

¹¹ 16 U.S.C. § 2101(b).

¹² 40 C.F.R. § 1501.8.

¹³ *Id.* at § 1501.8; *see also id.* at § 1508.1.

¹⁴ 2 C.F.R. § 415.1(a).

According to FS, this occurred because the agency felt it needed to quickly provide Alaska with funding. FS awarded the \$2 million grant to Alaska after discussions with Congressional staffers in which the agency was made aware of a \$2 million increase in its fiscal year (FY) 2018 State and Private Forestry—State Fire Assistance Program.¹⁵ FS officials stated that, based on these discussions, the agency felt it needed to quickly issue these funds to Alaska to develop the State-specific exemption. Officials from the State of Alaska stated that they also had discussions with the State’s Congressional representatives and that the State needed funding to fulfill the requirements of the MOU between Alaska and FS.¹⁶ We verified that FS’ FY 2018 State Fire Assistance budget increased by \$2 million over its FY 2017 budget; however, FS officials did not have documentation to support their discussions with Congressional staffers about the budget increase or the need for rapid funding for Alaska. We also did not identify language relating to this grant in our review of the Consolidated Appropriations Act of 2018.¹⁷ While we understand the need for timely grant disbursement, urgency does not exempt agencies from following Federal laws and regulations.

As of August 28, 2020, Alaska had not requested reimbursement for any of the expenses associated with its work on the Roadless Rule project; therefore, the full amount of \$2 million remains obligated and available. We reviewed the types of expenses, such as salaries and contracts, which Alaska intended to use grant funds to pay, and all expenses appear to meet Federal regulations for allowable expenses.¹⁸ Based on our findings, we recommend that FS work with the Office of the General Counsel (OGC) to ensure it uses this funding in compliance with Federal laws and regulations. At our agency closeout meeting, FS officials stated that they agreed with our conclusions and recommendations.

Recommendation 1

Work with OGC to develop and implement a plan to use this funding in compliance with Federal laws and regulations.

Agency Response

FS generally concurs with this recommendation. The agency will work with OGC to develop and implement a plan to use this funding in compliance with Federal laws and regulations. The estimated completion date is October 1, 2021.

OIG Position

We accept FS’ management decision on this recommendation.

¹⁵ Beginning with its FY 2019 budget justification, FS renamed the State Fire Assistance Program as the National Fire Capacity Program.

¹⁶ This MOU outlined the various actions that FS and Alaska would take to develop the State-specific exemption.

¹⁷ Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, 132 Stat. 348 (2018).

¹⁸ 2 C.F.R. § 200.403.

Recommendation 2

Pending OGC review, cease all payments related to this grant until FS identifies an appropriate path forward that complies with Federal laws and regulations.

Agency Response

FS generally concurs with this recommendation. The agency has not made any payments, to date, related to the funds discussed in this OIG report. Pending OGC review, the Forest Service will continue to cease payments related to the \$2,000,000 until the agency identifies an appropriate path forward that complies with Federal laws and regulations. The estimated completion date is October 1, 2021.

OIG Position

We accept FS' management decision on this recommendation.

Scope and Methodology

We conducted an inspection of FS' actions relating to a \$2 million grant it issued to Alaska for a State-specific exemption to the Roadless Rule. Our inspection followed the Quality Standards for Inspection and Evaluation. We performed our inspection work remotely due to COVID-19 restrictions. We interviewed FS management and regional office officials, as well as State of Alaska officials that have been involved in this grant. We conducted our fieldwork from April 2020 through September 2020.

To accomplish our inspection objectives, we:

- reviewed applicable laws and regulations relating to the Roadless Rule, as well as Federal regulations relating to the grant award process;
- interviewed FS and Alaska officials to obtain an understanding of the intent behind the grant and the process for awarding it;
- reviewed grant documentation to assess compliance with Federal regulations; and
- reviewed documentation supporting the actions FS and Alaska took relating to this grant between January 2018 and August 2020.

We conducted this inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Inspection and Evaluation.¹⁹ Those standards require that we plan and perform the inspection to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our conclusions based on our review objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our review.

¹⁹ CIGIE, *Quality Standards for Inspection and Evaluation* (Jan. 2012).

Abbreviations

CIGIE.....	Council of the Inspectors General on Integrity and Efficiency
C.F.R.....	Code of Federal Regulations
FS	Forest Service
FY	fiscal year
GAO.....	Government Accountability Office
MOU	memorandum of understanding
NFS	National Forest System
OGC	Office of the General Counsel
OIG	Office of Inspector General
Roadless Rule.....	Roadless Area Conservation Rule
U.S.C.....	United States Code
USDA.....	United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Exhibit A summarizes the monetary results for our inspection report by finding and recommendation number.

Finding	Recommendation	Description	Amount	Category
1	1	FS did not use an allowable authority when it awarded a \$2 million grant to Alaska.	\$2,000,000	Funds to be put to better use.
Total			\$2,000,000	

**Forest Service's
Response to Inspection Report**



File Code: 1430**Date:** December 2, 2020**Route To:****Subject:** Response to Reach Management Decision on OIG Report - Alaska Roadless Grant 08801-0001-24**To:** Gil H. Harden, Assistant Inspector General for Audit, Office of Inspector General

Thank you for the opportunity to review and comment on Office of Inspector General (OIG) Draft Report Number 08801-0001-24. The U.S. Department of Agriculture's Forest Service generally concurs with the findings and recommendations and appreciates the time and effort that went into the report. The response to the two audit recommendations is enclosed. Please contact Antoine L. Dixon, Chief Financial Officer, at (202) 205-0429 or antoine.dixon@usda.gov with any questions.

/s/ Victoria Christiansen

VICTORIA CHRISTIANSEN

Chief

Enclosure



USDA Forest Service (FS)

**Office of Inspector General (OIG) Audit Report No. 08801-0001-24
Forest Service Grant for Roadless Area Management in the State of Alaska
Official Draft Issued November 6, 2020**

Response to the Official Draft Report / Management Decision Request

Recommendation 1: Work with OGC to develop and implement a plan to use this funding in compliance with Federal laws and regulations.

FS Response: The Forest Service generally concurs with this recommendation. The Agency will work with OGC to develop and implement a plan to use this funding in compliance with Federal laws and regulations.

Estimated Completion Date: October 1, 2021

Recommendation 2: Pending OGC review, cease all payments related to this grant until FS identifies an appropriate path forward that complies with Federal laws and regulations.

FS Response: The Forest Service generally concurs with this recommendation. The Agency has not made any payments, to date, related to the funds discussed in this OIG report. Pending OGC review, the Forest Service will continue to cease payments related to the \$2,000,000 until the Agency identifies an appropriate path forward that complies with Federal laws and regulations.

Estimated Completion Date: October 1, 2021



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