

December 18, 1998

Yvonne S. Ferrell, Director
Idaho Department of Parks and Recreation
STATEHOUSE MAIL
Boise, ID 83730

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: Use of Money in State Waterways Improvement Fund for Road Repairs

Dear Director Ferrell:

The Department of Parks and Recreation ("Department") has asked for reconsideration of Attorney General Opinion No. 89-11 that concluded, *inter alia*, that the Idaho Waterways Improvement Fund ("WIF") could not be used for the construction and/or maintenance of roads. Your request for reconsideration relates to a factually specific stretch of road giving access to the Freeman Creek Unit of Dworshak State Park. Your request indicates that approximately 50% of the motorists utilizing this 4.5-mile section of roadway do so to access boating facilities at the Freeman Creek Unit of Dworshak State Park. This section of the roadway is undeveloped, causing rough, dusty driving conditions. These conditions may cause unsafe driving conditions for motorists towing watercraft. You also have indicated that your attempts to obtain contributions from other funding sources for the maintenance of this road have been unsuccessful, in part due to the significant percentage of use by boaters and lack of use by the general public.

Based upon the facts presented, I conclude the expenditure of monies for improvement of the Freeman Creek Unit road falls within the enumerated purposes contained in Idaho Code § 57-1501.

ANALYSIS

Idaho Attorney General Opinion No. 89-11 addressed, *inter alia*, the permissible uses for WIF fundings as well as some impermissible uses. This opinion recited the permissible uses contained in Idaho Code § 57-1501 as follows:

- (1) Protection and promotion of safety;
- (2) Waterways improvements;
- (3) Development/improvement of boating related parking;
- (4) Development/improvement of boat ramps;
- (5) Development/improvement of boat moorings;

- (6) Waterways marking;
- (7) Search and rescue; and
- (8) Anything incident to the enumerated uses, including the purchase of property both real and personal.

1989 Att’y Gen. Ann. Rpt. 93, 96. The Opinion concluded that the touchstone for determining whether a project falls within the expenditures contemplated by the legislature was whether “these items are primarily for the benefit of boaters engaging in boating activities.” *Id.*

Attorney General Opinion No. 89-11 concludes that road building and/or maintenance of roads is not a legislatively authorized use of the WIF:

The expenditure of WIF monies on the construction and/or maintenance of roads is repugnant to the WIF funding scheme. The WIF was created specifically because of the inequity of spending marine fuel revenues for non-marine uses. Currently, only a small percentage of gas tax revenue (less than one percent (1%) goes to the WIF) with the bulk of gas tax revenue going to roads. To spend the small proportion of gas tax revenues going to the WIF on roads would be a step back to the days before 1963 when boaters received no benefits from their boating-generated tax dollars. This result would be clearly contrary to the existing statutory scheme.

Id. This conclusion is logical. The expenditure of the gas tax intended to benefit boaters for road construction/maintenance activities seems contrary to the intent to segregate a portion of gas tax revenues from general road maintenance to be used for marine/boating purposes.

Attorney General Opinion No. 89-11 did not contemplate the specific factual circumstance presented in the Idaho Department of Parks and Recreation’s request to reconsider that opinion. In this instance, the roadway for which maintenance funding is requested primarily benefits boaters. Approximately 50% of the motorists who use this section of roadway do so exclusively to access the Freeman Creek Unit of the Dworshak State Park for boating purposes.

Moreover, this expenditure of funds will address purposes specifically enumerated in Idaho Code § 57-1501, which authorizes purchases that promote the protection and safety of boaters. The current rough condition of the roadway presents safety considerations for motorists towing watercraft. The expenditure of funds to improve this roadway will advance this statutory purpose of the WIF.

The conclusion reached in Attorney General Opinion No. 89-11, that WIF cannot be used for roadway maintenance, is not based on an express statutory ban. Rather, the

conclusion reached is logical, based upon the structure of the WIF contrasted with the expenditure of the remainder of gas taxes. In the limited factual circumstance presented by this request for reconsideration, I conclude that the primary benefit of improvement of this roadway will accrue to the boaters and, therefore, WIF funds may be used to improve the roadway. This expenditure also will help the Department obtain cooperative participation from other entities responsible for road maintenance to accumulate the total funds necessary to improve and maintain this section of roadway.

Sincerely,

C. NICHOLAS KREMA
Deputy Attorney General
Natural Resources Division