American Burying Beetle Conservation Fund

Briefing to the Subcommittee on Regulatory Affairs and Federal Management, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Accessible Version

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Background
Endangered Species Act of 1973

- The Endangered Species Act of 1973 (ESA) places a variety of responsibilities on federal agencies, private entities, and individuals to ensure that planned actions do not adversely affect species listed as threatened or endangered.
- Among other things, federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitats. Even if a federal agency does not authorize, fund, or carry out an action, the ESA generally prohibits any person from taking endangered species.[1]
- Under the act, the Department of the Interior's U.S. Fish and Wildlife Service (FWS) has primary responsibility for terrestrial and freshwater organisms, including the American Burying Beetle (ABB).

[1]Take means to harass, pursue, hunt, shoot, wound, kill, trap, capture, collect, or harm. Harm includes significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing breeding, feeding, sheltering, or other essential behavioral patterns.

Background (continued)
American Burying Beetle

- According to an FWS assessment, the ABB once lived in over 30 states but has drastically declined in numbers and in July 1989 was listed as endangered. FWS has not established any critical habitat for the beetle.
- As of March 2016, populations were known or believed to occur in 10 states: Arkansas, Kansas, Massachusetts, Missouri, Nebraska, Ohio, Oklahoma, Rhode Island, South Dakota, and Texas.[2]
- According to an FWS Fact Sheet, carrion beetles, like the ABB, recycle carcasses, ultimately returning valuable nutrients to the soil. In addition, this beetle might be an "indicator species," or one that provides information on whether its environment is healthy.[3]

[2]The Missouri population is experimental/nonessential; it is not covered by the endangered listing.

[3]U.S. Fish and Wildlife Service, *Endangered Species: American Burying Beetle Fact Sheet* (July 19, 2016), accessed August 2, 2016, https://www.fws.gov/midwest/endangered/insects/ambb/abb_fact.html.

Background (continued)
ABB Conservation Fund

- On February 12, 2009, FWS's Oklahoma Ecological Services Field Office established the ABB Conservation Fund (Fund) through a memorandum of agreement (MOA) with The Nature Conservancy (TNC).
- According to the MOA, FWS was to provide leadership for the planning, implementation, and monitoring of work undertaken as part of the MOA, and TNC was responsible for managing the Fund, among other things.
- Under the MOA, the Fund was to be used to (1) acquire lands or easements within priority conservation areas, including a stewardship fund for long-term maintenance of the lands acquired; (2) restore or manage potential ABB habitat; and (3) support research on ABB conservation needs. The MOA also stated that cooperative agreements may be developed by TNC and FWS with third parties as deemed appropriate.

Background (continued)
ABB Conservation Fund

- Multiple sources, including federal agencies and private companies, contributed financially to the Fund.
- The MOA was to be in effect for 5 years; however, FWS terminated it early on July 31, 2012.
- Separately, a private company submitted a conservation bank proposal to the Oklahoma Ecological Services Field Office for review and approval in October 2012 to provide an alternative for conservation of the ABB and its habitat. A conservation bank is a site that provides ecological functions and services expressed as credits that are conserved and managed in perpetuity for particular species and are used expressly to offset impacts occurring elsewhere to the same species.[4] The first ABB conservation bank for Oklahoma was approved in January 2014.

[4]81 Fed. Reg. 12380, 12391 (Mar. 8, 2016). The analysis of these ABB conservation banks is part of a larger GAO effort evaluating the conservation measures for the ABB and the operation of conservation funds.

Background (continued)

Other Agreements Related to the ABB Conservation Fund

- FWS and the Oklahoma Department of Transportation (ODOT) entered into an interagency agreement in 2009 wherein ODOT agreed to provide financial support to FWS to further the conservation of the ABB while ODOT retained the ability to implement new and routine maintenance and upgrade activities to the transportation network in Eastern Oklahoma. FWS and TNC subsequently signed a cooperative agreement to allow TNC to utilize ODOT funds for ABB conservation efforts. The cooperative agreement stated that ODOT funds were to be used to acquire land or easements within ABB priority areas in Oklahoma, restore or manage potential ABB habitat, or support recovery research, as described in the MOA. The period of performance of the agreement was to extend through September 30, 2013.

Background (continued)

Other Agreements Related to the ABB Conservation Fund

- Additionally, the Bureau of Land Management (BLM) consulted with FWS regarding the impact of its Wild Horse and Burro Program on ABB habitat and proposed contributing funds to TNC for ABB conservation to address the program's impact on ABB habitat.[5] In September 2008, this arrangement was formalized through a grant agreement between BLM and TNC; it ended in September 2013. TNC officials stated that they considered the Wild Horse and Burro Program grant receipts and disbursements to be separate from the Fund since they received the money as a grant from BLM, which was governed by a grant agreement and not the MOA. However, FWS considered the grant from BLM's Wild Horse and Burro Program to be part of the Fund since the grant was awarded to TNC for ABB conservation efforts as a result of FWS's consultation with BLM.

[5]Under the Wild Free-Roaming Horses and Burros Act of 1971, BLM protects and manages wild free-roaming horses and burros on land under its jurisdiction.

Objective

- You asked us to review the use of moneys collected into the Fund, including contributions to and disbursements from the Fund.
- Our objective was to determine the amounts and sources of funds received and disbursed by the Fund for each fiscal year from 2008 through 2014, as well as the extent to which adequate documentation exists to support the validity of such amounts.

Scope and Methodology

To address our objective, we did the following:

- Interviewed FWS and TNC officials to obtain an understanding of the policies and procedures related to the management of the Fund.
- Reviewed the MOA between FWS and TNC to determine the requirements within the MOA regarding cash received and disbursements made by the Fund. We also reviewed other related agreements, such as the Wild Horse and Burro Program grant agreement, and information regarding cash received and disbursements made by the Fund.
- Reviewed FWS, TNC, ODOT, and BLM documentation to the extent available to identify the types and amounts of cash received and disbursements made by the Fund for each fiscal year from 2008 through 2014.

Scope and Methodology (continued)

- Analyzed all of the Fund's transactions identified and information provided to determine whether adequate documentation exists in accordance with requirements of the MOA, related agreements, and *Standards for Internal Control in the Federal Government* to validate the amounts of cash receipts and disbursements.[6] Specifically, to validate amounts, we reviewed transaction documentation, such as invoices, project proposals and approvals, checks, or other documents, to confirm that transactions took place and the amounts were consistent.

[6]GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999). *Standards for Internal Control in the Federal Government* was revised in September 2014 and became effective beginning with fiscal year 2016. Our review addresses the activities of the Fund for fiscal years 2008 through 2014; therefore, we reference the November 1999 version of *Standards for Internal Control in the Federal Government* throughout these slides.

Scope and Methodology (continued)

- Confirmed cash received by the Fund from private companies to the extent possible, given that (1) some companies were no longer in business, (2) could not be reached, or (3) did not respond to our confirmation letters.
- Compiled data about the Fund's cash receipts and disbursements activity from multiple sources, such as FWS, TNC, and ODOT, by interviewing knowledgeable officials and obtaining relevant documentation, and tested the data by reviewing supporting documentation.
- Summarized the Fund's cash receipts and disbursements by fiscal year.

We conducted this performance audit from November 2015 to September 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Summary Observations

Our review of the transactions and documentation related to the Fund resulted in the following overall observations:

- The Fund received cash receipts totaling $1,004,281 from three main sources—private companies, ODOT, and BLM.
- The Fund disbursed $1,004,204 for ABB research projects, ABB habitat maintenance, and land acquisitions, among others.
- Amounts were generally supported with documentation from sources other than FWS.
- We identified several issues with the documentation provided as support.

Given the Fund's termination in July 2012, we are not including recommendations in this briefing. This work is part of a larger, ongoing GAO effort to evaluate FWS's conservation funds that will provide a broader understanding of the operation of these types of funds, including current conservation measures specific to the ABB.

Identified Amounts and Sources of Cash Received by the American Burying Beetle Conservation Fund (Fund), Fiscal Years 2008 through 2014

	Fiscal years							
	Before the MOA's establishment	During the MOA's active period				After the MOA's termination		
	2008/2009[a]	2009[a]	2010	2011	2012	2013	2014	Total
Cash receipts								
Private companies contributions								
For drilling without approval	$32,500	$5,000	--	--	--	--	--	**$37,500**
After discussions with FWS related to proposed projects	71,980	50,020	$8,500	$65,273	--	--	--	**$195,773**
Total received from private companies	**$104,480**	**$55,020**	**$8,500**	**$65,273**				**$233,273[b]**
ODOT								
Reimbursed through FWS	--	--	$236,070	$79,460	--	--	--	**$315,530**
Less: Overhead charged by FWS	--	--	(42,570)[c]	(14,329)[c]	--	--	--	**$(56,899)[c]**
Funds received by TNC	**--**	**--**	**$193,500**	**$65,131**	**--**	**--**	**--**	**$258,631**
Funds received directly from ODOT	--	--	--	--	--	--	$312,377	**$312,377**
Total received from ODOT Funds	**--**	**--**	**$193,500**	**$65,131**	**--**	**--**	**$312,377**	**$571,008**
BLM								
Wild Horse and Burro Program	--	$40,000	$40,000	$40,000	$40,000	$40,000	--	**$200,000**
Total cash received by the Fund	**$104,480**	**$95,020**	**$242,000**	**$170,404**	**$40,000**	**$40,000**	**$312,377**	**$1,004,281**

Source: GAO summary of U.S. Fish and Wildlife Service (FWS), Bureau of Land Management (BLM), Oklahoma Department of Transportation (ODOT), and The Nature Conservancy (TNC) data.

Note: Cells with dashes (--) indicate that there were no funds received in these areas.

[a]Fiscal year 2008/2009 included receipts through February 11, 2009. Fiscal year 2009 included receipts from February 12, 2009 , when the memorandum of agreement (MOA) establishing the Fund was signed, through September 30, 2009 (end of the fiscal year).

[b]We could not verify the completeness of cash receipts from private companies because we were unable to (1) confirm all of the amounts listed by FWS and TNC as some companies were no longer in business, could not be reached, or did not respond to our confirmation letters, and (2) determine whether there were receipts from additional private companies not included on the lists provided to us.

[c]FWS charged ODOT a 22 percent overhead rate on the amounts ODOT paid FWS. Consequently, ODOT paid FWS an additional $56,899 (22 percent of $258,631) that was not received by the Fund.

Cash Received by the ABB Conservation Fund

The Fund had cash receipts, including reimbursements from three sources:

1. **Private companies**:
   a. Private companies contributed directly to TNC for suitable conservation measures for drilling projects within the ABB's range in Oklahoma that occurred without prior approval from BLM and consultation with FWS.
      - When threatened or endangered species are involved, part of BLM's approval process for permitting drilling projects includes a consultation with FWS, as required by section 7 of the ESA.[7]

[7]Under the ESA section 7, a federal agency must consult with FWS when any action the agency carries out, funds, or authorizes—such as through a permit—may affect a listed endangered or threatened species or critical habitat. The consultations may be informal or formal. Formal consultations generally result in FWS issuing a biological opinion. A biological opinion contains a detailed discussion of the effects of the action on listed species or critical habitats and FWS's opinion on whether the agency action is likely to jeopardize the continued existence of the species.

Cash Received by the ABB Conservation Fund (continued)

However, in 2008 BLM found that nine companies drilled wells within the ABB's habitat range in Oklahoma without requesting approval from BLM; therefore, BLM was unable to consult with FWS. After learning about these wells, BLM and FWS discussed ways to address the potential adverse effects that the wells could have or had on the ABB, resulting in an FWS memo to BLM recommending that such companies contribute to the Fund. After receiving the FWS memo, from June 2008 through April 2009 BLM sent letters to those companies recommending that a contribution be made to the Fund for BLM to continue working on permitting the companies' wells. Subsequently, BLM issued a policy document in February 2010 stipulating that a $2,500 stipend would be assessed from each company that drilled a well without following the application process for obtaining approval to drill.

Cash Received by the ABB Conservation Fund (continued)

b. Private companies also contributed to the Fund after (1) federal agencies' ESA section 7 consultations (informal or formal) with FWS regarding their projects or (2) discussions with FWS of their projects in ABB habitat areas that did not involve authorization or funding from federal agencies. As a result of these discussions, FWS would recommend contributing to the Fund as one option for private companies seeking to carry out projects in ABB habitat areas.

Some FWS-issued biological opinions, prepared as a result of formal section 7 consultations, specifically mentioned making a contribution to the Fund or included it as a term or condition. In the cases involving other discussions with FWS that were not documented in a formal biological opinion, we were unable to determine the specific reasons why private companies ultimately made contributions to the Fund because FWS was unable to provide supporting documentation, as discussed further below.

Cash Received by the ABB Conservation Fund (continued)

We could not verify the completeness of cash receipts from private companies because we were unable to (1) confirm all of the amounts on the lists provided by FWS and TNC because some companies were no longer in business, could not be reached, or did not respond to our confirmation letters and (2) determine whether there were receipts from additional private companies not included on the lists provided.

Cash Received by the ABB Conservation Fund (continued)

2. **ODOT:**

   ODOT reimbursed TNC through FWS to further the conservation of the ABB, while retaining ODOT's ability to implement new and routine maintenance and update activities to the transportation network in Eastern Oklahoma.

   Under the cooperative agreement between FWS and TNC regarding ODOT funds, TNC proposed projects in writing, obtained FWS written approval, paid for the projects, and submitted to FWS a form for reimbursement from ODOT funds. FWS added an overhead charge of 22 percent of the cash disbursements TNC invoiced and submitted its own invoice to ODOT. Once ODOT paid FWS for the invoice, FWS retained the overhead charge and reimbursed TNC the net amount.

Cash Received by the ABB Conservation Fund (continued)

3. **BLM:**

   BLM reimbursed TNC directly under a grant agreement between BLM and TNC regarding the Wild Horse and Burro Program funds until the grant agreement expired in September 2013. As previously mentioned, TNC officials stated that they considered the Wild Horse and Burro Program grant receipts and disbursements to be separate from the Fund since they received the money as a grant from BLM, which was governed by a grant agreement and not the MOA.

Cash Received by the Fund before the MOA Was Established or after It Was Terminated

The MOA establishing the Fund was in effect from February 12, 2009, until its early termination on July 31, 2012. However, we found the following:

- TNC received cash from private companies prior to the MOA's establishment because FWS provided private companies with the option to make contributions to the Fund during fiscal years 2008 and 2009, before it signed the MOA. According to TNC officials, FWS began drafting the MOA in 2007 and it was not finalized until 2009. However, none of these funds were expended until after the MOA was signed.
- TNC received cash from ODOT after the MOA's termination in 2012 because in June 2014 FWS requested that ODOT reimburse TNC directly for disbursements TNC made under the ODOT cooperative agreement prior to the termination of the MOA. This reimbursement appears as a receipt for $312,377 in fiscal year 2014. According to FWS officials, after the termination of the MOA in July 2012, the reimbursement process for ODOT funds was no longer available through FWS.

Cash Received by the Fund before the MOA Was Established or after It Was Terminated (continued)

- BLM continued making annual payments under its grant agreement for the Wild Horse and Burro Program until fiscal year 2013 when the grant expired.

Identified Amounts and Types of Cash Disbursed by the American Burying Beetle (ABB) Conservation Fund (Fund), Fiscal Years 2009 through 2013

	Fiscal years					
	During the MOA's active period				After the MOA's termination	
	2009[a]	2010	2011	2012	2013	Total
Cash disbursements						
Disbursements for ABB research projects from:						
Private companies' receipts	$5,962	--	--	--	--	**$5,962**
ODOT receipts	--	$12,285	$14,865	$28,020	--	**$55,170**
Total disbursements for ABB research projects	**$5,962**	**$12,285**	**$14,865**	**$28,020**	**$0**	**$61,132**
Disbursements for land acquisition and closing costs from:						
Private companies' receipts	--	$129,273	--	--	--	**$129,273**
ODOT receipts	--	246,346	--	$255,186	--	**$501,532**
Total disbursements for land acquisition and closing costs	**$0**	**$375,619**	**$0**	**$255,186**	**$0**	**$630,805**
Disbursements for stewardship endowments from:						
Private companies' receipts	--	$13,727	$60,840	$23,471	--	**$98,038**
ODOT receipts	--	--	--	14,229	--	**$14,229**
Total disbursements for stewardship endowments	**$0**	**$13,727**	**$60,840**	**$37,700**	**$0**	**$112,267**
Disbursements for ABB habitat maintenance from BLM's Wild Horse and Burro Program grant receipts	$40,000	$40,000	$40,000	$40,000	$40,000	**$200,000**
Total cash disbursed by the Fund	**$45,962**	**$441,631**	**$115,705**	**$360,906**	**$40,000**	**$1,004,204[b]**

Source: GAO summary of U.S. Fish and Wildlife Service, Bureau of Land Management (BLM), Oklahoma Department of Transportation(ODOT), and The Nature Conservancy (TNC) data.

Note: Cells with dashes (--) indicate that there were no funds disbursed in these areas.

[a]Fiscal year 2009 included disbursements from February 12, 2009, when the memorandum of agreement (MOA) establishing the Fund was signed, through September 30, 2009.

[b]Total disbursements shown for the Fund in this table are $77 less than total amounts received because we were unable to obtain support for a $77 difference on one TNC invoice from ODOT funds. Specifically, ODOT documentation showed that it reimbursed TNC $312,377 for multiple cash disbursements related to ABB transactions; however, TNC's support for disbursements totaled $312,300.

Cash Disbursed by the ABB Conservation Fund

TNC made cash disbursements from the Fund for the following:

- Research to study the ABB population and the effects of conservation measures.
- Land acquisitions in Oklahoma to help ensure preservation of ABB habitat, which included the land purchase price and closing costs related to the purchase.
- Stewardship endowments to help provide for the long-term maintenance and management of the acquired lands.
- ABB habitat maintenance to pay for labor and supplies used to remove and exterminate invasive plants that degraded ABB habitat, build and maintain fences to contain animals that helped support ABB habitat in Oklahoma, and conduct prescribed burns, among other activities.

Cash Disbursed by the Fund after the MOA Was Terminated

The MOA was terminated on July 31, 2012. However, under its grant agreement with BLM's Wild Horse and Burro Program, TNC continued making annual disbursements until the end of fiscal year 2013 when the grant agreement expired. As previously mentioned, TNC officials stated that they considered the Wild Horse and Burro Program receipts and disbursements to be separate from the Fund since they received the money as a grant from BLM, which was governed by a grant agreement and not the MOA.

FWS Was Unable to Provide Supporting Documentation for Most of the Fund's Transactions, but Validity of the Amounts Was Generally Supported by Other Sources

During our review we found that FWS was unable to provide supporting documentation for most of the Fund's transactions, but we were able to obtain supporting documentation for most transactions from TNC, BLM, and ODOT for their projects. It is unclear whether FWS should have retained these documents under its record retention policy. When we requested the supporting documentation for the Fund's transactions, FWS officials stated that they could not find supporting documentation for the transactions and that officials who were involved with the Fund are no longer with the Oklahoma Ecological Services Field Office. *Standards for Internal Control in the Federal Government* provides that (1) entities should appropriately document transactions and internal controls—and such should be readily available for examination—and (2) control activities include the creation and maintenance of related records that provide evidence that these activities were executed as well as appropriate documentation.[8]

While we were able to support most amounts from sources other than FWS, we identified other issues in our review of the documentation, which are described further below.

[8]GAO/AIMD-00-21.3.1.

Documentation of Private Fund Company Transactions

Receipts

FWS and TNC each provided a list of private companies' receipts. BLM and TNC provided supporting documentation, such as notification letters and acknowledgment of private company receipts and copies of checks for these transactions to support the validity of the amounts.

We also attempted to contact all of the private companies on the lists to verify that the amounts received from each company per the lists were accurate and complete. As noted previously, we could not verify the completeness of these cash receipts because we were unable to (1) confirm all of the amounts on the lists provided by FWS and TNC because some companies were no longer in business, could not be reached, or did not respond to our confirmation letters and (2) determine whether there were receipts from additional private companies not included on the lists provided.

Disbursements

TNC provided supporting documentation, such as the settlement statement for the land acquisition, to validate Fund disbursements made from private companies' receipts.

Documentation of ODOT Transactions

Receipts

FWS could only provide summary documentation of ODOT receipts, but we obtained detailed documentation, such as disbursement reports and copies of warrants, from ODOT.

Disbursements

TNC generally provided supporting documentation, such as copies of project invoices, settlement statements for land acquisitions, and most project approvals. However, we were unable to obtain support for a $77 difference on one TNC invoice from ODOT funds. Specifically, ODOT documentation showed that it reimbursed TNC $312,377 for multiple cash disbursements related to ABB transactions; however, TNC's support for disbursements totaled $312,300. TNC officials stated that although they believe the additional $77 amount to be a valid expense made for an ODOT project, they could not account for it.

Documentation of BLM Transactions for the Wild Horse and Burro Program

Receipts and Disbursements

BLM and TNC provided supporting documentation, such as copies of invoices, the financial assistance grant agreement and its supplements, Single Audit reports, and performance reports, for the $200,000 in receipts and $200,000 in disbursements related to the Wild Horse and Burro Program.

Other Transaction Issues Identified

During our review of the documentation to support the validity of ABB receipts and disbursements, we found some instances in which the amounts were validated but the supporting documentation was deficient in other areas. Specifically, we found that three projects with disbursements lacked required FWS approval, FWS could not support the agreement to a 22 percent overhead charge imposed upon ODOT as part of their interagency agreement, and FWS incorrectly billed ODOT for one transaction as discussed below.

Other Transaction Issues Identified (continued)

- Three Disbursements Lacked Required Approvals:

  The MOA between FWS and TNC states that projects to be funded must be proposed in writing along with their funding levels—including any long-term maintenance costs—and that FWS should approve all proposed projects and funding levels in writing. Although TNC generally provided supporting documentation for the project disbursement amounts, neither FWS nor TNC could provide support for the written approval of three projects with disbursements totaling $27,867:

  1. research project supplies paid from private companies' funds in 2009 for $5,962,
  2. an ABB research project conducted with ODOT funds in 2010 for $12,285, and
  3. an ABB research project conducted with ODOT funds in 2012 for $9,620.

  According to TNC officials, because these projects were requested by FWS and not proposed by TNC, they did not obtain written approval from FWS.

Other Transaction Issues Identified (continued)

- FWS Lacked Support for Agreement of 22 Percent Overhead Charge:

  FWS did not provide or could not locate documentation to support the agreement to a 22 percent overhead charge, resulting in $56,899 charged to ODOT for ABB-related activities under the interagency agreement with FWS. FWS officials stated that the authority for the charges is the Intergovernmental Cooperation Act; however, neither the rate nor the authority to charge the rate was contained in the interagency agreement. FWS officials also stated that personnel involved with acceptance of this agreement no longer work for FWS, but the officials assume that ODOT was aware of the 22 percent overhead rate charged because ODOT paid the charge as billed. However, the FWS invoices provided by ODOT showed nonitemized lump sums that included the overhead charges. ODOT officials told us that they were aware that an overhead cost was charged, but they were unaware of the rate actually charged.

Other Transaction Issues Identified (continued)

- FWS's Billing Error:

  During our review of ODOT transactions, we also found that FWS incorrectly billed ODOT for $10,271 in March 2012 as evidenced by an unrelated invoice that referenced the ABB agreement number. FWS officials stated that upon further investigation, they discovered this error was the result of payroll that was erroneously accrued on this agreement causing the system to charge ODOT this amount. Subsequently, FWS reimbursed the full amount to ODOT in May 2016. This error is not included in the Fund's cash receipts and disbursements tables discussed previously.

Agency Comments and Third-Party Views

- The Department of the Interior and The Nature Conservancy provided technical comments on a draft of these slides, which we incorporated as appropriate.