

From: bill.weale@builderman.com

Subject: Fairlee Forest Governance: Questions which the Select Board must answer

Date: December 18, 2023 at 1:09 PM

To: Lance Mills lance.mills@fairleevt.gov, Peter Berger peter.berger@fairleevt.gov, Cathy McGrath cathy.mcgrath@fairleevt.gov

Cc: Ryan Lockwood townadministrator@fairleevt.gov



To: The Fairlee Select Board
From: Bill Weale
Date: 12/18/2023
Re: Your Town needs and deserves answers
cc: Ryan Lockwood, Fairlee Town Administrator

Hello Fairlee Select Board

This message is a followup to my "Usurping" email of Friday, 12/15/2023. (a copy is attached below) It comprises a more specific explanation with a long list of questions about legal culpabilities on the part of both the Town of Fairlee and the State of Vermont concerning management and oversight of all 1600 acres of town forest land, not "just" the 770 acres we acquired by the LWCF (W.H.Lange Memorial) Forest.

Below is a list including events, reports, actions, observations, etc., each of which is credibly documented. I've mostly avoided citations to specific documents. There are no secrets or surprises. Most are posted online. Many corroborating documents are also posted online. Many more are not, yet. I look forward to informing anyone interested, particularly "licensed professionals" such as foresters, CPAs, attorneys, etc.—anyone wishing to have this matter pursued in a way beneficial to the citizens of the State of Vermont, especially those of Fairlee.

Deliberately planned and executed actions by some individual members of the Fairlee Select Board and the Fairlee Forest Board have enabled them to evade the terms and conditions of our Federal LWCF Grant, covering 770 acres of forest, plus 3 long access trails through the Town Forest. As a result of their chokehold over the management of public property, they have very likely violated Vermont State Criminal and Civil, in addition to the terms and conditions of the Lange Forest grant.

Supporting this contempt for "gub'ment control" has required a shroud of secrecy—a deliberate coverup—effective for more than 4 decades. Inevitably, serious environmental and financial damages have propagated throughout our entire 1600-acre Town Forest. They simply can't be ignored—or covered up—any more.

As a Select Board and as individuals, perhaps you've made the mistake so many of us have made nationally. In spite of our assumptions of a democracy and in spite of all of the checks and balances upon which we rely to protect that democracy, you, our legislative body, should not have assumed everything will always work right any more than we, your constituents, should.

Background:

In the Spring of 2020, Select Board Chair Peter Berger and former T-A Tad Nunez requested me to do research for the Select Board about the governance of the Fairlee Town Forest. (This is explained in detail in my 12/15/2023 message to the Select Board, attached below.)

What follows describes some details so far. This is a serious issue, documented by many important public records. The public must learn those records exist; it must understand the story they tell.

Nearly 10 years ago, Forest Board Chair David Matthews researched the long-buried rules of the LWCF grant. [He reported to the Select Board](#) that there were inconsistencies between the grant terms and conditions and the governance structure which had been unilaterally created by the Select Board. Both boards appear to have "forgotten" that exchange, but the documents remember. (Interestingly, a few have been scrubbed from the town website.)

Violations of the LWCF rules and abusive management practices of the acquired forest land were again brought to the attention of Mr. Berger and his Select Board nearly 4 years ago, in May 2020. (for details see the copy of that letter attached below) They also were reported at that time to Vermont's Department of Forests, Parks and Recreation, the state-side authority charged with monitoring compliance with and enforcing the rules of our LWCF grant. Since this issue was uncovered and exposed nearly 4 years ago, there has been a standoff—a deadlock—between State and Fairlee officials. Members of both groups have failed our town and seem to be trying to ignore—to hide—public disclosure of evidence which demonstrates their respective failures

References:

The Vermont Attorney General will not act on Fairlee's behalf. She claims a conflict of interest. The State of Vermont was supposed to have monitored and enforced the Town's compliance with the terms and conditions of the Lange Forest Grant. For 44 years and counting, it has never done so. Recognizing possible culpability of the State of Vermont in this matter, she has stated that her job is to defend the State.

There are 3 parties to the LWCF agreement, the Grantee Town, the Grantee State, and the Grantor, the United States. Our Select Board is duty-bound to respect the law and the legally-binding contracts for which we vote. The State of Vermont is, in perpetuity, legally bound to monitor our Town's compliance to and enforce the terms and conditions of the LWCF grant. Both our Select Board and the State of Vermont have failed us. All residents of the State of Vermont are entitled to accountability. **The quandary we face: accountability on the part of either our Select Board or our State, or both, implicates both.** Since both the State and the Select Board were notified, four years of cooperative stonewalling has added substantially to damages and costs. For every day, every storm, every seasonal melt that passes, environmental damages increase, recreational value decreases, and with both, respectively, at accelerating rates.

1) The Town of Fairlee's Select Board's culpabilities:

As serious as the entirety of this issue is, its triggering event is well documented and quite easy to understand. One need only consider a series of Select Board actions which occurred within an 8-day period, immediately preceding its request for the LWCF grant reimbursement funds. Those events describe a falsification, a forgery—changing just 3 words—of an important Federal grant requirement.

See my 12/15/2023 email to the Select Board for more details. (copy attached below)

With this slight-of-hand and secret 3-word falsification of the terms of a Federal Contract, the Fairlee Select Board intentionally and knowingly pilfered voter authority over the acquired forest land and bestowed it upon themselves. The results they achieved: town ownership of 770 acres of forest land, fully paid for by U.S. taxpayers; successful evasion of the entirety of the Town's legally-binding LWCF grant responsibilities; and plenary control by the Select Board over not just the LWCF-acquired forest land but, eventually, over our entire 1600-acre forest. We have not been allowed even a single public vote concerning forest management, finances, or stewardship since we voted 92-53 in 1979 to accept the terms of our Federal LWCF grant.

- Is this the classic definition of Criminal Fraud?
 - And, with well-documented financial damages, is this also the classic definition of Civil Fraud?
- Answers, please

Plenary control held by the Select Board means total, absolute and exclusive—excluding even its voting constituency. The Select Board was “caught” converting 550 acres of grant-funded forest, from what was supposed to have been our Recreational Forest, into a tree farm. They employed abusive whole-tree logging and biomass chipping practices. They clear-cut forest land in steep terrain and thin soils to build truck roads and log landings, appropriate for equipment which never should have been allowed on any LWCF-funded Recreational Forest land. [Earlier, they had “dismissed” the services of our County Forester](#), because he would not approve precisely what they proceeded to do.

Our Town Officials sold our forest products (sometimes even lacking a Timber Sales contract) without seeking voter permission or even notifying the voters about the logging. This violates VT State Law regarding the sales of public property. They have spent all of the proceeds from these unauthorized sales to support access to ATVs and mud trucks. In some cases they even spent funds directly from the sales proceeds to remove water bars, fill ditches and push raw soils into stream buffers, after honest loggers had previously closed out projects properly. This has been observed and reported by our State foresters, who themselves were never notified by the town or the State about the restrictions of the LWCF program.

Forest Board Chair David Matthews directed licensed forester Markus Bradley, acting as an agent for the Forest Board, not for the town, to conceal—to hide—expenses [by deducting them from stumpage receipts before those receipts were reported to the Town.](#)

- Does the Law describe these unauthorized sales and secret and unapproved expenditure of town money as Larceny and Embezzlement?
- Answers, please

With public input and voting completely suppressed, we have not even been able to mitigate well-documented and worsening environmental damages and financial losses, even though we are still liable for them. Nor are

we able to exercise the responsibilities we accepted when we voted to enter into the LWCF contract: the Select Board rejects our requests to apply for grant money targeted precisely for what we need to begin restoration work. The Select Board used our votes to obtain Federal money to buy 770 acres of forest, but then usurped both our rights to manage the land and our responsibilities to honor the grant contract. We are, as merely tax-paying citizens, in an impossible dilemma.

•Is this an example of our Select Board using our votes—our commitment to the grant requirements—to Bribe the Federal and State Governments into obtaining money for their own unauthorized and illegal purposes?

•Is the Select Board Intentionally Negligent by not protecting the interests of the Town AND by preventing its voters from doing so?

•Is there a basic Civil Rights issue in our Select Board's deliberately and continually suppressing our legal Right to Vote for 44 years and counting?

Answers, please

All along, the Select Board has used a cooperating Forest Board (after all, the Forest Board is a Select Board appointed board) to help execute many unlawful and Federal contract-violating actions.

•Is this an example of a Conspiracy between and amongst Town Boards and multiple Town Officials against their own citizens?

Answer, please

Hiding the flow of town money through bogus Forest Trust funds has led to misleading, inaccurate and incomplete financial reporting, which in turn has led to the production of inaccurate Statements of Financial Position by our independent CPA's.

•Were our CPA's and Town Treasurers, Audit and Budget Committees misled by Town officials or were they negligent?

Answers, please

Our former T-A Nunez and Select Board member Peter Berger have repeatedly said that all of the Forest Board's activities have been legal and OK'd by Town Attorney, Paul S. Gillies. We've corresponded with Gillies: Gillies has or should have sufficient knowledge to make an opinion, and certainly by now that opinion should be on file with the town and available to the public. We've asked for that "legally defensible opinion" repeatedly since June of 2020. We've never received it. (Two of the most serious offenses an attorney can commit are 1) working in concert with a client to intimidate a potential witness from reporting a crime and 2) failing to report a crime he knows has happened and/or is likely to happen or continue.

•Has Attorney Gillies been misled by Town Officials?

•Is Attorney Gillies himself seriously negligent?

Answers, please

2) Collective culpabilities of both the Select Board of the Town of Fairlee and the State of Vermont

A complaint was filed over a year ago with the Office of the Inspector General of the Department of the Interior, bringing to the DOI OIG's attention the complete failure of the State to monitor and enforce the Town's compliance to the terms of the LWCF grant. The State's failure in compliance monitoring has been an effective cover for the original grant fraud committed by the Select Board, and thus, for the 44 years of neglect, abuse and mismanagement of our entire forest.

Just last week the Office of Inspector General, U.S. Department of the Interior released a report which is highly critical of the National Park Service' own oversight responsibilities to assure that the states themselves are living up to their requirements of LWCF Grant compliance by the states' "...political subdivisions and public agencies."

Where compliance and enforcement are necessary and stipulated, it is because we should not always assume absolute trust in all folks all of the time. The Town of Fairlee must not be the only city or town harmed by a State's negligence in LWCF compliance monitoring:

[The National Park Service Should Increase Monitoring and Oversight To Protect the Integrity and Recreational Value of the Land and Water Conservation Fund State Side Program | Office of Inspector General, U.S. Department of the Interior \(doioig.gov\)](#)

3) The State of Vermont's culpability:

Several documents, including the 1964 Act of Congress which enabled the LWCF program, the LWCF Grants-in-Aid Manual, and numerous legally-binding documents comprising Fairlee's own specific LWCF grant contract are all in agreement: they are infused with language clearly and unambiguously assigning the State of Vermont the authority and the responsibility to monitor and enforce all LWCF grant contracts throughout the State, as well as those of Fairlee's specific grant agreement. (See, for example, Project Agreement, General Provisions, Part II – Continuing Assurances:

"A. The State agrees, as recipient of this assistance, that it will meet the following specific requirements and that it will further impose these requirements, and the terms of the project agreement, upon any political subdivision or public agency to which funds are transferred pursuant to the project agreement. The State also agrees that it shall be responsible for compliance with the terms of the project agreement by such a political subdivision or public agency and that failure by such political subdivision or public agency to so comply shall be deemed a failure by the State to comply with the terms of this agreement."

This Agreement was signed by Vermont's Agency of Environmental Conservation (now VT ANR). The State failed its duty of Compliance Monitoring for our LWCF acquisition grant. In fact, there was never a Compliance visit or other communication regarding the LWCF grant by the State following the transfer of grant reimbursement funds to the town in March of 1980.

The above was confirmed when we first notified the State in June of 2020. Forty years after the grant closing, we discovered in our town archives the apparent act of grant fraud (as explained above in the list of Select Board culpabilities) by our Town Select Board. That act of fraud was committed **before** the transfer of funds to the Select Board, but importantly, over 6 months **after** all parties had signed the Grant Agreement and its legally-binding terms and conditions. That act annulled a legal town vote and bestowed on the Select Board solitary and absolute control of the acquired forest land, contrary to the legally-binding grant requirements that a Board of Trustees, elected by the town, would have control.

•How can this not be a case of Grant Fraud?

Answer, please

Failing completely at Compliance Monitoring, albeit for 4 decades, could be considered "mere" negligence on the part of the State. But what about failing to respond for nearly 4 years after it was notified? What about ignoring for years the on-the-ground reported findings of its own field experts? What about refusing to respond to the State's Auditor of Accounts? I believe he made that request nearly 2 years ago. What about ignoring the directive from the EPA to investigate Federal Water Quality violations? That request by the EPA VT DEC was made 13 months ago.

- Is this Negligence of the part of the State?
- Is this Intentional Negligence on the part of the State?
- Is the State (constructively) involved in a Fraud?

Answers, please

The State itself appears to have been defrauded, yet it claims that a conflict keeps it from investigating. Since the State won't refer the matter to Federal Authorities, then who will? It is clear, and has been for years, that our Select Board has made itself immune to accountability and consequences, unless Federal Authorities step in.

One alternative our town has for accountability, enforcement, restoration and restitution depends upon our trust that Federal Authorities are serious and effective in discharging their duty to protect and enforce the 1964 LWCF program and the 1965 Federal Water Quality Act, both Acts of Congress. The recent report by U.S. Interior's Inspector General (see above), highly critical of the National Park Service's lack of monitoring the States' LWCF grant responsibilities, is a sign that help is on the way, that LWCF grant terms and conditions will be enforced.

Time is of the essence. We have lost 4 construction seasons since all of this came to light. With miles of forest roads in steep terrain, severely rutted by unchecked ATV activity, and at least a dozen stream crossing violations, erosion and discharges increase at an exponential rate. Our forest is primary watershed for already-stressed Lake Morey. Our Town needs an independent and elected Forest Board now.

To be able to engage the resources we'll need for next season, we must commence a process of public planning immediately. Documents which are part of the LWCF grant provide for that public process. All that is needed is for that process to be started.

The Select Board should immediately provide the funds to hire an independent consulting attorney, one who puts the rights of town's residents—its voters—above all else. This is an emergency. The Fairlee Select Board has had, for years, the legal obligation to do so. It's really simple: who amongst our 3 Select Board members has the courage to honor their oath? For each individual, this should be easier than it is simple. Or is the Select Board still in favor of endorsing and continuing a fraud?

Culpability, both criminal and civil can be sorted out by the appropriate authorities. Money damages are significant, fairly easy to compile and, where necessary, to monetize. There is the possibility for enhanced damages. There are many potential sources for recovering damages, depending on what we learn: PACIF, the Town's insurer, the State of Vermont, licensed Forester Markus Bradley, Logger Bruce Limlaw, former Forest Board Chair David Matthews, Licensed Attorney Paul Gillies, and Licensed CPA Martin Segale. There are others, but nothing will happen until our residents ask the hard questions and learn the truth.

This matter has brought into suspicion many town officials. Our townspeople deserve to know who in Town Hall can be trusted.

The whole State must know. This type of behavior, unchecked even at the State level, jeopardizes the State's eligibility for all similar types of forest land protection grants.

Bill Weale
Fairlee, Vermont

