

Opinion No. 20.

**Fish and Game Department—Wildlife-
Restoration Projects—Consent
to Federal Act—Effect of
Consent.**

HELD: 1. A proposed act purporting to give consent to the "provision" of the Federal Act which adds another requirement such as the consent of the Governor, does not meet the requirements of the Federal Act, the provisions of which do not include the Governor's consent.

2. The consent by the state through legislation to a Federal Act which requires that the Secretary of Agriculture and the Fish and Game Commission "shall agree upon wildlife-restoration projects" does not permit the Secretary of Agriculture or the Biological Survey to undertake such projects or to acquire lands for such purpose without the consent of the Fish and Game Commission.

February 8, 1939.

Hon. J. A. Weaver
State Fish and Game Warden
The Capitol

Dear Mr. Weaver:

You have submitted House Bill No., introduced by Siegling, (which we shall refer to as the State Act) and have asked my opinion upon the following questions:

1. Does such House Bill meet the requirements of the Act of Congress therein referred to as "Public—No. 415—75th Congress" approved September 2, 1937 (which we shall refer to as the Federal Act)?

2. Does the consent given by said House Bill give the Biological Survey or the Secretary of Agriculture authority to acquire lands, or undertake wild life restoration projects in Montana, without the consent of the Fish and Game Commission?

Section 1 of the Federal Act provides:

"That the Secretary of Agriculture is authorized to cooperate with the States, through their respective state fish and game departments, in wildlife-restoration projects as hereinafter set forth; but no money apportioned under this Act to any state shall be expended therein until its legislature or other state agency authorized by the State Constitution to make laws governing the conservation of wildlife, shall have assented to the provision of this Act and shall have passed laws for the conservation of wildlife which shall include a prohibition against the diversion of license fees

paid by hunters for any other purpose than the administration of said State Fish and Game Department, except that, until the final adjournment of the first regular session of the Legislature held after the passage of this Act, the assent of the Governor of the state shall be sufficient. The Secretary of Agriculture and the State Fish and Game department of each state accepting the benefits of this Act shall agree upon the wildlife-restoration projects to be aided in such state under the terms of this Act and all projects shall conform to the standards fixed by the Secretary of Agriculture." (Underscoring ours.)

Section 1 of the State Act reads:

"The State of Montana hereby assents to the provisions of the Act of Congress entitled, 'An act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes,' approved September 2, 1937 (Public No. 415, 75th Congress), and the Montana Fish and Game Commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects as defined in said Act of Congress and in compliance therewith and no funds accruing to the State of Montana from Fish and Game license fees shall be diverted for any other purpose than the administration of the Division of Fish and Game of said Department."

It is proposed to amend this section of the State Act by adding, "provided that no wildlife-restoration project shall be established by the Montana Fish and Game Commission except with the consent of the Governor of the State of Montana, which consent shall be evidenced by the Governor's proclamation defining the boundaries of the area included in the project."

It will be noted that Section 1 of the Federal Act specifically states that the Secretary of Agriculture and the Fish and Game Department shall agree upon the wildlife-restoration projects. By the amendment to Section 1 of the

State Act, it is proposed that the Governor shall also consent or agree to all wildlife-restoration projects. In my opinion this does not meet the requirements of the Federal Act for the reason that it virtually amends Section 1 of the Federal Act by requiring that the Governor, as well as the Fish and Game Commission, shall agree upon the wildlife-restoration projects, whereas all this section requires is that the Fish and Game Commission shall agree with the Secretary of Agriculture. The State Act, as amended, therefore does not give unqualified consent to the "provision of this Act," as required by Section 1 of the Federal Act, since the provision of that Act does not include the Governor's consent.

As to the second question, it is my opinion that since the Federal Act expressly provides that the Secretary of Agriculture and the State Fish and Game Commission shall agree upon wildlife-restoration projects (see last sentence of Section 1 of the Federal Act above quoted), neither the Secretary of Agriculture nor the Biological Survey, under his direction, may undertake wildlife-restoration projects or acquire lands in Montana for that purpose, without the consent of the Fish and Game Department. It will be noted that Section 2 of the Federal Act specifies that the term "wildlife-restoration project" shall be construed to mean and include "the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife, including acquisition by purchase, condemnation, lease, or gift of such areas or estates or interests therein as are suitable or capable of being made suitable therefor * * *."