

MINUTES
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

February 9, 1977

The twelfth meeting of the Fish and Game Committee was called to order by Chairman Frank Dunkle, at 8:00 A.M., in Room 405 of the State Capitol Building.

ROLL CALL: All members were present, with the exception of Senator Manley, who was excused.

CONSIDERATION OF SB 281, an act to further regulate the use of snare traps.

Senator Mark Etchart, Chief Sponsor of the bill, outlined it briefly for the committee. There was discussion about snares that entrapped cattle and were a danger to saddle horses. He then introduced Mr. Jack W. Nickels, Jr., a rancher from Fort Peck, who spoke in favor of the bill. He feels it would relieve a lot of problems between farmers, ranchers and trappers.

Mr. Wes Woodgerd of the Montana Fish and Game Department said there is a definite problem that could be corrected by this bill, and that he supports it.

Mr. Kenneth Seyler, representing the Montana Department of Livestock, spoke, saying he understood the concern, but would ask that the use of a tagging procedure should be included in the bill.

Mr. Ralph Holman, Legislative Chairman of the Montana Outfitters and Guides Association, spoke in favor of the bill.

Chairman Dunkle asked if there were any opponents, which there were not. He then opened the hearing to discussion.

Senator Lowe asked if the traps should be registered with the Montana Fish and Game Department. Senator Etchart replied that the portion of the bill dealing with this had been changed.

Chairman Dunkle closed the hearing on SB 281.

CONSIDERATION OF SB 173, an act to require that at least one-half of the annual expenditures for fish and game acquisitions be used to purchase the development rights of productive agricultural lands acquired for game management areas.

Senator Greg Jergeson, Chief Sponsor of the bill, discussed it. He stated the complaints about the bill were that it is taking land out of private ownership and putting it into public ownership. He said the purpose is to keep the ownership in private lands. It is designed to keep habitat, which will remain for all time and therefore will benefit farmers and ranchers. Senator Jergeson mentioned that the amendments to the bill will decrease it to \$120,000 for the biennium for the Fish and Game Department to purchase development rights, rather than to buy land. He stated he would give the proposed amendments to Debbie Schmidt, Legislative Council Researcher, for her review.

Chairman Dunkle asked if there was further discussion on the bill.

Mr. Wes Woodgerd of the Montana Fish and Game Department said he felt there should be further discussion of the bill. He said some of the Department's money, such as coal tax money, is line-itemed for the purposes of purchase.

Senator Lowe spoke in favor of the bill, with a suggestion that SJR 3 could be explored in regard to land use, and it has a lot of merit.

Chairman Dunkle asked if there were any other proponents or opponents who cared to testify.

Ms. Jennifer Cote, representing the Western Montana Fish and Game Association of Missoula, testified. It was her feeling that if the people's money is spent, the land should be purchased and not leased. She stated that private landowners pay taxes on this land and her association would prefer private ownership.

Senator Galt asked if last session a bill wasn't passed that would require the landowner to sign a form and then receive a tax reduction.

Senator Jergeson said the individual's property wouldn't be put in a higher classification. The development rights would be complementary.

Debbie Schmidt stated if a farmer or rancher were to sell his rights, it would be taxed as an agricultural use; she didn't think it would be much of a tax break.

Chairman Dunkle excused Senator Lowe from the hearing at 8:30 A.M. He then closed the hearing on SB 173, asking Debbie Schmidt to research the amendments for the committee.

CONSIDERATION OF SB 117, an act to authorize the department of fish and game to utilize part of those portions of fishing license fees earmarked for purchase of fishing accesses for

development, operation, and maintenance.

Chairman Dunkle asked for testimony on SB 117.

Mr. Kevin Glaes of Trout Unlimited spoke in favor of the bill.

Jennifer Cote stated her association supported the bill as amended.

Mr. Wes Woodgerd said it was his understanding the bill has been amended into another bill.

Mr. Ralph Holman, Legislative Chairman of the Montana Outfitters and Guides Association, testified his association was unanimously in favor of it.

Mr. Bob Biggerstaff of the Montana Association of Conservation Districts spoke in support of the bill.

After ascertaining there were no further questions or discussion on the bill, Chairman Dunkle closed the discussion.

CONSIDERATION OF SB 151, an act to revise fish and game statutes relating to hunting and fishing licenses by clarification of existing statutes, simplification of the license structure, inclusion and modification of certain definitions, and establishment of administrative fees, without modifying existing licenses or fees.

Chairman Dunkle went through the proposed amendments to SB 151. (Attachment #1). He called for testimony on the amendments.

Mr. Ward Swanser of Billings, representing game farm owners, testified in support of the bill with the amendments. He feels the bill solidifies and codifies what the law presently says, and that it would have no adverse impact on the present law.

Mr. Wes Woodgerd of the Montana Fish and Game Department spoke in opposition to those amendments that would take away rights from the Fish and Game Department. He felt there was a need to draw a definite distinction between wild animals in captivity and wild animals in general. Mr. Woodgerd spoke of a serious problem of disease control. He said the committee should be aware that this matter is under litigation, and he felt the testimony should be heard in a court room. It was his opinion that we should not attempt to try the case here in committee, but in court. (Attachment #2).

Ms. Jennifer Cotes said her association is opposed to any kind of captivity, rather than propagation to increase our herds. She feels satisfied with the present laws concerning the disposal of carcasses.

Mr. Holman, representing himself as an individual, said when this was discussed, we wanted to point out that our concern at the time was directed at small game farms. Since this is in litigation, Mr. Holman recommended that it be left to court decision.

Mr. Swanser said he didn't feel the litigation will be a problem. He said he felt Mr. Woodgerd was speaking as an individual and not as a representative of the Fish and Game Department. His point was that all the game farm owners want is not to be required to buy a license to harvest their own animals. He felt all the opposition is covered by existing laws. He quoted several parts of existing laws. (Attachment #3).

Mr. Woodgerd said he wanted to reiterate that this matter belongs in a court of law and not before the committee.

Senator Galt asked Mr. Woodgerd if he spoke as a representative of the Fish and Game Department, rather than an individual. He replied that he represented the Fish and Game Department.

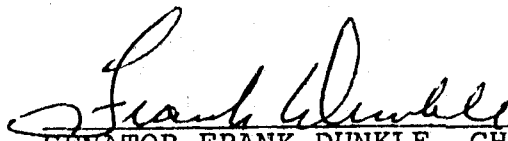
Senator Dunkle closed discussion on the bill.

DISPOSITION OF SB 281: Senator Warden made a motion to amend the bill as proposed. The motion was seconded by Senator Smith and carried.

A motion was made by Senator Smith that SB 281 DO PASS AS AMENDED. The motion was seconded by Senator Bergren and carried.

ANNOUNCEMENTS: Senator Dunkle announced that the committee would consider SJR 3 at the next meeting.

ADJOURNMENT: Chairman Dunkle adjourned the meeting at 9:30 A.M.


SENATOR FRANK DUNKLE, CHAIRMAN

1000

COMMITTEE ON

FISH AND GAME

BILL NO.

VISITOR'S REGISTER

[illegible]

SENATE COMMITTEE FISH AND GAME

Date 2-7-77 Bill No. 281 Time 9:00

NAME	YES	NO
DUNKLE, Frank, Chairman	✓	
WARDEN, Margaret, Vice Chairman	✓	
GALT, Jack	✓	
LENSINK, Everett	✓	
LOWE, Bill	✓	
MANLEY, John		
SMITH, Richard	✓	
BERGREN, Russell	✓	

Sharon (Riskin) Smith
Secretary

FRANK DUNKLE
Chairman

Motion: AND AS SO AMENDED, DO PASS

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 9 19 77

MR. Chairman

We, your committee on Fish and Game

having had under consideration Senate Bill No. 281

Respectfully report as follows: That Senate Bill No. 281

introduced bill, be amended as follows:

1. Amend page 1, section 1, line 17.

Following: line 16.

Strike: lines 17 through 20 in their entirety.

Insert: "(b) It is unlawful to set snare traps on private property without the landowner's consent."

2. Amend page 1, section 1, line 21.

Following: line 20.

Strike: lines 21 and 22 in their entirety.

Insert: "(c) Snare traps shall be set in a manner, and at a time, so as not to unduly endanger livestock."

AND AS SO AMENDED
DO PASS

February 9, 1977

PROPOSED AMENDMENT TO SENATE BILL 151

1. Amend page 2, section 1, line 15.
Following: "means"
Insert: "any state owned or controlled"

February 9, 1977

PROPOSED AMENDMENT TO SENATE BILL 151

3. Amend page 5, section 1, line 21.

Following: "thereof"

Insert: "not the subject of private ownership"

2

J. L. Woodgerd

Statement on SB 151
Department of Fish & Game - Wes Woodgerd, Consultant

First, I think we should draw a distinction between wild species under captivity and domestic species and why it has always been considered important to impose certain restrictions on the raising of wild species.

Someone should be in a position to insist that fencing be adequate to prevent mixing of the captive animals with wild herds for several reasons including proof of ownership and possible transmission of disease into the wild population.

I suspect that all of the committee members realize that this matter is under litigation at this time. It was unfortunate that the case got tried before this committee on Monday -- that testimony belonged in district court, not here. The decision should come from the court.

We have discussed the future of hunting in Montana in terms of paid hunting and shooting preserve hunting and now it is here. Regardless of our personal views on shooting preserve situations I can't believe that the Montana sportsman would be pleased to witness uncontrolled proliferation of large private shooting preserves.

It was recognized by the legislature several years ago that some type of controls should be placed on roadside zoos and menageries. Instances of abuse of animals were cited in support of the proposed legislation -- the Trap near Kalispell, the caged mountain lions at Bigfork and Seeley Lake, the cub bears chained to a post near the gas pumps to attract tourists. The Department of Fish and Game was given the job of imposing rules and regulations to prevent further abuse of captive wild animals. I can assure you no one volunteered but we got the responsibility anyway and things got better.

These controls are needed as badly now as they ever were and to remove captive wild animals from all controls would be a big step backward.

It goes without saying that the only powers exercised by the Department are those granted by the Legislature. They can be removed the same way. If they are bad or have been abused they should be amended or repealed. If they are good and doing the job as intended they should be retained.

History: En. Sec. 1, Ch. 97, L. 1933.

3 C.J.S. Animals §§ 3, 4, 7.

Collateral References

4 Am. Jur. 2d 262-267, Animals, §§ 15-19.

Animals⇒2.

67-205. (6665.2) Brands—recording—fees. That any owner or prospective owner of such animals in restraint or captivity shall be entitled from time to time, by written subscribed statement, to adopt distinctive brands or tattoo marks, and not including arabic numerals and not already in known use by others, for any of such animals and to have such distinctive brands and tattoo marks recorded in his name in the office of the secretary of the livestock commission, upon paying a recording fee of four dollars (\$4.00) for each such brand and for each such tattoo marks. Such statements shall be recorded in a suitable book to be kept therefor in said office. The presence of such recorded brand or recorded tattoo marks upon any such animal shall be prima facie evidence of the ownership of such animal in the person, persons, association or corporation in whose name such brand or tattoo mark is so recorded, subject always to his, their or its right to make due transfer of title, right or interest in, or lien upon such animal.

History: En. Sec. 2, Ch. 97, L. 1933.

3 C.J.S. Animals §§ 24-26, 28, 101.

Collateral References

4 Am. Jur. 2d 255-257, Animals, §§ 8, 9.

Animals⇒5-10.

67-206. (6666) Real and personal. Property is either:

1. Real or immovable; or,
2. Personal or movable.

History: En. Sec. 1073, Civ. C. 1895; re-en. Sec. 4424, Rev. C. 1907; re-en. Sec. 6666, R. C. M. 1921. Cal. Civ. C. Sec. 657. Field Civ. C. Sec. 162.

Timber

Growing timber is realty under our law. R. M. Cobban Realty Co. v. Donlan, 51 M 58, 66, 149 P 484.

Crops

Crops of wheat and oats are emblements, and as such are treated as chattels personal, subject to sale or mortgage, and levy of attachment or execution, even while still annexed to the soil. Power Mercantile Co. v. Moore Mercantile Co., 55 M 401, 407, 177 P 406.

Collateral References

Property⇒3, 4.

73 C.J.S. Property § 10.

42 Am. Jur. 195, 204, Property, §§ 13, 23.

Solid mineral royalty as real or personal property. 68 ALR 2d 728.

67-207. (6667) Real property. Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

History: En. Sec. 1074, Civ. C. 1895; re-en. Sec. 4425, Rev. C. 1907; re-en. Sec. 6667, R. C. M. 1921. Cal. Civ. C. Sec. 658. Based on Field Civ. C. Sec. 163.

even while still annexed to the soil, and are not included within the definition of real property. Morton v. Union Central Life Ins. Co., 80 M 593, 608, 261 P 278.

Annual Crops

Annual crops are usually treated as chattels personal, subject to sale or mortgage and levy of execution as are other chattels,

Annual crops growing upon land are not part of the land under the statutes of this state, but where the owner of the land sells it with the right of immediate possession in the purchaser and without

NAME: Donald C. W. DATE: 8/9/77

DATE: 8/9/72

ADDRESS: Muscatelli

PHONE: 549-2719

REPRESENTING WHOM? Western Montana Fish & Game Assoc.

APPEARING ON WHICH PROPOSAL:

SUPPORT?

AMEND?

OPPOSE?

COMMENTS: