

MINUTES OF THE MEETING OF THE FISH AND GAME COMMITTEE
January 15, 1981

The meeting was called to order at 12:30 p.m. by Chairman Ellison. Roll call was taken and all members were present.

HOUSE BILL 103 (EXHIBIT 1)

The hearing on HB 103 was opened.

Representative Manuel, sponsor of this bill, introduced Greg Curtis who represented the Teton Sportsmens' Association. Mr. Curtis told the committee the Choteau area residents are proposing to have the Teton-Spring Creek Bird Preserve opened for a special archery season for big game only.

Pete Howard, Sheriff of Teton County, gave some facts about the preserve. He said the area is thirty miles in depth (north-south) and three to four miles in breadth (east-west). It is located in the Teton River Valley bottom which is a very brushy area. The area is not conducive to firing arms. With the landowners' and the Department of Fish, Wildlife, and Parks' permission, the special archery season could address the problem of overpopulation of big game in this area. In one year, there was documented proof of thirty-seven vehicular animal kills in this area. One year ago, there was a hearing in Choteau with the landowners who live on the preserve area. Those landowners said they don't want to abandon the preserve but would be supportive of a bow and arrow hunting season. They would not be supportive of firearms being used. He said there is in excess of 300 head of deer in this area and because of the high population of deer, many are killed from traffic on the secondary highway that runs through the preserve.

Woody Wright, attorney for the Department of Fish, Wildlife, and Parks (F, W, & P), gave committee members copies of a prepared statement supporting HB 103 which included a report of the hearing that was held in Choteau (EXHIBIT 2). Mr. Wright read his statement to the committee.

Don Murray, principal of Choteau High School and also President of the Teton County Sportsmens' Association, spoke in support of HB 103. He said the area is just one-half mile from Choteau. A lot of the Choteau kids are bow and arrow hunters and if the preserve was opened to an archery season they could do a lot more hunting because of the closeness of the preserve to Choteau.

Wilbur Rehmann, representing the Montana Wildlife Federation, had received a request from the Teton County Sportsmens'

Association to see if the Montana Wildlife Federation would support this proposal. He told the committee the Federation would endorse and support HB 103.

Craig Swerneman, Teton County Sportsmens' Association, said the action that is being proposed does not affect any other preserve or hunting in any other area.

There were no opponents present at this hearing on HB 103.

Representative Robbins asked when this archery season would be opened. Mr. Howard told him that would be left up to this committee.

Chairman Ellison asked if this bill was passed, would the F, W, & P handle the hunting season on this preserve through the commission. Mr. Flynn, Director of F, W, & P, said yes.

The hearing on HB 103 was closed.

HOUSE BILL 102 (EXHIBIT 3)

The hearing on HB 102 was opened.

Representative Manuel, sponsor of this bill, introduced Mr. Flynn to the committee. Mr. Flynn read a prepared statement from his department to committee members (EXHIBIT 4) and explained the amendments to the committee.

Mr. Rehmann told the committee the Montana Wildlife Federation supports HB 102 because it gives the F, W, & P better land management capabilities and makes them more fiscally responsible.

Bob Gilbert, representing the Montana Wool Growers Association, told the committee his association supports HB 102.

There were no opponents present at this hearing on HB 102.

Mr. Flynn told the committee the department will use only the interest from the trust fund. The interest money would go into an earmarked account that would be appropriated to the F, W, & P by the legislature every two years.

Representative Devlin asked if this money would be used to purchase other land. Mr. Flynn told him "no" and referred him to page 2, line 25 of HB 102.

Mr. Flynn told the committee the F, W, & P has some property in the Fox Lake area. There is gas and oil development in the

middle of the land owned by the F, W, & P. They would like to have this trust fund account so that monies from that activity will go to the Department of F, W, & P.

Representative Bennett said he had a problem with the Board of Investments taking the principal of these types of trust accounts and investing that money out-of-state.

Representative Robbins said there is going to be a bill that will prohibit the Board of Investments from investing out-of-state.

Chairman Ellison asked Mr. Flynn where the money that is earned from the sale of land goes now. Mr. Flynn told him that money goes into the operational budget and would be spent.

Chairman Ellison asked if that money were surplus and the F, W, & P had no place to spend it, would the money be carried over into the next biennium. Mr. Flynn told him he didn't know for sure but it was his impression that if that money was not spent in the same biennium that it was earned, then the money would revert back to the general fund at the end of that biennium.

Representative Phillips told the committee he had read in the LFA (Legislative Fiscal Analyst) report that some of the coal money is earmarked strictly for maintenance of parks. He said there is a lot of money that could not be spent because it is earmarked strictly for maintenance. He asked Mr. Flynn if that could happen with this proposal. Mr. Flynn told him he didn't feel there would be enough interest generated from this trust fund to worry about that.

Representative Devlin asked Mr. Flynn if the interest from this trust fund could be carried over into other bienniums. Mr. Flynn told him it could.

The hearing on HB 102 was closed.

The committee was then called into Executive Session.

HOUSE BILL 123 (EXHIBIT 5)

The subcommittee, appointed by Chairman Ellison to address problems brought up by Jack Williams concerning HB 123, reported their findings to the committee.

Representative Phillips, who acted as chairman of that subcommittee, told the committee after talking with Russ Josephson, committee counsel, and the sponsors of HB 123, they would like

to keep the bill as simple as possible and not put restrictions on the cities and towns. The subcommittee's recommendation for amending HB 123 is as follows:

Title, line 9.

Following: "MCA"

Strike: "."

Insert: ", and providing for an immediate effective date."

Page 1, line 21.

Strike: ":"

Page 1, line 22.

Following: line 21

Strike: "(a)"

Following: "by the"

Strike: remainder of line 22 and line 23 through line 2 on page 2 in their entirety

Insert: "town or city."

There was discussion concerning the \$25 fine mentioned on page 1, line 19 of HB 123. It was suggested that the city or town could set a fine. Representative Phillips said if the committee changed that, it might mean the city or town would have to write new ordinances.

Representative Nilson moved the amendments be approved. Representative Phillips seconded the motion. The motion was voted on and PASSED unanimously.

Representative Phillips moved that HB 123 DO PASS AS AMENDED. Representative Roush seconded the motion. The motion PASSED with all members of the committee voting "aye" except Representative McLane who voted "no."

HOUSE BILL 103

Representative Fedas moved HB 103 DO PASS. The motion was seconded by Representative Manuel. The motion carried unanimously.

HOUSE BILL 102

Representative Fedas moved the amendments to HB 102 (EXHIBIT 6), as set forth by the Department of F, W, & P, DO PASS. Representative Manuel seconded the motion.

Representative Bennett feels the principal and interest should be available to be spent on investments in the State of Montana. The principal is turned over to the Board of Investments who have the policy of investing that money wherever they can obtain the best interest.

Representative Feda made a substitute motion to sit on this bill.

The amendments to HB 102 were discussed by the committee.

Representative Bennett said he still had problems with taking the money from this fund out-of-state and just taking the interest back. Chairman Ellison told the committee the Board of Investments are charged with having to invest money where it will get the best interest.

Representative Feda withdrew his motion. There was more discussion on the amendments.

Representative Manuel then moved the amendments on HB 102 be approved. Representative Feda seconded the motion. A roll call vote was taken. Those voting "no" were: Representatives Ellison, Bennett, Burnett, Devlin and Feda. The rest of the committee voted "aye" except Representative McLane who was excused. The motion carried.

Representative Phillips moved HB 102 DO NOT PASS AS AMENDED. Representative Devlin seconded the motion.

There was more discussion on the bill. Representative Phillips explained why he made that motion. He told the committee he felt locking up the trust fund was not a wise use of that money. He said no one knows what the 1980 dollar will be worth in 1995.

Chairman Ellison told the committee he was going to recess this Executive Session until the next meeting.

The meeting was adjourned at 2:00 p.m.



ORVAL ELLISON, Chairman

vml

HOUSE BILL NO. 103

INTRODUCED BY

Manuel

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT A SPECIAL ARCHERY SEASON IN THE TETON-SPRING CREEK BIRD PRESERVE; AMENDING SECTIONS 87-5-401 AND 87-5-405, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-5-401, MCA, is amended to read:

"87-5-401. Creation of game preserves and general provisions. (1) There are game preserves within the state for the better protection of all the game animals and birds within their limits. Except as otherwise provided in this section part, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap

fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or to carry firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission."

Section 2. Section 87-5-405, MCA, is amended to read:

"87-5-405. Teton-Spring Creek bird preserve ---special archery---season. (1) For the better protection and propagation of birds, the following described area in Teton County, state of Montana, is hereby set aside and established as a state bird preserve, to be known as the Teton-Spring Creek bird preserve: All of sections 2, 3, 4, 9, 10, 11, 12, 13, 14, and 15 in township 24 north, range 5 west.

(2) The department may open all or part of the Teton-Spring Creek bird preserve for a special archery season in accordance with 87-1-304 and 87-2-108."

-End-

Presented by: F. Woodside Wright, Dept. Attorney January 15, 1981
Dept. Fish, Wildlife, & Parks

Good afternoon, Mr. Chairman, members of the House Fish & Game Committee. My name is F. Woodside Wright, Department attorney for the Department of Fish, Wildlife, & Parks. I am speaking on behalf of the department on HB 103.

Supporters of this bill ask that the department present to you the outcome of the hearing held in October, 1979, on the proposed abandonment of the Teton-Spring Creek Bird Preserve. As part of my statement today, I am including a report made to the Fish & Game Commission after that hearing.

In the summer of 1979, concerned sportsmen in and around Choteau, Montana asked the Commission to provide bow and arrow hunting in the Teton-Spring Creek Bird Preserve. The only method that could be used under current state law was to abandon the bird preserve and then re-establish a closed area except for bow and arrow hunting. A petition to the department by sportsmen was presented and the hearing set up pursuant to state law to receive input on that abandonment. At the hearing, it was apparent that sportsmen and landowners did not want the area in the bird preserve abandoned where there was a possibility that its original purpose could be lost. Legislation is the only alternative that provides for continuing the preserve and authorizing limited hunting within it. That authorization is provided in HB 103. The department sees the need for some limited hunting within the bird preserve because of increased deer populations. Not only do the deer live inside the preserve, but they forage outside the preserve on private grounds.

Authorizing bow hunting in this preserve would also increase sportsmen hunting opportunity close in to Choteau and provide the department another method of responding to landowner damage complaints within the preserve.

Upon receiving the report and considering the comments from the hearing, the matter was tabled, as the commission could not authorize hunting in the preserve under current state law.

Thank you for the opportunity to testify. If you have any questions, I am available to answer them.

BEFORE THE FISH AND GAME COMMISSION
STATE OF MONTANA

Teton-Spring Creek Bird)
Preserve Abandonment) REPORT ON HEARING

On 10 October 1979, at 7:40 p.m. in the Choteau Public Library, Choteau, Montana, a public hearing was held on the subject of the abandonment of the Teton-Spring Creek Bird Preserve. The presiding officer was F. Woodside Wright; There were in attendance some 31 persons. The presiding officer read the notice as it had appeared in the local paper and gave the general procedure for the conduct of the hearing. Before any testimony or presentation was made, opportunity for questions was given.

At that time Mr. Pete Howard came forward and submitted a letter dated October 5, 1979, to the Teton-Spring Creek Bird Preserve landowners, signed by himself and Don Murray. Copy of this letter is enclosed in the minutes of the hearing. The subject is a discussion of the purpose of seeking modification of the preserve; the rationale for bow hunting on the preserve area; the method of use of the area, particularly contact with the landowners and by landowner permission only; the deer population difficulties; limitation of hunting with firearms; the desire for alteration of preserve status to allow bow hunting only, not complete abandonment; and asking for attendance of landowners at the hearing. Copy of this letter is attached to this report for reference.

There were several other questions regarding the reason and purpose for the hearing --the possibility of just shutting the hearing down immediately as most people were opposed to the concept; and other questions relating to general information regarding this proposed abandonment.

The presiding officer then opened the hearing to the proponents for their comments, statements, evidence, or other information they wished to present. There being none, the presiding officer then asked for comments, statements, or evidence from those in opposition to the proposed abandonment.

Mr. Harold Bouma commented as follows: there have been no problems with deer in the area from 1957 on; that he is adamant against abandonment; that there is no good purpose for the abandonment; that he does not desire it; and that he is against any alteration of the present status of the bird preserve for this piece of land.

Mr. Walt Arensmeyer spoke in opposition for the following reasons: that he is opposed to any change of status of the area; and that there is no opposition to bow hunting on the preserve but opposition to gun hunting and to any arrangement that would permit the Fish and Game Commission to set up gun hunting on the preserve.

Mr. Les Arensmeyer, who owns land but does not live in the area, commented that there was some deer damage last year; that he did not desire to make it difficult for the bow hunters but that he did speak in opposition to the abandonment.

Mr. Pat Saylor leases ground on the preserve; is against the abandonment; speaks in favor of the opportunity for bow hunters to hunt on the preserve; and that there is some damage by deer but not enough to require abandonment as an alternative. He further commented that he felt if the area were abandoned, "no trespassing" signs would go up and that all hunting activity in the area would cease.

Mr. Pete Howard spoke, requesting that the initial petition be returned to the persons who submitted it and that it be withdrawn and the proposal for abandonment not continue any further.

Mrs. Bernice Van Setten spoke, suggesting that the matter go through a legislative process to permit bow hunting on the preserve.

Mr. Nels Thoreson spoke in general comment as being supportive of the bow hunters' request to hunt in the area and also presented the landowners' complaints and the difficulties of removing deer that are causing damage to crops while the current status is retained. He noted that the current statute does not provide for hunting of any type on the preserve, whether it be to mitigate landowner damage by wildlife or not.

The presiding officer then called for a show of hands regarding those who were in support of pursuit of the legislative action alternative, focusing on allowance of bow hunting only on the bird preserve and at this time no change in the designation of the Teton-Spring Creek Bird Preserve. The show of hands gave 16 who supported this action. The presiding officer noted that 15 of the 16 who showed hands as being landowners in or adjacent to the preserve.

Mr. Harold Bouma then submitted petitions in regard to this abandonment. The petitions stated as follows:

To: The Montana Department of Fish, Wildlife & Parks:
We the undersigned residents of Teton County do hereby respectfully petition the department to continue and not terminate the Teton-Spring Creek Bird Preserve. The undersigned who live in the vicinity of the area protest the termination because of probable problems with hunters in the area.

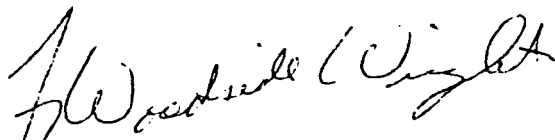
There are six petitions of this type with approximately 121 signatures thereon, all addressed from Choteau, Montana. The petitions were admitted as part of the record of the hearing. Copies are attached hereto.

After receipt of the petition, Mrs. Bernice Van Setten asked how many landowners had called in with damage complaints. Warden Sergeant Jack LaValley of the department stated that four had at this time.

Prior to conclusion, Mr. Pete Howard requested that the presiding officer write to him or someone in the community with publication in the local paper and report on the outcome of the commission action on this hearing. The presiding officer indicated he would do so.

There being no further comments, statements, or submission of evidence by anyone present at the hearing, the hearing was closed.

This report respectfully submitted this 8th day of November, 1979.

A handwritten signature in cursive script, reading "F. Woodside Wright". The signature is written in dark ink and is positioned above a horizontal line.

F. Woodside Wright
Presiding Officer

FWW/b

HOUSE BILL NO. 102*Manuel*

INTRODUCED BY

BY REQUEST OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE STATUTORY AUTHORITY TO ESTABLISH A TRUST ACCOUNT FOR THE OPERATION, DEVELOPMENT, AND MAINTENANCE OF LANDS OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTION 87-1-601, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 87-1-601, MCA, is amended to read:

"87-1-601. Use of fish and game moneys. (1) All moneys collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, or from damages collected for violations of the fish and game laws of this state, from appropriations, or received by the department from any other state source shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the department. Any moneys received from federal sources shall be deposited in the federal and private revenue fund to the credit of the department."

(2) Those moneys shall be exclusively set apart and made available for the payment of all salaries, per diem,

fees, expenses, and expenditures authorized to be made by the department under the terms of this title. Those moneys shall be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game moneys in the earmarked revenue fund and federal and private revenue fund.

(4) All money collected or received from fines and forfeited bonds relating to violations of state fish and game laws under Title 87 shall be deposited by the state treasurer and credited to the department of fish, wildlife, and parks in an earmarked revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution shall be paid to the county where the trial was held in any case where the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property, exploration or development of oil, gas, or mineral deposits from lands acquired by the department, and from leases of interests in department real property not contemplated at the time of acquisition, shall be deposited in the trust and legacy fund of the state treasury. This money and the interest derived therefrom may be used only for the purpose of operation, development, and

1 maintenance of real property of the department. If the use
2 of money as set forth herein would result in violation of
3 applicable federal or state statutes, then the use of this
4 money must be limited in the manner, method, and amount to
5 those uses that do not result in such violation."

-End-

HB 102 is a bill to provide a management tool to the Department of Fish, Wildlife & Parks which we feel will enhance the department's ability to approach land management decisions in a more fiscally responsible manner.

Department acquisition of lands for game management, fishing access, or recreational purposes occasionally entails purchasing adjacent lands under the same ownership, but lands which may be "surplus" to the department's primary reason for the purchase. Occasional sales of these surplus lands provide the department with unanticipated "windfall" income. Additionally, leasing of department lands for grazing, hay or grain production, timber cutting, oil and gas exploration and development and other, similar activities generates substantial, but unpredictable income.

The past practice of the department has been to utilize this unanticipated income to increase operations' budgets of the various divisions. Fiscally, this practice is unsound in two different respects: (1) it results in expanding the operations' budget requests in ensuing years when such revenues are not available, and (2) it results in the department consuming these funds, and totally dissipating these department assets.

HB 102 would create a trust account which would serve as a depository for the various one-time or short-term sources of income. This trust would add stability to management

financial planning and the interest income from the fund would provide a long-term source of funding for operation, maintenance, and development of department lands. Funds would also be readily available for the approximately \$106,000 paid annually to local governments as payments in lieu of taxes, special improvement districts, and fire protection.

The department believes that HB 102 would allow greater fiscal responsibility with respect to land management and planning and would also serve to stabilize operations and development of department-owned public use areas.

The department recognizes that Section 5 of HB 102 requires additional language to clarify the intent of this fund. These corrections should provide that expenditures may come from interest only, and the principle will remain intact. Secondly, an appropriation by the legislature will be a prerequisite to the use of any portion of the interest income derived from the fund. Without the legislative appropriation, the department may not utilize any portion of the trust.

Addition of the necessary corrective language will provide a bill which will give the department an immediate managerial benefit and will give the people of the state a long-term source for recreational benefit.

Proposed Amendment for HB 102

1. On page 2, line 24, following the word "treasury." strike "This-money-and-the" and insert "THE INTEREST DERIVED THEREFROM, BUT NOT THE PRINCIPAL,"
2. On page 3, line 1, following "department", strike the period (.) and add ", AND ONLY UPON APPROPRIATION BY THE LEGISLATURE."

HOUSE BILL NO. 123

INTRODUCED BY

Butler

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW DISCHARGE OF FIREARMS AT SHOOTING RANGES LOCATED IN TOWNS OR CITIES OR LOCATED IN PRIVATE DWELLINGS UNDER CERTAIN CONDITIONS; AND TO CLARIFY THAT IT IS OTHERWISE LAWFUL TO DISCHARGE A FIREARM IN TOWNS, CITIES, OR PRIVATE DWELLINGS IN CERTAIN INSTANCES; AMENDING SECTION 45-8-343, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-8-343, MCA, is amended to read:
 "45-8-343. Firing firearms. Every ~~all~~ Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding \$25.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if:
 (a) the shooting range is approved by the national rifle association;

(b) the shooting range does not constitute a public nuisance under 45-8-111; and

(c) all other applicable state and local laws are complied with.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1."

-End-

AMENDMENTS TO HB 102

1. Page 2, line 24.

Following: "treasury."

Strike: "This money and the"

Insert: "The"

Following: "therefrom"

Insert: ", but not the principal,"

2. Page 3, line 1.

Following: "department"

Insert: ", and only upon appropriation by the legislature"

VISITORS' REGISTER

HOUSE Fish and Game COMMITTEE

ULL HB 102

Date 1/15/81

ENSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

January 20 1931

MR. SPEAKER:

We, your committee on FISH AND GAME

having had under consideration Bill No. 102

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE STATUTORY AUTHORITY TO ESTABLISH A TRUST ACCOUNT FOR THE OPERATION, DEVELOPMENT, AND MAINTENANCE OF LANDS OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AMENDING SECTION 87-1-601, MCA."

Respectfully report as follows: That HOUSE Bill No. 102
be amended in the introduced copy as follows:

1. Page 2, line 24.

Following: "treasury."

Strike: "This money and the"

Insert: "The"

Following: "therefrom"

Insert: ", but not the principal,"

2. Page 3, line 1

Following: "department"

Insert: ", and only upon appropriation by the legislature"

DO PASS AS AMENDED

STANDING COMMITTEE REPORT

January 15 19 81

MR. SPEAKER

We, your committee on FISH AND GAME

having had under consideration HOUSE Bill No. 103

**A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT A SPECIAL ARCHERY
SEASON IN THE TETON-SPRING CREEK BIRD PRESERVE; AMENDING SECTIONS
87-5-401 AND 87-5-405, MCA."**

Respectfully report as follows: That HOUSE Bill No. 103

DO PASS