

MINUTES OF THE MEETING OF THE FISH AND GAME COMMITTEE
March 10, 1981

The meeting was called to order at 12:30 p.m. by Chairman Ellison. All committee members were present except Representative Manuel who was excused.

HOUSE JOINT RESOLUTION 47

Representative Les Nilson, sponsor of HJR 47, told the committee this resolution was discussed in this committee earlier.

Representative Nilson read a prepared statement to the committee. (EXHIBIT 1)

Mr. Bob Robinson, legislative fiscal analyst's office, told the committee he had two concerns regarding the Department of Fish, Wildlife, and Parks (F, W, & P). The first area of concern is the amount of levels of administration. Before Mr. Flynn became director, there were four levels of administration. Mr. Flynn is working towards reorganizing the department, cutting the number of levels of administration. Another area of concern, to Mr. Robinson, is the same concern the appropriations subcommittee had with the department's budget in establishing priorities and with the revenue from the proposed new license increases.

Robert Van Der Vere, a concerned citizens lobbyist, told the committee the F, W, & P had paid \$327,777 over the appraised price of land and he didn't think that should've been done. Mr. Van Der Vere said he feels the department does have a lot of trouble but doesn't think Mr. Flynn is to blame. He said this resolution should be passed because it will give Mr. Flynn a "helping hand".

Mr. Jim Flynn, Director of F, W, & P, told the committee the department supports HJR 47. Mr. Flynn said he is concerned with the wordage of HJR 47. He referred the committee to page 1, lines 14, 15 and 16. Mr. Flynn said he feels the intent of that wording is to promote the concept that the department has too much land and should have less land owned by F, W, & P. Mr. Flynn said the department has a role to play with land acquisition and ownership.

Mr. Flynn referred the committee to page 1, lines 17 through 19 of HJR 47. He said the department is an agency of specialists because of the specific tasks that need to be performed.

Mr. Flynn told the committee there are only two levels of administration within F, W, & P now. Those two levels are the Director and the regional supervisors and division administrators.

Mr. Flynn referred to lines 22 and 23 and told the committee there are other revenues, other than just license fees, used for the operation of F, W, & P.

Mr. Flynn said the job of the executive branch and the agency is to recommend to the legislature things they think should be done. Mr. Flynn said he feels this resolution is saying the legislature will make recommendations to the legislature.

Mr. Flynn questioned the assumption that there will be cost savings by having a review of better usage of F, W, & P staff.

Mr. Flynn told the committee the F, W, & P is facing problems with natural resources development, large numbers of people wanting more recreational opportunities, expanding population, and the number of people who are concerned over the amount of land the department has.

Mr. Flynn said he feels the committee, to do the interim study, should be made up of representatives from each of the seven regions in the state.

Representative Devlin became Chairman of the committee so that Representative Ellison could speak as a proponent of HJR 47.

Representative Ellison, co-signer of this resolution, said the language should be cleaned up. He said he doesn't want this study to turn into a "witch hunt". He said this committee doesn't know enough about the operations of the department. The department gets the blame for things that are not of their making.

Representative Ellison said he is concerned about the amount of land being closed every year to hunting and fishing. He asked how you can manage fish and game if you can't get on the land. He told the committee something should be done to promote a better public image of the department.

Representative Robbins said he thinks this is a good chance to help the department. He asked Mr. Flynn if he had better language to be used for this resolution. Mr. Flynn said the department has a number of problem areas on resource management of wildlife but this resolution does not address any of those concerns. He said the in-house problems can be taken care of internally. The big problems are the ones that need the most attention. He said the main area that needs attention is what

kinds of revenue the department can expect in the future and whether or not the revenue is enough.

Representative Jensen recommended delaying action on HJR 47 until Mr. Flynn can make up some proposed amendments to be presented to this committee.

The hearing on HJR 47 was closed.

Representative Ellison became chairman again.

SENATE BILL 413

Senator Severson, sponsor of SB 413, said this bill is an important bill to bird farm operations. He said SB 413 is an act to clarify definitions of "game animals" and "upland game birds" by adding species and scientific names.

Proponents

Dave Majors, Burnt Fork Game Farm and Western Montana Aviculturists, gave a slide presentation and talked about this bill. (EXHIBIT 2)

Fred Frey, representing himself as a game farm operator, testified in support of SB 413. (EXHIBIT 3)

Opponents

Jim Flynn, Director of F, W, & P, submitted written testimony in opposition to SB 413. (EXHIBIT 4)

Representative Mueller asked if there wasn't a problem with diseases being brought into Montana by exotic species. Mr. Gene Allen, Administrator of the Wildlife Division, F, W, & P, said that is a concern of F, W, & P. He said those diseases could affect not only wildlife but also domestic livestock.

Chairman Ellison asked if there is any other department that regulates importation of birds into Montana. Mr. Allen said the Department of Livestock or maybe the Department of Health might have something to do with imported birds other than game animals.

Senator Severson said Section 5 of SB 413 shows the official names of animals and birds. The Senate Fish and Game Committee has gone through the names and they should be correct.

The hearing on SB 413 was closed.

SENATE BILL 320

Senator Mike Halligan, sponsor of SB 320, said the bill is an act to provide for the sale of regular deer and elk tags to residents who are 62 years of age or older at a price not to exceed one-half of that paid by residents who are 15 years of age or older and under 62 years of age.

Senator Halligan said SB 320 only applies to Montana residents 62 years of age or older. He said this would not apply to special hunts for anything other than elk. He said those people who take advantage of this bill will be those who cannot afford to buy a license at a regular price. This bill would allow them to enjoy outdoor activities at a reduced cost.

Proponents

Robert Van Der Vere, speaking on behalf of senior citizens, said a certain amount of money is allocated to each state through the Pittman-Robertson fund. Montana will receive \$2 million, from licenses sold last year. Mr. Van Der Vere said it has been stated that there will be a loss of revenue of over \$100,000 if this bill passes. He said that is an incorrect figure. The loss of revenue would be less than \$42,000.

Opponents

Woody Wright, legal counsel for the Department of Fish, Wildlife, and Parks, passed out copies of a prepared statement by Mr. Jim Flynn. He read the statement to the committee. (EXHIBIT 5)

Representative Devlin asked if SB 320 came through the Senate committee without a fiscal note. Senator Halligan said he had asked F, W, & P to generate figures as to the cost and those are the figures given to this committee today. He said he disagrees with the numbers given in Mr. Flynn's statement. He said only about 10%, of the 13.8% referred to, will buy licenses. Idaho estimated their total revenue loss, for this type of license, at approximately \$37,000 and North Dakota estimated their loss at approximately \$47,000.

Representative Jacobsen said many of the senior citizens have retired and are wealthy. He said there are a lot of young families who cannot afford to buy these licenses. He asked why the senior citizens are singled out to receive these cuts. Mr. Van Der Vere, said there are no restrictions that the senior citizens cannot buy licenses at the regular cost.

Senator Halligan spoke about an effective date for this bill.

He said he would be willing to give F, W, & P a year to get this program going.

Senator Halligan submitted a petition to the committee that had been signed by senior citizens in support of SB 320.

Senator Halligan said he would estimate the revenue loss at about \$30,000 if SB 320 is passed.

The hearing on SB 320 was closed.

The committee went into EXECUTIVE SESSION.

SENATE BILL 320

Representative Feda moved SB 320 BE NOT CONCURRED IN.

The motion was voted on and PASSED. Representatives Nilson, Hart, Mc Lane and Phillips voted "no". Representative Mueller deferred voting. All other committee members present voted "aye".

SENATE BILL 413

Representative Mueller moved SB 413 BE NOT CONCURRED IN.

Representative Mueller said if SB 413 was passed, there would be an inconvenience to the bird people but there would be bigger problems for the State of Montana. He said we need controls for the benefit of the people of Montana.

The motion was voted on and PASSED. Representatives Jacobsen, Nilson and Robbins voted "no". All other committee members present voted "aye".

HOUSE JOINT RESOLUTION 47

Representative Jacobsen recommended the appointment of a subcommittee to handle HJR 47.

Chairman Ellison assigned Representative Nilson as chairman of the subcommittee and assigned Representative Bennett to work with Representative Nilson.

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


ORVAL ELLISON, Chairman

HOUSE JOINT RESOLUTION 47 - An Interim Study on Department of
Fish, Wildlife, and Parks

There is a great amount of legislative and public interest in whether or not the Department of Fish, Wildlife, and Parks is doing a good job.

I feel that the Department of Fish, Wildlife, and Parks is unique in state government because the people of the state rely heavily on the resources administered by this department. The state's economy is greatly affected by the rivers and streams, beauty and wildlife that is found throughout Montana and the department advertises our state nationally.

When put into perspective with other state agencies, I suppose the Department of Fish, Wildlife, and Parks has more effect on more people and considering the total amount of their budget, this idea becomes more interesting.

There are a lot of people, both public and legislative, that feel they know what is good for the Fish and Game Department. I have realized that, in some cases, they have some very good points to make. I also realize, as a sportsman, that the department does a good job in many areas.

Taking a look at the resolution, page 2, lines 4 and 5, the wording may be a little broad. I am referring to the words "study include at least the following". I'll not offer any amendments but if the committee is uncomfortable with that we can sure change it.

There are two results that I feel should come from such a study. The obvious one is the recommendations to the '83 legislature. The other result is the "tool" that is created for the administration to use to solve some of the problems without legislation! I certainly hope such a "tool" could be used properly.

Another area of concern of mine is the problem of "stacking of the committee". If there are too many ranchers, or too many urban people, or too many conservatives, or too many liberals, and so on, the committee recommendations could be greatly prejudiced.

Although I am a urban democrat, I still have faith that the committee has a good chance to be a "well rounded" group that will make some good recommendations.

NAME David L. Majors BILL No. SB 413
ADDRESS 1417 Middle Burnt Fork Rd, Stevi DATE 3/10/81
WHOM DO YOU REPRESENT Burnt Fork Game Farm & W. Mont. Audubon Society
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

In the 1979 legislative session Rep. Hirsch introduced HB 420, at the request of the Department of Fish & Game which substantially changed the definition of upland game birds as it relates to pheasants. Prior to this change the definition read 'Chinese pheasant and Mongolian pheasant commonly called ringneck pheasant.' The current definition only includes the word pheasant. According to the House Fish & Game Committee minutes this change in definition was made to clean up the language by removal of the local or common names. This seemingly small change in language increased the number of species of pheasant, for which a game farm permit was required, from one to forty-nine.

I would like to direct your attention to the next to the last paragraph of Mr. Gregory Taylor's letter of March 6, 1980 which reads "The Department of Fish, Wildlife, & Parks is taking the position that the language effective May 1, 1980 means all pheasants."

Rep. Ellison has kindly allowed us to give a short slide presentation covering the various types of pheasants. Our goal through this presentation is to give you a brief look at some of the ornamental or exotic species of pheasants.

SLIDE PRESENTATION

The current definition of upland game birds as found in MCA 87-2-101 can be likened to a Muligan Stew - a little of this and a little of that. On one hand the six species of grouse and two species of partridge are each listed separately, on the other hand the 49 species of pheasants and nearly 100 species of quail are grouped together under the two headings of pheasant and quail.

Of the almost 50 species of pheasants, only the Ringneck pheasant can be found in the wild in Montana. Of the nearly 100 species of quail in the world only 6 are found in the United States and none in Montana.

I would like to direct your attention to the checklist of the Birds of Montana, published by the Department of Fish, Wildlife, & Parks in 1972, which lists the Bobwhite quail as being introduced at one time but now extinct.

We feel that there should be a logical pattern to the species listed, not the current separate listing of 6 species and then the grouping of nearly 150 species, most of which are not found in Montana, under the two headings of pheasant and quail. We feel that a logical criteria would be the existence of a species within the state of Montana.

Utilizing this criteria the list of species for the definition of 'Game Animal' and 'Upland game birds' was developed. There are three exceptions to this criteria, the caribou, the greater prairie chicken, and the Bobwhite quail. It is doubtful that either the Caribou or the Greater Prairie Chicken exist in the state of Montana at the present time, however, both these species were native to Montana. In contrast, the Bobwhite quail, which is extinct at this time, was an introduced species and not one native to the state.

We believe that the appropriate scientific name should be included with each species listed to further clarify the exact bird or animal we are speaking of. We realize that the scientific name of a given species may change occasionally, but only following a lengthy taxonomic review, however, we feel it is essential to a clear and exact definition.

The same criteria was utilized in selecting those species for inclusion in the definition of 'Game Animal'. The current list is rather specific in most cases, with the exception of bear and deer. The definitions could possibly be interpreted to mean all bear and deer. There are approximately

11 species of bear in the world with only two found in Montana. There are nearly 60 species of deer (Cervidae) known to exist today, however, only five of these species of the deer family are found in Montana.

On the other hand the list is rather specific with respect to the goats and sheep. There is a total of 13 genera world-wide, while only 2 species, those that are found in Montana, are listed in the definition of 'Game Animal'.

We feel that the list of species in these two definitions are logically selected and very carefully stated so as to leave no area of uncertainty.

We feel that these changes should be made at this time in view of the fact that thousands of Montanans could be in violation of MCA 87-4-401 as it is currently interpreted.

STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

Helena, Montana 59601
March 6, 1980

Mr. C. Fredrick Frey
Route 2, Mullan Road
Missoula, Montana 59801

Mr. David L. Majors
Route 1, Box 57
Stevensville, Montana 59870

Gentlemen:

Your recent letters of inquiry have been brought to my attention for response and I am taking the liberty of responding to you both in this fashion.

Both letters made inquiry as to changes to Montana statute 87-2-101. Subsection 13 of that statute (subsection 12 effective May 1, 1980) relates to the definition of upland game birds. As you both pointed out, the language of this section has been changed. What formerly read "Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant" now reads merely "pheasant".

This change made during the 1979 legislature was part of a revision of the licensing statutes and was not a recodification of these statutes. A review of the House Fish & Game Committee minutes relating to this change reflects only "local or common names removed to clean up the language". There is no report as to any comment upon this change.

The Department of Fish, Wildlife & Parks is taking the position that the language effective May 1, 1980 means all pheasants.

Hopefully, this is responsive to your inquiry. We thank you for your concern.

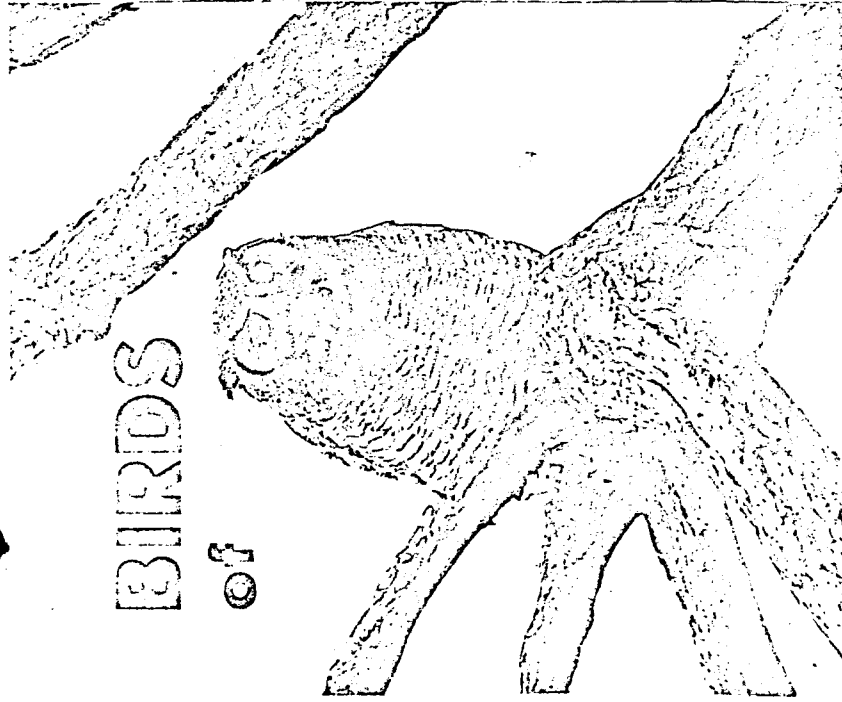
Sincerely,


Gregory C. Taylor
Staff Attorney

GCT/b

BIRDS

of



MONTANA

From a Listing by
DR. C. V. DAVIS
Montana State University, Bozeman

MONTANA FISH AND GAME DEPARTMENT

Black Duck *M	Turkey (Int.) #BW
Gadwall #B	Whooping Crane **M
Pintail #Bw	Sandhill Crane #B
Green-w. Teal #Bw	
Blue-w. Teal #B	Virginia Rail #Bw
Cinnamon Teal #B	Sora #B
European Widgeon	(Yellow Rail) **
Am. Widgeon #Bw	American Coot #Bw
Shoveler #Bw	
Wood Duck #B	Semipalmated P. #M
Redhead #B	Piping Plover
Ring-necked Duck *#B	(Snowy Plover) M
Canvasback #B	Killdeer #Bw
Greater Scaup **	Mountain Plover *B
Lesser Scaup #B	Am. Golden Plover *#M
Common Goldeneye #BW	Black-b. Plover #M
Barrow's G. #BW	Ruddy Turnstone **M
Bufflehead #B	(Black Turnstone) **M
Oldsquaw *#M	
Harlequin Duck *B	Am. Woodcock **
White-w. Scoter **M	Common Snipe #BW
Surf Scoter **M	Long-b. Curlew #B
Ruddy Duck #B	(Whimbrel) **M
Hooded Merganser #B	Eskimo Curlew **
Common Merganser #Bw	Upland Plover *#B
Red-b. Merganser #B	Sp. Sandpiper #B
	Sol. Sandpiper #B
Turkey Vulture #B	Willet #B
	G. Yellowlegs #B
Goshawk #BW	L. Yellowlegs #B
Sharp-s. Hawk #BW	Knot **M
Cooper's Hawk #Bw	Pectoral Sandpiper #M
Red-tailed Hawk #Bw	White-r. Sandpiper **
Swainson's Hawk #B	Baird's Sandpiper #M
Rough-legged Hawk #WS	Least Sandpiper #M
Ferruginous Hawk #B	Dunlin **M
Golden Eagle #BW	L-b. Dowitcher #M
Bald Eagle #BW	Stilt Sandpiper *M
Marsh Hawk #Bw	Semipalmated S. *M
	W. Sandpiper **M
Osprey #B	Buff-breasted S. **M
	Marbled Godwit #NB
Gyrfalcon *FW	Hudsonian Godwit **
Prairie Falcon #BW	Sanderling *MR
Peregrine Falcon #BW	
Pigeon Hawk #BW	American Avocet #B
Sparrow Hawk #Bw	(Black-n. Stilt) *M
Blue Grouse #BW	(Red Phalarope) *M
Spruce Grouse #BW	Wilson's Phal. #B
Ruffed Grouse #BW	N. Phalarope #M
Willow Ptarmigan ***	
White-t. Ptarmigan BW	(Parasitic Jaeger) **
G. Prairie Chicken **	Long-tailed Jaeger **
Sharp-t. Grouse #RW	
Sage Grouse #BW	(Glaucous Gull) **
	(Western Gull) **
Bobwhite (Int.) #gone	Herring Gull **MB
R-n. Pheasant (Int.) #BW	California Gull #B
Chukar (Int.) #BW	Ring-billed Gull #B
Gray Partridge (Int.) #BW	

STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

Helena, Montana

October 22, 1976

Mr. C. Frederick Frey
Route 2
Mullan Road
Missoula, Montana 59801

Dear Mr. Frey:

Your letter of August 12, 1976, was forwarded to me for reply. You were subsequently informed in September that the questions you raised would be considered and this letter is in reply to your original request.

You presented six points you would like addressed. Before I address these points, I would like to comment that I do not understand the general focus of your problem and your concern for changing the definition of quail as a game bird. Should the subspecies and variety of closely related birds which are termed quail be excluded from the upland game bird definition, any possession of such bird without a certificate from the Department of Fish and Game would be in violation of the law under Section 26-501, R.C.M. 1947. Further, I understand you are interested in propagation of game birds. If those subspecies or variations which you list are not considered game birds, what is the purpose of your propagating game birds?

Question 1, "A revised detailed definition of an upland game bird" - It is planned at this time to revise all of Chapter 2 of Title 26 in the Revised Codes of Montana, 1947. Included in this revision is a reworking of the definition of upland game birds. However, at this time a division of this department that administers game management does not consider it necessary or in the best interest of the wildlife species of this state that the definition of game bird include a detailed listing under quail. A broader definition of quail, while it does allow for the possibility that exotics and variations are conceptually huntable in this state (though those subspecies and variations may not actually be capable of living in this state) also allows for the possibility of game farms, particularly game bird farms to raise, propagate and sell these particular animals. Exclusion of a subspecies would eliminate that species from consideration by a game farm permit holder.

Question 2, "The exclusion of coturnix or Pharaoh quail from that definition," and Question 3, "The exclusion of other species of quail not represented by breeding (wild) populations within the United States by specifically listing the species which will be included as an upland game bird," have been answered by the answer to Question 1.

October 22, 1976

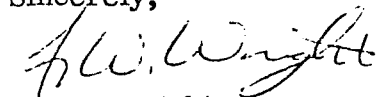
Question 4. "Clarification of the definition with respect to ring-necked pheasants" - In this regard you state on page 2 of your letter that it is your understanding that the ring-necked pheasant is a combination of several closely related species and that you can possibly attain pure strains of Chinese, black-necked, and Mongolian pheasants, each a distinct species, from private breeders around the country. Your concern possibly has validity if you work under the assumption that the State Fish and Game Commission and the department of which the commission is the head, are concerned only with providing hunting populations of birds and other wildlife. However, this is not the case. One of the major concerns of the commission, it is true, is to perpetuate game populations whether they be bird, fish or other wildlife.

However, in fulfilling this duty it is incumbent upon the commission and department that they have control of what types of birds, or species and subspecies and variations enter the wild, or actually enter the state at all with the possibility of being introduced into the wild. Further, the concern of the commission and the duty of the commission is the "preservation, propagation and management of all wildlife" of the state regardless of whether it is game or otherwise. For this reason alone the commission has control and regulation of the possession of wildlife in this state.

Question 6. "Either upholding Section 26-1201, R.C.M. 1947, as written, or re-writing it so as not to be subject to a variety of interpretations. Local interpretation implies arrest for ownership which is not the liberal translation of what is written." This suggestion is well taken and even prior to receipt of this letter, legislation had been considered and is being prepared to rework the entire Section 26-1201. In that reworking, attempts will be made to clarify and remove any variety of interpretations that might be available.

Thank you very much for your letter. I hope that I have answered you sufficiently. If you have any further questions, please contact me at any time.

Sincerely,



F. W. Wright
Staff Attorney

FWW/jt

cc Jim Ford

February 2, 1980

C. Fredrick Frey
Route 2 Mullan Road
Missoula, Montana
59801

Law Enforcement Division
Department of Fish, Wildlife, and Parks
1420 East 6th Avenue
Helena, Montana

Gentlemen,

I am writing you as a concerned game farm permit holder as well as the President of the Western Montana Aviculturists. This organization promotes the breeding and propagation of ornamental and upland game birds, waterfowl, cage birds, domestic fowl, and related species of birds held in captivity in their pure form. Currently, a majority of our members have Montana game farm permits.

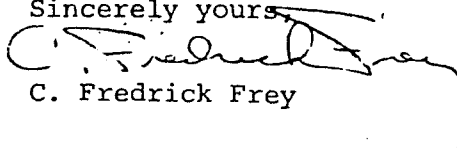
I was recently reviewing the Statutes of the State of Montana for the Department of Fish, Wildlife, and Parks, and found that on May 1, 1980 the definition of upland game birds in 87-2-101 will change. Rather than identify a specific species of pheasant by naming two races of *Phasianus colchicus*, it will then read "pheasants". I was told by an attorney of the Legislative Council that the intent of this change was to clean up the language. However, for those of us raising various kinds of birds, that change has complicated matters. Once what was specific becomes very general and open to interpretation. A number of us in this area made it pretty well known with your Department, and both Fish and Game committees of the 1979 Legislature that we wanted to be informed of any proposals that could in any way affect our operations, however HB 420 was passed without any word from those groups. Now, we will need some clarification.

For most of us that have some knowledge and interest in pheasants, that term refers to some 48 species divided among 16 Genera, and their subspecies and races. Does this mean that any person propagating, owning, and controlling any one of these species will now have to be a game farm permit holder as outlined by Section 87-4-401? I do not know how to answer this question for the people buying birds from me, the members of our organization, or even for myself! I have also asked a lot of questions in the past of wardens, representatives of your department, and legislative representatives as to what is meant by the word "quail" in Section 87-2-101. I haven't always gotten the same answer.

In order to clear up some questions as to when an individual must have a game farm permit, I am at this time asking your Department to provide me with a list, by species-common name preferred, of those pheasants and those quail which can only be owned and controlled in Montana if a game farm permit has been first procured. In that way, I can stay in compliance with the law, and so can quite a few other Montanans, and any ignorance of the laws in question can be erased.

I look forward to your response. Thank you.

Sincerely yours,


C. Fredrick Frey

March 26, 1980

Mr. C. Fredrick Frey
Route 2 Mullan Road
Missoula, MT 59801

Montana State Senator Ed B. Smith
Chairman - Senate Fish, Wildlife, and Parks Committee
Rural Route 1 P.O. Box 11
Dagmar, MT 59219

Dear Mr. Smith:

As I discussed with you on the telephone Thursday, I am one of the Montana game farm permit holders who was in contact with you on a number of occasions during the 1979 Legislature. Other game bird raisers and myself are concerned about the wording and provisions of some of the current statutes, but even more concerned about bills and regulations the Department of Fish, Wildlife, and Parks has tried to put into affect during the past couple years that would severly and adversely affect game farm operations and the rights of the people of Montana to private property.

I thought I had kept myself informed of the activities during the 1979 Legislature that would affect game farms. However, in January, it was brought to my attention that House Bill 420 will change the wording of Section 87-2-101 effective May 1, 1980. In the definition of upland game birds currently appears the words, "Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant,". Those words are to be replaced by the general term, "pheasant".

As soon as I saw this, I knew that the Department would try to take advantage of the wording in order to extend their authority over possession of the ornamental pheasants as well as those orginally' included in the definition. I discussed the situation with the other members of the Board of Western Montana Aviculturists and it was decided that the matter had to be pursued. On February 2, I wrote the Department a letter and I have attached a copy, which expresses some of my concern about the upcoming change. While waiting for a response, I brought the situation to the attention of other members of the Western Montana Aviculturists at our regular February meeting. There was a unanimous decision that the Board continue to work on the situation.

On March 8, 1980, I received the response from the Department, a copy of which I have attached, and the response was as I anticipated. As you can see, the Department plans to interpret the word "pheasant" as all species of pheasants. Based on the content of my letter and their response, I am assuming this to mean that the Department will require game farm permits for possession of all species of pheasants, which, by the way, includes peafowl, a number of tropical species, as well as the ancestor of the domestic chicken, the jungle fowl. Further, at least five of these species are controlled by Endangered Species Act of 1973 which could well supercede any regulations the state might come up with. By saying "all pheasants", Mr. Taylor avoided any research into my request for a list of pheasants and quail to be included in the definition of upland game birds.

As I stated above, I had expected the Department to interpret the word "pheasant" as inclusive of all 48 species. This is consistent with a response that Mr. Wright made in 1975 to an inquiry of mine on the use of the term "quail", in which he interpreted it to mean all species of that group. The definition of upland game birds is one of the areas of the statutes we had hoped to address with the 1979 Legislature and will take issue with 1981. The group of breeders I represent believe that:

- 1) The wording in this section should be specific to species,
- 2) Neither the 1979 Legislature nor the 1947 Legislature intended the terms 'pheasant' and 'quail' to be that loosely interpreted,
- 3) Breeders of captive game have played and will continue to play an important part in the preservation of these species, and undue regulation tends to discourage this important activity,
- 4) Management of native game is not enhanced by involvement of the Department in other activities,
- 5) Section 87-4-801 establishing the game farm permit was only intended for those persons in control of species of game birds, non-migratory in nature, that are indigenous to the state of Montana,
- 6) And that any concern the Department has about the release of non-indigenous birds and animals into the wilds is already covered by Federal law.

My reason for contacting you was that I felt it was the logical and proper step to take. I have not contacted Mr. Stagmiller as of yet, but intend to bring this issue to his attention. I do hope, with your assistance, May 1st will not result in the kind of change that the Department has decided upon, just because the language in Section 87-2-101 was simplified. I would appreciate being kept informed of what happens when you confront the Department on this situation, and would readily accept any recommendations you might have. In the meantime, we will be reviewing the statutes and drafting several proposals for consideration at the next Legislative Session.

Respectfully,

C. Fredrick Frey

12-8-75

Marsh Farms

UNIVERSITY OF CALIFORNIA STUDY

Recent studies at the University of California has shown that there is a considerable difference in the domesticated Coturnix quails and the wild Coturnix quail. These studies have proven that the Coturnix raised by breeders in the U. S. is a domesticated bird and is not a wild game bird.

Further information might be had on this study from the:

University of California
Department of Poultry Husbandry
Davis, California 95616

PHEASANTS- Their Breeding and Management
by K. C. R. Howman

(Secretary of the World Pheasant Association)

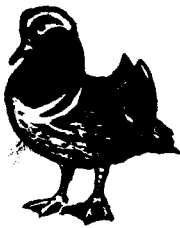
Species range from the lovely Tragopans and Monal Pheasants living at altitudes of up to 14,000 feet (4,200m), to the Peacock-Pheasants, some of which live almost at sea level. Between these extremes we have the Junglefowl. Many people are not aware that the incredible variety of domestic poultry including such diverse species as Polish Bantams, Millefleurs, Brahmas, Battery hens and Fighting cocks are all derived from a pheasant - the Red Junglefowl - or that the Indian Blue Peafowl is in fact a pheasant. Pheasants belong to the order *Galliformes* which includes Grouse, Francolins and Partridge as well as less well known birds such as Curassows and Megapodes.

NAME C. FREDRICK FREY BILL No. SB 413
ADDRESS Route 2 Muller Rd DATE March 10, 1981
Missoula, MT 59801
WHOM DO YOU REPRESENT _____
SUPPORT ☒ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Testifying in support of SB 413 on behalf
of the Western Montana aviculturists and
myself as a breeder of ornamental and upland game
birds. Copy of letter to the committee chairman
is attached.



WESTERN MONTANA AVICULTURISTS

March 9, 1981

C. Fredrick Frey
Route 2, Mullan Road
Missoula, Montana 59801

Representative Orval Ellison
Chairman, House Committee on Fish and Game
Capitol Station
Helena, Montana

Dear Sir,

I respectfully request that you and your committee review Senate Bill 413, and send it to the floor of the House with a 'Do Pass' recommendation. I have been involved with the terms of this bill for over four years, and our organization chose to support these changes about one year ago when HB 420 of 1979 went into effect. We contend that the definition of upland game birds and game animals in Section 87-2-101 of the Montana Codes is unacceptable in its current form. This section needs to be rewritten to indicate specific species, and thereby eliminate the problems we are having with the different interpretations that have been coming about.

When I first obtained a Montana Game Farm Permit in 1975, I found that the local wardens were not able to specifically tell me when the permit is needed and when it is not. Most of the difficulty came from the word quail. The wardens were not sure if a permit would be needed for the domesticated quail species, the Coturnix or Pharaoh quail. They could see from one hand that it is domesticated, but the definition in the Codes states 'quail' are upland game birds. So I was referred to the Department. In my letter to the Department in August 1976 I tried to develop an argument that quail should not include species considered domesticated or not found in the northwest part of our country. I also questioned the wording of section requiring the Game Farm permit and the definition of the ringneck pheasant. The Department's response came dated October 22, 1976, and I ask that you please read the third paragraph on the first page and the second paragraph on the second page (attached). I interpreted Mr. Wright to say that as a Game Farm permit holder, I could not raise any species of quail that might be excluded from the definition of upland game birds. I feel I have the right to raise anything I want as long as I comply with the law in each individual case. I further felt that the letter became very philosophical and theoretical, and provided no just facts as to why all quail had to be considered upland game birds in the state of Montana.

In 1977 I tried to pursue this matter in the Legislature but it became too late for any bills to be introduced to make the necessary corrections to Section 87-2-101. In 1979, the Chairmen of the Fish and

Game Committees of both the House and Senate discouraged the introduction of any such legislation because the Department had introduced several bills that would affect the game farms, and every effort was made to just keep the status quo. However, HB 420 made it through the process, and changed that part of the definition of upland game birds on the ringneck pheasant to just read 'pheasants'.

On February 20, 1980, I wrote the Department on behalf of myself and the Western Montana Aviculturists, asking for a list of all quail and pheasants that the staff considered an upland game bird, as the law states that a game farm permit is required to own and propagate those birds. Rather than a comprehensive list, I received a letter dated March 6, 1980 which stated the change in language as a result of HB420 would be interpreted as all pheasants.

At this point, I contacted Senator Ed Smith, and informed him of the Department's stand on the change. After he made contact with the Department he assured me that they had backed down on their position, and that pheasants would be interpreted to mean the common ringneck pheasant as previously defined. To date, I have never received any correspondence from the Department that states any change of their interpretation of the word pheasants.

Because of the past problems, it was decided that the best way to eliminate the various interpretations of Section 87-2-101, was action ... be taken to clarify the wording of this code. As some of our members raise different kinds of animals, it was further decided to also correct the loose wording of the game animals as well.

It is the position of the Western Montana Aviculturists that:

1. the Montana Legislature should define exactly which animals and birds will be game in this state, and should prefer not to use general terms, such as pheasants, quail, deer, and bear.
2. it is of absolute necessity to define these terms in Section 87-2-101 as to specific species, since Section 87-4-401 mandates that a game farm permit is required in order to own and propagate upland game birds and game animals.
3. the current definition, through the use of general terms, such as deer and pheasants, has been and will continue to be interpreted by the Department of Fish, Wildlife, and Parks to include the tens and hundreds of species of birds and animals found throughout the world, let alone the state of Montana. This interpretation by the Department makes it necessary to hold a game farm permit in order to own and propagate birds and animals that are not indigenous to Montana. It also means, technically, that the permit is required for such domesticated birds as the Coturnix quail, the familiar peafowl, and even the everyday chicken, which belongs to the Gallus genera of the pheasant family. We contend that game animals and upland game birds of this state should be restricted to those wild species indigenous to our state, and not so loosely defined as to include domestic stock and ornamental species.
4. quail be removed from the definition of upland game birds because studies, including those of the department, indicate that no breeding populations of any species of quail exist in Montana other than in private collections.
5. of the 48 species of pheasants found in the world, only the ringneck pheasant is indigenous to our state, and, therefore, should be the only one classified as an upland game bird. Most bird breeders refer to the other species of pheasants as exotic or ornamental pheasants.

6. it is impossible to defend the continued use of the terms pheasants and quail, when other large families of game birds in the world, such as tinamous, francolins, the European grouse, and related birds like the ostriches and rheas can be maintained in private ownership without the game farm permit.
7. Senate Bill 413 eliminates the confusion of when a game farm permit must be held in order to legally possess certain birds and animals.

As an officer of this organization, and as a private bird raiser, I find a very obvious need to redefine the definitions of upland game birds and game animals in Section 87-2-101. The enactment of Senate Bill 413 will correct this situation by providing a statute that exactly states which species of animals and birds are game in our state of Montana, and for which a game farm permit is required for ownership and propagation. I urge your committee to support this bill with a do pass recommendation, and to encourage its passing by the House.

Sincerely yours,



C. Fredrick Frey
President

PRESENTED BY: James W. Flynn, Director
Dept. Fish, Wildlife, & Parks

March 10, 1981

SB413

Mr. Chairman, members of the committee, my name is Jim Flynn, I appear today on behalf of the Department of Fish, Wildlife, & Parks, and I appear in opposition to SB413.

SB413 would effectively change the department's authority in monitoring game animal and game bird species. The change results from the redefinition of game animals and game birds.

While the department has exclusive supervisory control over all wildlife, specific statutes set out the manner and method of that supervision. Game animals and game birds are treated much differently from nongame animals and birds. Game animals and birds may be hunted only in accordance with Fish & Game Commission rules and regulations and under specific statutory provisions. Nongame animals may be taken at any time in any way unless a given species is declared "in need of management." Nongame birds are protected from taking except under permit from the director.

Propagation and control of game animals by private persons is authorized by statute and regulated by the department. These laws assure that there is a legal source of the animals and birds and that adequate facilities are provided for their containment. This bill is aimed primarily at bird farm regulations. The monitoring of game animals and birds and their proper containment is our primary concern. It should be noted that the department has never turned down an application for a bird farm permit when the above criteria were met. Requirements after the initial inspection are minimal and usually only involve a very simple annual report to the department by the bird farm operator. We think these regulations are reasonable in view of the potential problems created by escaped exotic wildlife.

Current fish and game statutes were developed by previous legislatures to exercise the public's responsibility and trusteeship for all wildlife in the state. Game birds and animals have been of primary concern, particularly in control of the taking and possession of the different species. Of further importance in state regulation and control of game wildlife is the continuation of healthy populations of native wildlife and properly introduced wildlife species. This regulation and control is designed, in part, to protect native wildlife from disease and interbreeding by non-native species. It is also designed to assure a method of control for protection of domestic livestock from disease potentially carried by wildlife species.

SB413 results in loss of control over wildlife species not specifically defined as game birds or animals. For persons engaged in owning, controlling, or propagating game birds, this has meant construction of a fence or caged area to keep the birds from mixing with native populations, and submitting an annual report to the department. There are currently 201 bird farms licensed by the state. Department records show no applicants have been turned down. For game animals, there are 53 licensed operators. None have been turned down, although specific species might not be authorized until native animals are removed.

Game farms were the subject of a separate bill in the Senate - SB18. That bill was killed when the governor decided to establish an ad hoc interim committee to study the entire game farm issue.

By limiting the definition of animals to only those that are currently hunted and for which seasons are set in Montana opens the opportunity for the importation into the state of Montana of exotic species and placement of those species within game farms without knowledge of the department or ability of the department to review any of the effects of such importation. The potential difficulty with the escape and unintentional introduction of

exotics is the possibility of cross or interbreeding with native populations and the possibility for establishing a hybrid species, thereby endangering native populations. Exotic species have occasionally become established that seriously compete for food and space with native animals. Current regulations also protect the private livestock producer; interbreeding can occur with domestic livestock as well as other wild animals.

The potential problems for hunters are obvious. A hunter taking a hybrid or crossed species doesn't know whether he's violated the law or not. An identification problem will also exist with the "look alike" species. Last fall, a sportsman killed an exotic deer on a state-owned wildlife management area during hunting season. Upon investigation, it appeared the deer had escaped from a nearby game farm. The difficulty for the sportsman is obvious as it raises the question of civil liability for his acts.

Escaped exotic animals can cause property damage. In the case of "look alike" species, responsibility for control of these animals will not be in the department. The private landowner may take the action necessary so long as no protected animal or bird is killed illegally. His potential civil liability must be addressed separately.

Montana statutes currently provide at Sec. 87-3-105, MCA, that it is unlawful to transplant or introduce, without department authorization, any game or nongame wildlife. Under current department interpretation, the introduction of wildlife into Montana does not occur when animals are brought into the state and placed into a licensed game farm. The presumption is that the fence of a licensed game farm is sufficient to retain the animals.

Importation of exotic species has potential for the introduction of unusual or unforeseen parasites or disease -- a disease that is not necessarily detrimental to domestic livestock or to the exotics themselves, but may be disastrous for the natural wildlife populations in the area.

In this bill, the apparent intent is to assure that only those game birds that are currently viable populations will be subject to the game laws of the state, thereby removing the requirement for bird breeders to be licensed by the state as game farm operators. The general focus of this concern comes upon the many varieties of pheasant that may be bred and raised. Most of the varieties are unable to exist in the Montana climate without assistance from special heating and habitat modifications. These same weaknesses could be introduced into our native populations if it is not assured that these birds are maintained so that there is no possibility that they will interbreed with native species.

I would like to restate the primary concern of the department in this area is monitoring and assuring containment of the wildlife species that potentially cause disease and interbreeding problems for native wildlife and private owners.

I recommend a "do not concur" on SB413.

STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

Helena, Montana 59620

January 1, 1981

Permit No. _____

Dear Game Farm Operator:

Montana law provides that game or fur farm permit holders must submit a report showing the number and species of game animals, game birds, and furbearing animals on hand on January 1 of each year and the numbers and kinds of animals pelted, bought, or sold during the year. To assist you to meet this requirement, please fill out the form below and return it to this office no later than January 31, 1981. If this report is not received, a notice of cancellation will be sent to you.

Licensee's Name _____			
Please give number and species of game animals, game birds, and furbearing animals on hand as of January 1, 1981.			
Species	No.	Species	No.

Please give number and species of game animals, game birds, and furbearing animals bought, sold, or pelted in 1980.							
Species	Number			Species	Number		
	B	S	P		B	S	P

Sincerely,

Erwin J. Kent
Administrator, Law Enforcement

March 10, 1981

PRESENTED BY: James W. Flynn, Director
Department of Fish, Wildlife & Parks

Before the House Fish & Game Committee

SB320

Mr. Chairman, members of the committee: My name is Jim Flynn and I appear today on behalf of the Montana Department of Fish, Wildlife, and Parks. I speak in opposition to SB320.

It should also be noted that this bill has fiscal impact upon an agency of state government. No fiscal note has been prepared upon SB320.

The Department of Fish, Wildlife, and Parks is concerned about the revenue impact of SB320. This bill would authorize half-price deer and elk tags for those persons 62 years of age or older. The department estimates that approximately \$110,000 would be lost annually if this bill were passed. It would be extremely difficult for the department to absorb this financial loss over the next biennium when budgets are so tight.

To explain our cost estimate, the department reports 13.8% to the federal government as the percentage of Montanans 62 or older who fish and hunt. To arrive at the approximate figure of \$110,000, the department took the total number of deer and elk licenses sold last year (May 1, 1979 to April 30, 1980) and multiplied by 13.8%. This gives an estimated number of senior citizen deer and elk licenses each year. Then, the number of licenses

SB320

was multiplied by the current prices (\$7 and \$8) and the resulting numbers multiplied by 50%, which is the revenue impact of a half-price license.

It should be pointed out that senior citizens can currently fish and hunt birds with no license other than a conservation license after the age of 62. This privilege already results in a revenue loss to the department. Passage of this legislation would result in further revenue loss.

The revenue loss from reduced licenses would not present a difficulty if those losses were made up from other funding sources -- possibly the general fund. However, this was not done in considering either HB200 or the department's appropriation. With funding from the general fund sufficient to meet the revenue loss resulting from this bill, the department would have no opposition to reduced license fees for senior citizens.

A further complication is the effective date of this bill. Under current statutes, SB320 will become effective July 1, 1981, if passed. This year's licenses have already been printed. They are in Helena now. It is impossible to reprint them without major inconvenience to the hunting and fishing public and unnecessary costs to the department. If this bill is passed, I request an effective date of May 1, 1982.

I recommend a "do not concur" on SB320.

1

SB

BILL NO. 320

2

INTRODUCED BY

Holligan Graham Berg

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE SALE
OF REGULAR DEER AND ELK TAGS TO RESIDENTS WHO ARE 62 YEARS
OF AGE OR OLDER AT A PRICE NOT TO EXCEED ONE-HALF OF THAT
PAID BY RESIDENTS WHO ARE 15 YEARS OF AGE OR OLDER AND UNDER
62 YEARS OF AGE; AMENDING SECTION 87-2-801, MCA."

9

10

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

11

Section 1. Section 87-2-801, MCA, is amended to read:

12

"87-2-801. Residents over sixty-two years of age. (1)

13

A resident, under the definition of 87-2-102, who is 62
years or older shall be entitled to fish and hunt game birds
with a conservation license issued by the department for a
fee of \$1. The form of such license shall be prescribed by
the department.

18

(2) A person described in subsection (1) is also
entitled to purchase regular resident deer and elk tags at a
price that is no more than one-half of the fee paid by a
resident who is 15 years old or older and who is under 62
years of age."

22

-End-

sign on following pages!

We are in support of an act to provide for the sale of regular Deer and Elk tags to residents who are 60 years or older at a price not to exceed one-half of that paid by residents who are 15 years of age or older and under 62 years of age.

Name	Address
James P. Grovney	1413 Helena Ave. #10
John Bessman	1226 Laurel
Floyd Skov	925 Hollins
Leah Skov	"
Wm H. Fredricks	424 Power St, Helena
Henry Smith	908 Logan
Wilton Kitchko	Box 271 804 N Caring
Sidney J. McCullough	928 Madison Ave. Helena
Allen Moore	1331 Knight
Donie Ethel Smith	908 Logan
Leo C. Hofmeister	916 Dearborn Helena
Earl Chittings	1857 Oct. Hill Helena
Bernice Dahl	1845 Gladys #14
Richard H. Kelly	4725 N Mont AVE
Ken Rorifohn	705 - 9th St
Ken Bushnell	423 - 8th Ave
Emiel Routhahn	705 Elm St
Jim White	1831 Cannon
Sam Amar	100 So Warren

Name	Address
Alvin D. White	1831 Cannon St.
Sybil McCullough	928 Madison Helena
Willie Rudis	1106 Wilkins Ave
Ann Rudis	1106 Wilkins Ave
Willie G. Leaf	3652 N. Montana
August Kutz	315 Chances
Nathan B. Kamrad	1101 Livingston
Noris M. Kamrad	1101 Livingston
Norman C. Howard	1003 9th Ave
Harry C. Harlan	822 Breckenridge
Richard W. Marley	1295 College Pl. Rd.
Vernis P. Dunn	1008 Warren
Samuel Anna	100 S. Warren
Emma Johnson	302 Stewart Homes
Michael J. Jurek	5007 N. 2nd St. E. H.
William J. Jurek	1000 1st St. N. E. H.
William J. Jurek	2910 1st St. N. E. H.
William J. Jurek	2910 1st St. N. E. H.
William J. Jurek	1000 1st St. N. E. H.

Name

Address

John S. Ford	1494 W. 1st Ave. Helena
Benneth Ogden	68 So. Emory Hotel
Frederic Grand	1805 Beosta
Paul Schaefer	531 Spencer
Ben Schaefer	531 Spencer
Glen Leaf	1719 Bonanza Helena
Walter A. Lee	1400 1st Ave. Helena
Elizabeth Owens	914 N Warren
Jack Owens	914 N Warren
Helen Collins	1531 Lewis St.
Wing C. Lewis	811 N. Warren
Ernest Hood	909 Beosta Helena
Norman C. Howard	1003-9th Ave Helena
Frederic W. Turtz	1805 W. Lynn #86 Helena
Helen Dawson	1999 Euclid, Helena
Ernest E. Spence	2440 W. 1st Helena
W. H. Spence	1400 1st Ave. Helena

March 9, 1981

Dear Rep. E. Ellison

I am contacting you to request your support for Senate Bill 413 in the form transmitted to the House of Representatives from the Senate. The definition of upland game birds and game animals in Section 87-2-101 of the Montana Code is unacceptable in its current form as those definitions have been subject to various interpretations by Fish and Game officials, wardens, game farm permit holders, and other interested parties. The following summarizes the concerns of and the basic reasons for the changes provided by SB 413:

1. The Montana Legislature should be expected to define exactly which animals and birds will be considered game in this state, and should not use general terms, such as pheasants, deer, and bear.
2. As Section 87-4-401 mandates that a game farm permit is required in order to own and propagate upland game birds and game animals, it is of absolute necessity to define these terms in Section 87-2-101 as to specific species.
3. The current definition, by using some general terms such as deer and pheasants, has been interpreted by the Department of Fish, Wildlife, and Parks to include the tens and hundreds of species of birds and animals found throughout the world, let alone the state of Montana. This interpretation by the department makes it necessary to hold a game farm permit in order to own and propagate birds and animals that are not indigenous to Montana. It also means, technically, that the permit is required for such domesticated birds as the Coturnix quail, the familiar peafowl, and even common chickens, which belong to the Gallus genera of the pheasant family. I believe that game animals and upland game birds of this state should be restricted to those wild species indigenous to Montana, and not be so loosely defined to include domesticated stock.
4. Quail has been removed from the definition of upland game birds because studies, including those of the department, indicate that no breeding populations of any species of quail exist in Montana other than private collections.
5. Of the 48 species of pheasants found in the world, only the ringnecked pheasant is indigenous to Montana, and, therefore, should be the only one classified as an upland game bird. The bird raisers that I know, and myself, refer to the other species as exotic or ornamental pheasants.
6. Game animals have been redefined by SB 413 to only reflect those known to be represented in our state.

As a bird raiser, I feel that our current statutes that define game animals and upland game birds are inadequate and too loosely written. The enactment of Senate Bill 413 will correct this situation by providing a statute that exactly states which species of animals and birds are game in Montana, and for which a game farm permit is required for ownership and propagation. I would appreciate your support in gaining approval of this bill by the House.

Sincerely yours,

David Thornton

4324 Barbara Lane
Missoula, Mt. 59801
March 10, 1981

Representative Orval Ellison
Chairman of House Fish and Game Commission
Capital Station
Helena, Montana

Dear Mr. Ellison:

I am contacting you to request your support for Senate Bill #413 in its present form as transmitted to the House of Representatives from the Senate. The definition of Upland Game Birds and Game Animals in section 87-2-101 of the Montana code is not clear in its present form. It is hard for anyone, whether it be Fish and Game Officials or game farm permit holder, to define what is really covered under the present wording.

This is why it is so important for the Montana Legislature to define exactly what is meant to be covered, not a general definition.

There are about 48 species of pheasants found around the world, and only one species is found in Montana. Of the over 100 varieties of quail, there are none existing in Montana, other than in private collections.

Under Senate Bill 413, game animals have been re-defined by listing those only indigenous to Montana.

As a bird raiser, I feel the present statutes are inadequate and very loosely written. The enactment of Senate Bill 413 will correct the situation by providing a statute that exactly states which species of animals and birds are game in Montana, and for which game farm permits are required for ownership and propagation.

I would appreciate your support in gaining approval of this Bill by the House.

Sincerely,

Douglas Wright
Douglas Wright