

MINUTES OF MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

February 5, 1981

The meeting was called to order by Chairman Smith at 1:00 p.m. in Room 402 of the Capitol.

ROLL CALL: All members of the committee were present for roll call except Senator Berg who came into the meeting at 1:20 p.m.

CONSIDERATION OF SENATE BILL 103, "An act to make the trafficking in body parts of unlawfully taken wildlife protected by the State of Montana a felony punishable by a \$10,000 fine or one year imprisonment, or both; amending Section 87-3-111, MCA."

Chairman Smith asked Vice Chairman Galt to chair the meeting. Acting Chairman Galt called upon Senator Smith, chief sponsor, to explain the bill. Senator Smith said that he had been approached by several people, one of whom was Senator Turnage, and asked to do something about the problem of illegally taking parts of animals and selling those parts for profit. The market for antlers is \$105 to \$110 per pound and the maximum weight of one set of antlers may reach 20 pounds--that's \$2,000. Senator Smith said that he had visited with some of the game farm operators and they also feel a bill such as this is necessary. He had an opportunity to see animals from which antlers had been removed, and the animals seemed fine. He said if the trend of taking animals in an illegal manner continues it will be detrimental to the wildlife population.

PROPOSERS OF SENATE BILL 103. Mr. Erv Kent, Administrator of the Law Enforcement Division of the Department of Fish, Wildlife and Parks, speaking for Director Flynn, submitted written testimony in support of the bill (Attachment #1).

Mr. Wilbur Rehmann, Executive Director of the Montana Wildlife Federation, spoke in support of the bill. He said the bill was necessary to bring the penalties in line with the values of the wildlife resource damage.

Mr. Fred Carver, President of the Southeastern Montana Sportsman Association, Billings, with a total membership of 1100, spoke in support of the bill.

OPPOSERS OF SENATE BILL 103. Mr. Welch Brogan, game farm operator at Corwin Springs, spoke in opposition to the bill. He believes the legislation is a result of newspaper articles and that the incidents of illegally taken wildlife are not prevalent. He had sample newspaper articles to show to the committee. He said he was concerned that legislation could be harmful to people who harvest antlers which are naturally shed by animals in areas around Yellowstone Park. He suggested amending the bill to specifically rule out this kind of harvesting.

Vice Chairman Galt called on Senator Smith to close the discussion. Senator Smith said that SB 103 would not in any way affect the game farm business, that the bill deals only with illegally taken animals and will not involve anyone who harvests antlers naturally shed by animals. He feels that unless the state acts to stop the abuse, laws will be initiated at the federal level.

There was a question and answer period. The hearing on SB 103 was concluded. The meeting was turned over to Chairman Smith.

CONSIDERATION OF SENATE BILL 18, "An act to provide for the regulation of private game animal shooting preserves."

Chairman Smith called on Senator Tom Towe sponsor, to explain the bill.

Senator Towe explained in detail the problems involved in regulating a shooting preserve or a game farm. He said at the present time there are no restrictions other than the game farm statutes which apply to furbearing animals. He raised the following questions: What happens if there are public wildlife trapped inside the game farm? In transporting killed game legally taken at a game farm, how can it be determined that the animal was privately owned? How can it be determined that the animal was disease free? The bill requires publicly owned game animals or domestic animals be protected from adverse effects or harvested by mistake, and also requires that fencing plans be approved by the department. The bill provides that public wildlife be removed from the preserve area, privately owned game be identified by tagging, animals be properly inspected and treated for disease, and the operator keep records which are open to inspection by the department.

Senator Towe then went through the bill, page by page, identifying those portions of the bill where he is suggesting amendments.

Page 1, line 14, after "87-2-101" strike "(4) and"

Page 1, line 23, after "owned" insert "or leased"

Page 3, line 4, after "of" insert "an initial \$100 fee for each species introduced into the preserve plus"

Page 4, line 2, after "location" insert "including the legal description"

Page 5, line 2, after "permit" insert "." Strike remainder of line 2 and lines 3 through 6.

Page 5, line 15, add a new sentence, "If, under these conditions, the operator cannot remove all public wildlife, the department may refuse to issue a permit."

Page 5, line 18, after "permit" strike "that should become commingled with and not readily distinguished from publicly owned wildlife"

Page 6, line 2, after "or" strike 90 days, insert "one year"

Page 6, line 5, after "within" strike the number "6" and insert "10 days of acquisition of the private game animal or within 9";

Strike "receipt" insert "birth of private game animal progeny"

Page 8, line 20, add a new sentence. "Copies of this invoice shall be retained by the permittee for 5 years."

Page 9, line 11, add new section 14, "Annual reports. On or before January 31 of each year a report shall be submitted by the permittee to the director showing the numbers and species of game animals on hand on January 1 preceding and the number and kinds of animals harvested, bought, or sold during the year."

Page 9, renumber sections 14 and 15, to 15 and 16, respectively.

PROPOSERS OF SENATE BILL 18. Mr. Jim Flynn, Director of the Department of Fish, Wildlife and Parks, spoke in favor of the bill with its suggested amendments (Attachment #2).

Senator Towe read a letter submitted by Al Jenkins, secretary to and representing the Billings Rod and Gun Club. They support the legislation (Attachment #3).

Mr. Fred Carver, President of the Southeastern Sportsman Association, spoke in favor of the bill (Attachment #4).

A letter was read into the record from James Phelps, President of the Montana Audubon Council. The council represents six chapters with a membership of approximately 2,000. They support SB 18 believing that the development of private game farms requires the protection of Montana's native wildlife and domestic animals (Attachment #5).

Mr. Wilbur Rehmann, Executive Director of the Montana Wildlife Federation, spoke in favor of SB 18. They support the provisions regarding the identification of private game animals and the annual reporting to the department. He stated the bill would go a long way to control any major disease problem which could come to the state.

Mr. Henry Stip, game farm owner at Sidney, Montana, said that he would support the bill in general and thought it was good. He said he had conducted 46 hunts. He didn't believe tagging of deer and elk was necessary. He did not agree with the 6 months requirement in the bill as originally proposed on page 6, line 5.

OPPOSERS OF SENATE BILL 18. Mr. Steve Musick of Hilger, representing Judith River Ranches, Inc. spoke in opposition to the bill. He manages a game farm in central Montana and expressed concern for more laws to test animals for disease. He stated that the Department of Livestock requires game farms to test all animals before they are brought into the state. Another concern was that of tagging animals. He said that tags will not stay attached to the animals when they are traveling through the brush. He suggested an invoice would have to be given any time a game animal is sold or taken from the farm. He was also concerned about tagging the animals within 9 months of birth. In the situation at their farm, the herd is inaccessible and there has not been enough snow to drive them in to feed. He asked that if they have to tag the animals, they need at least a year.

Senator Towe was recognized by Chairman Smith. He agreed that page 6, line 6, should be amended to 12 months instead of 9 months.

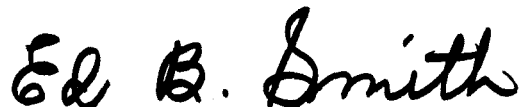
Mr. Glen Childers spoke in opposition to the bill (Attachment #6). He believes that the bill is designed to gradually eliminate game farms. He stated that he has tried to work with the department in coming up with regulations for game farms. He referred to diseased animals in that there are now existing laws that prohibit bringing diseased animals into the state. He said his fences comply with fish and game regulations and if he had to identify his animals, he would prefer putting a tattoo in the lip.

Chairman Smith called on Senator Towe to close. Senator Towe quoted excerpts from Attorney General opinion dated February 25, 1980, regarding game farms, wild game enclosed therein and necessity for removal (Attachment #7). He said a lot of people are very concerned about a large farm being established where public wildlife might be mistakenly harvested. He said if there was a positive way to work out an identification scheme without tags, he would be agreeable to that. Senator Towe also stated that he would be willing to change page 6, line 5, to read 12 months instead of the 6 or 9 that had been mentioned. He agreed that there was a law which required a disease-free certificate on animals brought into the state, but there is no requirement for visual inspection or disease-free certification when transporting animals within the state. He stated there is a provision in the bill requiring notification to the department in the event of any outbreak of a disease. This affords protection to those who are concerned about livestock and hunting and fishing in the state. He said he believed the bill is needed and will not put game farm operators out of business. He believes it is necessary to enact the bill to make sure that public animals are not used and taken for private use.

During the question and answer period, Senator Towe suggested that in every place where the word "wildlife" appears, the word "game animals" should be inserted. He also stated that if the fee as provided for in the bill does not cover the cost to the department, it is going to be the sportsmen around the state who pay the difference. They, of course, will not be happy about subsidizing this venture. He said that the committee may wish to consider raising the annual fee (page 3, line 4) to \$200.00 or more.

Chairman Smith said that no action would take place on the bill today because there are changes the committee will wish to discuss.

The meeting was adjourned at 2:50 p.m.



Senator Ed B. Smith, Chairman

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

February 5, 1981

SB 103

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 speak in support of SB 103.

In recent years, values of certain parts of some wildlife species has increased greatly. These values in some cases far exceed the penalties currently in our laws for the illegal taking of those parts. The result is that it may be attractive for persons to illegally take an animal for its parts.

SB 103 provides a penalty that more closely approximates the loss incurred to the state's wildlife resources by poachers and traffickers in illegal animal parts. To the extent that stiff penalties can do so, it will also act as a deterrent to illegal taking.

For these reasons, I recommend a do pass on SB 103.

February 5, 1981

PRESENTED BY: JAMES W. FLYNN, DIRECTOR
DEPT. FISH, WILDLIFE, & PARKS

SB 18

Mr. Chairman, members of the committee, my name is Jim Flynn. I appear today on behalf of the Montana Department of Fish, Wildlife, & Parks. I am here speaking in support of SB18.

The Department of Fish, Wildlife, & Parks has had the responsibility of licensing game farms since 1917. It was not until recent history (past 5 years) that this responsibility has resulted in difficulty and controversy. The difficulty arises from the lack of specific authorization in the licensing statutes found at Part 4, Chapter 4, Title 87, MCA. The controversy arises from whether or not these game farm statutes authorize sport hunting of those game animals owned by the permittee without regard to state hunting laws and regulations. SB 18 addresses that difficulty and controversy by requiring a separate permit and providing specific statutory guidance and limitations for those operations that have private game animals which the operators wish to hunt as game. All other types of game farm operations would be licensed under present statutes.

The department supports the amendments suggested by the sponsor and believes they will make it a better bill. Providing separate licensure, requiring adequate fencing and removal of public wildlife from the shooting preserve area, and establishing identification of the shooting preserve animals adequately address department concerns with operation of game farms.

There are some areas of the bill to which I would like to call specific attention. The fee suggested in the amendments will still not recoup department costs in initial licensure, but for continuing operations, it will recoup some of those costs over time.

In consideration of the wording in Sec. 6 that refers to "partial" removal of public wildlife from an area, it is important to understand this reference is designed for shooting preserves with several fields or pastures. Thus, for a single species, for example, mule deer, only the mule deer in the field designed for them would need to be totally removed rather than all mule deer on the whole shooting preserve. Fencing of the pastures would then have to be adequate to keep the private mule deer from mixing with the public.

The amendments to Sec. 5 and 6 are important to establish. Tagging of progeny is a difficult area which needs to be studied carefully. The amendment for annual reports will continue the current requirement.

I recommend do pass on SB 18. Thank you.

Montana State Capitol
Helena, Montana 59601.

ATTACHMENT #3

Dear Tom,

I have read all the provisions in SB 18, "The Game Farm Bill" and most heartily agree in every aspect.

Of particular interest to the people of our Club was the provision in the bill for identifying native wild animals that would be entrapped in the confines of a newly constructed game farm. Also desirable was the degree of control that would be given to the Fish Wildlife and Parks Department, both in requirements in regard to the sale of animals or parts of animals and also the right to inspect the animals as regards to disease.

If we are to have game farms in this State, then the least we can do is ^{to} provide some method of regulating them for the good of our native animals and to provide some method for our authorities to be able to check the legality of sales of animals or parts of animals.

The members of the Billings Rod & Gun Club wholeheartedly endorse this bill; without it there could be too many areas of abuse.

Sincerely,

Al Jenkins, Sec.
Billings Rod & Gun Club

Southeastern Sportsman Association

Box 33 Billings, Montana 59103

February 5, 1981

Senator Ed B. Smith-Chairman
Senate Fish & Game Committee
Capitol Station
Capitol Building
Helena, Montana 59601

Mr. Chairman, Committee members:

I am Fred Carver-President of the Southeastern Montana Sportsmen Association, an organization consisting of eight sportsmen clubs and having a membership of over eleven hundred.

We are very much concerned that during the 46th., legislative session of 1979, the Department of Fish, Wildlife and Parks submitted House Bill-38, which was introduced by Representative Robert Dozier. The bill stated; the department shall supervise all the wildlife, fish, game and non-game birds, waterfowl, and the game and fur-bearing animals of the State, (whether they are privately or publicly owned and whether or not they have been reduced to captivity) "wording in() deleted" Ammended to; not held in private ownership pursuant to the law of the State. House Bill-38 was killed and the Fish, Wildlife and Parks director and commission chairman, were persuaded to sign an agreement not to enforce private game farm laws for two years.

This agreement has been a source of real concern for those who finance the Department of Fish, Wildlife and Parks through licenses, taxes on hunting, fishing and other recreational equipment, not to have some type of law enforcement, to help eliminate poaching of wildlife, illegal taking of big game especially elk to increase private game farm herds and the illegal slaughter of elk for their antlers. We feel that unless the committee sees fit to recommend passage of this Senate Bill-18, introduced by Senator Tom Towe, very little can be accomplished in law enforcement by the Department of Fish, Wildlife & Parks.

Thank you,

F. B. Carver

Fred B. Carver
2108 Spruce St.,
Billings, Mt. 59101

cc/fbc

Senator Jack Galt
" Elmer D. Severson
" Gary R. Lee
"

Sen. Dorothy Eck
" Harry K. Berg
" Judy H. Jacobson

Montana Audubon Council

Post Office Box 1075
Billings, MT 59103

February 3, 1981

Mr. Ed Smith, Chairman
Senate Committee, Fish, Wildlife & Parks
State Capitol
Helena, Montana 59601

Dear Sir:

This letter authorizes Mr. Fred Carver, President, Southeastern Sportsmen's Association, to be spokesman for and present a statement on behalf of the Montana Audubon Council with regard to Senate Bill No. 18: "An Act to Provide for the Regulation of Private Game Animal Shooting preserves."

Very truly yours,



JAMES PHELPS, President
Montana Audubon Council

cc: Mr. Fred Carver

Senator Thomas Towe

STATEMENT OF THE MONTANA AUDUBON COUNCIL WITH REGARD TO SENATE BILL NO. 18: "AN ACT TO PROVIDE FOR THE REGULATION OF PRIVATE GAME ANIMAL SHOOTING PRESERVES. -- submitted by James Phelps, Pres. of the Council

The Montana Audubon Council represents six chapters having as headquarters Kalispell, Missoula, Butte (including Anaconda and Dillon), Helena, Bozeman, and Billings. A seventh chapter is being organized at Great Falls. Our membership in the state is approaching 2,000.

Senate Bill No. 18 addresses the same concerns as House Bill No. 38 of the 46th Session, which unfortunately failed to pass. Time has shown the problems have not gone away. The development of private game farms requires protection of our native wildlife and domestic animals.

Much progress has been made in the control of disease among our domestic animals and much knowledge gained about diseases of our game animals. Yet the animal kingdom will be a source of disease that affects man, directly or indirectly. Seldom does a new year pass without a new disease problem. We support the section of the bill (Section 8) addressing disease control.

Private game farms are similar to any business in that they may change the ways in which they are being operated or perhaps cease operations. We support the provision (Section 12) prohibiting the release of any private game animal into the wild except as authorized by the Department of Fish, Wildlife and Parks. This should go a long way in preventing the release of an exotic game animal not considered desirable for the wild. When an exotic is introduced into another life system, where the natural controls of its home do not occur, it may or may not succeed. There are abundant examples of out-of-control introductions; two are the European rabbit in Australia and the red deer in New Zealand. (The red deer is considered by some to be the same species as our elk or wapiti.) More recently, the nutria, from South America, escaped from private fur farms and became a problem in many states. Montana, fortunately, has not had the problem, but we should guard the door.

We support Senate Bill No. 18.

James Phelps
P. O. Box 1075
Billings, MT 59102

(This statement will be submitted on our behalf by Mr. Fred Carver.)

TESTIMONY ON SENATE BILL NO. 18

Senate Bill No. 18 layers an additional licensing procedure on top of existing game farm and shooting preserve requirements. Presently an individual can operate a game farm lawfully within Montana and may harvest animals on that game farm in accordance with the decision of Boyce v. Fish and Game Department. This has since been recognized by the Fish and Game Department in the letter entered into with the Senate Committee of Fish and Game in the last session.

S.B. 18 imposes an additional licensing procedure for game farms when hunting could occur. It vests enough discretion in the Department of Fish, Wildlife and Game so that they would never be required to issue a shooting preserve permit if they chose not to.

This is evident when a person considers the effect of the bill for example. It provides that a prospective operator must satisfy the department that his operation would be conducted in such a manner that it would not adversely affect the public wildlife of the state. What does this mean? Does it mean that if it adversely affects the rabbits or any other type of wildlife that it could be denied? The bill as written is so broad that this interpretation could be made by the department.

Also, S.B. 18 requires:

(1) That an applicant must satisfy the department that no public wildlife would be mistakenly harvested as game animals. Does this again apply to other species, other than elk or deer? Could this as well apply to coyotes or any other wildlife?

(a) That public wildlife be removed from the property. This makes no reference to public game animals such as elk or deer which is intended to be raised by the applicant, but refers to public wildlife in general.

The bill violates an individual's private property rights and is an unlawful and illegal intrusion upon those rights without any showing of any overriding public interest.

Some other objectional provisions contained in the bill are the revocation of the permit provisions which provide that if the permit is revoked all of the private game animals possessed must be disposed of within six months. Presumably, if there was no harvesting or shooting of those animals, a person could continue to have them on the property under the underlying game farm statute, but S.B. 18 would not allow this.

The provision that requires the removal of publicly owned wildlife refers to wildlife rather than to game animals.

Also, the identification of the animals is unrealistic and does not recognize that it may be impossible to tag an animal within 90 days of birth.

It appears that S.B. 18 is an attempt to kill game farms by over regulation, and by giving the department the discretion that they want to decide if any shooting preserves should be allowed to exist. It is a backhanded attempt to destroy a legitimate business venture without any justification.

Respectfully submitted
Allen C. Childers

FEB 26 1980

STATE
OF
MONTANA

**ATTORNEY GENERAL
MIKE GREELY**

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

WILDLIFE - Game farms, wild game enclosed therein, necessity for removal;

WILDLIFE - Game animals, ownership;

MONTANA CODE ANNOTATED - Sections 87-4-401, 87-4-501, et seq.

HELD: Where the fence of a game farm permittee under 87-4-401 et seq., MCA, encloses native wild big game animals, these animals remain the property of the state and may be hunted and taken only in compliance with state law. The state has no responsibility to remove the wild game animals from the enclosure.

25 February 1980

Robert F. Wambach, Director
Department of Fish, Wildlife & Parks
1420 East Sixth Avenue
Helena, Montana 59601

Dear Dr. Wambach:

You have requested my opinion on the following question:

Where the fence of a game farm permittee under 87-4-401, et seq., MCA, encloses native wild big game animals, is the permittee or the state responsible for removal of those animals from the enclosure?

In addressing this question we do not write on a clean slate. The Big Horn Game Ranch near Hardin, Montana, has been engaged in a series of controversies with the department over the last few years. Both a prior Attorney General's opinion (Vol. 36, No. 112) and an unreported district court opinion (Boyce v. Montana Fish and Game

Commission, No. 8529, Thirteenth Judicial District) held that the state is precluded from regulating the hunting of privately-owned animals within the farm.

The present issue does not concern these privately-owned animals, but rather indigenous wild deer populations which were living within the approximately 19,000 acres of the farm when it was fenced. Big Horn apparently intends to stock the farm with privately-owned big game animals and then to allow them to be hunted. The department has issued a game farm permit to Big Horn for all big game species except deer because of the indigenous population trapped within the fence. There have been several unsuccessful efforts to remove these animals from the farm, including a special hunting season. Big Horn argues that it is the state's responsibility to remove these animals by live trapping, hunting or otherwise, and that if this is not accomplished within a reasonable time the state must be deemed to have abandoned its ownership claim to them.

Part of the problem with these issues stems from the applicable statutes. Section 87-4-401 requires a game farm permit from the director of the department before "engaging in the business or occupation of propagating, owning and controlling game animals (except buffalo)...." That section further provides for the issuance of a permit once the land involved has been fenced "so that no wild or public animals of like species can mix with those confined." There is nothing else specifically provided in the code to answer the questions raised here. By contrast, the Legislature has provided for private bird shooting preserves (87-4-501 et seq.), requires a license to hunt thereon (87-4-504), and has set hunting seasons (87-4-521). Any game animals on a shooting preserve may be hunted only in accordance with applicable license, season and bag limits (87-4-527).

This regulatory precision is absent from the game farm statutes and no implementing regulations have been adopted by the department. In fact the game farm statutes do not even expressly provide that the privately-owned animals confined therein may be hunted. Section 87-4-401 speaks only of "propagating, owning and controlling" the animals, although the assumption at this point by all concerned seems to be that ownership and control includes hunting and killing.

Our Supreme Court, and the courts of other states, have clearly defined the limits and extent of state powers with regard to wild game animals. In State v. Rathbone, 110 Mont. 225, 100 P.2d 86 (1940), the Court noted the values of wild animals and held (110 Mont. at 242):

Wild game existed here long before the coming of man. One who acquires property in Montana does so with notice and knowledge of the presence of wild game and presumably is cognizant of its natural habits.

It is further clear that the ownership of wild animals is in the state, held in its sovereign capacity for the use and benefit of its people. Rosenfeld v. Jakways, 67 Mont. 558, 562, 216 P.2d 776 (1923); State ex rel. Visser v. Fish and Game Commission, 150 Mont. 525, 530, 437 P.2d 373 (1968). Wild game is not subject to private dominion to any greater extent than the Legislature sees fit to prescribe within the limits of the Constitution. Herrin v. Sutherland, 74 Mont. 587, 601, 241 P. 328 (1925); Rosenfeld, supra; Visser, supra. Montana recognizes both sovereign ownership and the police power as ample bases for wildlife regulation. State v. Jack, 167 Mont. 456, 460, 539 P.2d 726 (1975). Section 70-2-112 provides:

Wild animals by nature are the subjects of ownership, while living, only when on the land of the person claiming them or when tamed or taken or held in the possession or disabled and immediately pursued.

This does not, however, give a landowner the right to take wild game without regard to law. It merely authorizes him to protect those animals, while on his property, from invasion by another not authorized to be there. Herrin v. Sutherland, supra. See also State v. Mallory, 83 S.W. 955 (Ark. 1903). No individual acquires any title to any wild animal until he reduces it to lawful possession. Krenz v. Nichols, 222 N.W. 300, 303 (Wis. 1928); Geer v. Connecticut, 161 U.S. 519, 529 (1896).

Thus it is clear that the wild deer now enclosed by Big Horn's fence are the property of the people of the State of Montana; that they are subject to regulation for the common good and for the protection of the animals; and that Big Horn can acquire no ownership interest therein except in compliance with law. The game farm statutes provide no such method for acquiring ownership and, in fact, mandate that wild and privately-owned animals not be allowed to mingle. (87-4-401.)

Thus Big Horn and its owners and guests will encounter a quandry if Big Horn introduces privately-owned deer onto the farm for purposes of hunting them. As long as the only

animals that are killed are privately-owned, no problems arise. However, if one of the confined wild deer is killed, the hunter must be in compliance with applicable license, season and bag limits or risk prosecution.

Several alternatives are open. First, all deer hunting on the farm could be done in compliance with state law. Then the successful hunter could shoot either a private or a wild deer. Second, the privately-owned deer could be conspicuously marked or banded so that a hunter could easily distinguish them. These deer could be hunted by Big Horn as it saw fit. This alternative would work the first year, but thereafter a question would arise as to the ownership of offspring which might be the offspring of a wild deer and a privately-owned one. It would be impossible to determine the parentage. Third, Big Horn could refrain from introducing privately-owned deer onto the farm until the wild population had been removed by hunting in compliance with state law or otherwise. Removal of the wild deer has been attempted to some extent already. It should be noted in this regard that nowhere has there been found any support for the proposition that when a game farm permittee encloses an area of land with a game-proof fence, the burden is upon the state to do whatever is necessary to remove the wild game animals. The department can and should cooperate in any reasonable way possible by scheduling special seasons, or by live trapping and transplanting where the terrain and the department's budget and personnel limitations will allow. In large areas containing rugged terrain, an immediate removal requirement would be practically impossible for the department to fulfill. The benefits from the farm itself and from the game farm statutes flow primarily to Big Horn. If a removal requirement is to be imposed upon the department, it is the Legislature that must do so. There likewise will probably always be some lingering doubt as to whether all wild animals had been removed both because of the size and terrain of the area involved, and because of the possibility of breaks in the fence which would allow wild animals into the enclosure. Reasonable satisfaction by the department that all wild game animals have been removed is the most that can be workable.

Another cooperative alternative could involve an agreement between the department and Big Horn as to how many wild deer were entrapped on the farm. Big Horn could agree to never reduce the herd below this number. Thereafter the "wild herd" base figure could be periodically reduced by hunting in compliance with state law or by trapping and transplanting.

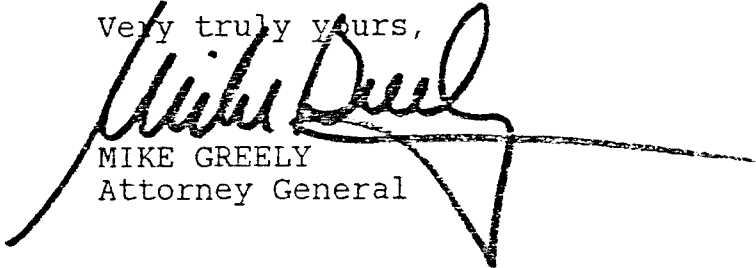
Robert F. Wambach, Director
Page 5
25 February 1980

The selection of one of these alternatives, or of another, is upon the permittee. The wild game animals existed upon the land long before the existence of the farm, and Big Horn had actual and constructive knowledge of this fact before the fence was erected. It is the responsibility of Big Horn, or its client hunters or both, to take whatever steps are necessary to insure that wild game animals on the farm are taken only in compliance with state law, or that they are removed or not taken at all.

THEREFORE, IT IS MY OPINION:

Where the fence of a game farm permittee under 87-4-401 et seq., MCA, encloses native wild big game animals, these animals remain the property of the state and may be hunted and taken only in compliance with state law. The state has no responsibility to remove the wild game animals from the enclosure.

Very truly yours,



MIKE GREELY
Attorney General

APR 29 1980

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APR 29 1980

**ATTORNEY GENERAL
MIKE GREELY**

DIRECTOR'S OFFICE

STATE CAPITOL, HELENA, MONTANA 59601 TELEPHONE (406) 449-2026

24 April 1980

Robert F. Wambach, Director
Department of Fish, Wildlife & Parks
1420 East Sixth Avenue
Helena, Montana 59601

Dear Dr. Wambach:

This is in reply to your letter of March 17, 1980, requesting further clarification of Opinion No. 68, Volume 38, concerning game farms. Your request for clarification concerns the suggestion in the opinion that there are alternatives which may be adopted to resolve Big Horn's problem with the trapped native deer population.

The opinion stated that it is Big Horn's responsibility to determine how to proceed in this matter because the problem of the presence of the deer is one of Big Horn's own creation, and because the consequences of killing the native deer population in violation of state law would fall upon Big Horn or its client hunters. Big Horn must determine how it wants to proceed in order to remain in compliance with the law as set forth in the opinion.

As I clearly indicated, the alternatives discussed in the opinion are neither an exclusive list nor a complete discussion of the legal ramifications of each one proposed. The alternatives were offered to illustrate to Big Horn the possible courses of action open to it other than its abandonment theory, which is contrary to law.

According to your letter, Big Horn has decided to opt for the fourth alternative I suggested, which involves maintenance of a base-number state-owned herd within its fence. As the opinion indicated, this would necessitate a cooperative agreement between Big Horn and the department. The other alternatives suggested contemplated unilateral action by Big Horn. In this cooperative context, it is obvious there would be many details to be worked out on a mutual basis between the permittee and the department. One of them, as you suggest, would be the problem of the progeny of the trapped wild deer. These deer are certain to multiply among themselves, and from the law cited in the opinion, those

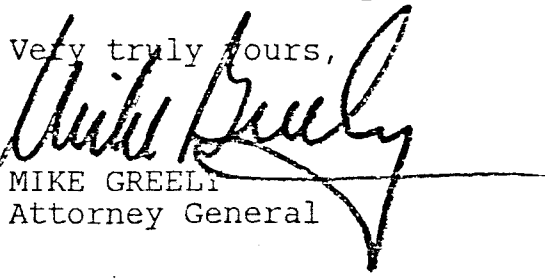
4/29/80 Original to Woody Wright, cc: Dr. Wambach, Orville Lewis, Fletcher
Newby, Erv Kent and Gene Allen. op

Robert F. Wambach, Director
24 April 1980
Page 2

progeny are as clearly owned by the State as their parents and must be accounted for.

Resolution of this wild deer problem is a difficult one. There are complex legal, biological and factual issues to be resolved in any attempted solution. If Big Horn decides to work with the department in seeking a solution, both sides must act reasonably and in good faith.

Very truly yours,



MIKE GREELY
Attorney General

NAME: Wesley E. Brown DATE: 2-15/81

ADDRESS: Cedwin Springs, Mont.

PHONE: 848 7200

REPRESENTING WHOM? Cinnabar Game Farm

APPEARING ON WHICH PROPOSAL: S B 103

DO YOU: SUPPORT? _____ AMEND? ☒ OPPOSE? _____

COMMENTS: Too many grey areas for law enforcement.
Legislation proposed as an attempt at irresponsible
newsprint articles. None of which have been
authenticated nor not.

NAME: Ulrich Rohmann DATE: _____

ADDRESS: Box 901 Helena mt. 59624

PHONE: 443-0326

REPRESENTING WHOM? Montana Wildlife Federation

APPEARING ON WHICH PROPOSAL: SR 15 - SBIC-3

DO YOU: SUPPORT? ✓ AMEND? X OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: F. B. Carter DATE: 2-5-51

ADDRESS: 2108 Spruce St Bldg 1, met 54101

PHONE: 259-1998

REPRESENTING WHOM? New Texas Gas Montrose Apartments Assoc.

APPEARING ON WHICH PROPOSAL: SR-18 & SB103

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: STEVE MUSICK DATE: 2/5/81

ADDRESS: Hilger, Montana

PHONE: 406-462-5658, 406-2167-5584

REPRESENTING WHOM? Judith K. River Kanches dnc

APPEARING ON WHICH PROPOSAL: SB 18

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

PHONE: 482-5860

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE *Fish and Game* COMMITTEE

BILL

VISITORS' REGISTER

DATE 2/5/81

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE FISH AND GAME COMMITTEE
January 20, 1981

Information Sheet

Senate Bill 103--Smith

SB 103 makes it a penalty punishable by a \$10,000 fine or one-year imprisonment to traffic in the body parts of unlawfully taken species. This bill addressed such schemes as the trafficking in elk antlers.

SENATE FISH AND GAME COMMITTEE
January 20, 1981

Information Sheet

Senate Bill 18--Towe

SB 18 allows for the establishment and regulation of private game animal shooting preserves. The privately possessed game animals referred to in this bill may include fur-bearers such as muskrat, bobcat, mink, fox, beaver, etc. and game animals such as deer, elk, moose, antelope, mountain sheep and goats and bear. The bill provides for a permit procedure for the operation of such a preserve that addresses the following concerns:

1. That publicly owned game animals or domestic animals will not be adversely affected or mistakenly harvested.
2. That fencing plans are approved by the department.

The bill also has provisions that would ensure:

1. That publicly owned game animals will be removed from the preserve area.
2. That all the privately owned game on the preserve will be properly tagged.
3. That the animals will be properly inspected and treated for disease.
4. The operator keep records that are open to inspection by the department.