

MINUTES OF THE MEETING  
FISH AND GAME COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 29, 1985

The meeting of the Fish and Game Committee was called to order by Chairman Bob Ream on January 29, 1985, at 3:20 p.m. in Room 317 of the State Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL NO. 314: Representative John Cobb, District 42, Augusta, appeared before the committee as sponsor of House Bill No. 314. He said that this bill provides another option for the Fish, Wildlife, and Parks and their discretion of what to do with wild animals that are damaging property. This option is to allow them to herd the animals off the land that they are damaging. He said that with this bill they can herd them anywhere they want, as long as they get permission. He said that this option is kind of included in Representative Asay's bill that we heard last week. He said that he would recommend that if Representative Asay's bill should pass, that this bill just be killed because his implies herding as an option anyway.

PROPOSERS: There were no further proposers to this bill.

OPPOSERS: Jim Flynn, Director of the Department of Fish, Wildlife, and Parks, spoke as an opponent of this bill. He said that while the department completely supports the intent of HB 314, he must oppose it because of the constraints it would necessarily place on their efforts to respond to and resolve game damage complaints in a timely fashion. A copy of his testimony was handed out to all committee members. (See Exhibit No. 1)

Hal Price, representing the Montana Wildlife Federation, spoke as an opponent of this bill. He stated that the Federation believes that the Department of Fish, Wildlife and Parks should never fail to seek permission before herding animals across or into private property. However, to make it an absolute requirement that permission first be obtained, it seems to set up in many cases, an insurmountable obstacle to effectively deal with game damage problems. He said that requiring prior permission could cause costly delays to both the landowner

FISH AND GAME COMMITTEE

January 29, 1985

Page Two

and the Department. He stated that in many cases, potential delays could cause substantial damage to crops and property. He said that the Fish and Game could find itself in violation of the law if it was unable to get permission of the right property owners. The Federation is opposed to House Bill No. 314, because they believe that its passage would result in less effective control of game damage problems.

Janet Ellis, representing the Montana Audobon Council, stated that the Council supports House Bill No. 314 with some reservations. (See Exhibit No. 2)

There were no further opponents to the bill.

DISCUSSION OF HOUSE BILL NO. 314: Representative Montayne wanted to know how easy it was to herd these animals away from a nice green alfalfa field, and once herded off, are they going to come back. Mr. Flynn replied yes, and no. He said that sometimes they come back and sometimes they don't. He said that it is not an easy task nor a long-term solution, but it will relieve the immediate problem. He said that herding them off once is not a guarantee that they will stay off forever; but what they can and do, is hire a herder to stay in the area for a week or so to move the animals.

Representative Hanson wanted to know if the elk or the deer were the worst offenders. Mr. Flynn stated that the elk cause the biggest problem because they do the most damage more quickly than the deer. He said, however, that the most frequent problem they have is the deer.

Representative Ellison asked Mr. Flynn what his Departments liability was at the present time. He said that he thought that elk or bison would be awfully hard on fences if they were being chased by a helicopter. Mr. Flynn said that he hesitated to answer, but he believes that their liability is undefined at the present time. He stated that he was not aware that they had ever been issued a bill for a fence knocked down.

Representative Grady asked Mr. Flynn if he felt it was a problem to get prior permission from landowners before a herd of elk was moved. He stated that his concern was with the property damage that could occur during such a move. Mr. Flynn stated that he felt that if a landowner was not cooperative with allowing the game to be hunted

FISH AND GAME COMMITTEE  
January 29, 1985  
Page Three

off his property, then he would probably not be cooperative with having the game herded off his property. Mr. Flynn said that House Bill No. 314 would close any option they now have.

Representative Ream asked Mr. Flynn if his Department was herding elk at the time of their last helicopter mishap. Mr. Flynn said that they were not herding elk back on to the refuge, but what they were doing was herding the elk that were off the refuge into a trap so they could be transplanted to another part of the state.

Representative Jenkins wanted to know if it would help the Department, if there were a law to allow the Department to spotlight game animals for special kill. Mr. Flynn said that spotlighting might be another tool to use, but he did not feel that it would be the solution to the problem.

There being no further committee questions, Chairman Ream asked Representative Cobb to close. In closing, Representative Cobb stated that he put in the word "permission" because he felt that the Fish and Game received enough verbal abuse for not asking permission. However, he would remove that word if this bill were considered for passage.

CONSIDERATION OF HOUSE BILL NO. 388: Representative John Cobb, District 42, Augusta, appeared before the committee as sponsor of House Bill No. 388. He said that this bill tells of the powers and duties of the Fish, Wildlife, and Parks; and what he is doing, on page three of the bill, is adding another duty. Basically, what that duty states is that upon written notice by a landowner or person in possession and having charge of any land in the state that wild animals are causing substantial damage to the property, the department shall mitigate all substantial property damage.

There were no further proponents to this bill.

OPPONENTS: Jim Flynn, Director of the Department of Fish, Wildlife and Parks, spoke as an opponent of this bill. He handed out testimony to all committee members. (See Exhibit No. 3)

Hal Price, representing the Montana Wildlife Federation, stated that their concern is not with what this bill intends to do, but their concern is that they do not understand

what would constitute successful mitigation. He also stated that they do not understand what "substantial property damage" consists of.

Janet Ellis, representing the Montana Audobon Council, stated that the Council opposes House Bill No. 388 as written. She said that it would be essential that the term "mitigate" and the phrase "all substantial property damage" be defined before they could potentially support this bill. (See Exhibit No. 4)

(Proponent): (Representative Brandewie could not be present at the committee hearing, but he sent some pictures in support showing the damage done to Christmas trees by game animals.)

DISCUSSION OF HOUSE BILL NO. 388: Representative Rapp-Svrcek asked Representative Cobb if he was worried about putting this whole issue into the courts and coming up with a similar situation of that which came out of the courts on the stream access. Representative Cobb said that this is an issue that has been going on for years and he feels that this bill is a simple solution to the problem that we have had. He said that right now it is a discretionary issue so it would be better to let the courts handle it. Representative Rapp-Svrcek asked Representative Cobb if he gave any thought to defining "mitigation" or "substantial property damage", when he was drafting this legislation. Representative Cobb said that he didn't want to get into defining them because he felt it was for the courts to decide.

Representative Pavlovich asked Mr. Flynn from where the money comes if there is damage done. He wanted to know if it comes out of the general fund or if there is a special fund. Mr. Flynn replied that to pay for the panels and bloodmeal, they have an appropriation from the Legislature that is funded out of general license revenue fund.

Representative Eudaily asked Representative Cobb why no process was provided in this bill. Representative Cobb stated that right now there is no law stating that an individual has a right to disagree because it is a discretionary law. This would give an individual a legal right to disagree. He said that he was not trying to get this into court, he was just trying to get the legal right.

FISH AND GAME COMMITTEE

January 29, 1985

Page Five

Representative Eudaily noted that on page 2, line 21, this bill gives the Department rule making authority, but there is no statement of intent of extension of authority. Representative Cobb stated that he thought it was in there.

Representative Ellison said that he felt that they were going to have to start treating the problem and not the results of the problem. Representative Ellison asked Mr. Flynn how much money they would need to get a game count and an inventory of resources. Mr. Flynn said that he could not be specific, but they do have an amount before the Appropriations right now. He said that a request made in the 1983 session was denied and it is a request that they now have for this session. He said they were trying to get at the problem and at the same time get an increase in the budget to treat the symptom and that is the game damage itself. Representative Ellison asked Mr. Flynn if he thought their original budget had enough money. Mr. Flynn stated that the Appropriations subcommittee has been extremely responsive to the requests of the agency.

Representative Pavlovich asked Mr. Flynn where the money would come from to pay for game damage. Mr. Flynn replied that there is no money available.

Representative Jenkins asked Janet Ellis what her views were in handling the problem of game damage. Ms. Ellis replied that, basically, they are supportive of management before there is a problem.

Representative Eudaily asked Mr. Flynn where the money would come from which they requested for aerial surveys for game counting. He asked if it would come from the hunting license fee money. Mr. Flynn replied that it would come from the state general license money. Representative Eudaily wanted to know why, if it is the license money paid by the sportsman, can't the department use some of this money for surveys. Mr. Flynn replied that he cannot assume what the committee is thinking, and there is more than just this one problem before the committee. He said that this is just one issue and many other issues they have rejected, approved, or modified even when there is ear-marked money.

Representative Ellison commented that he has sat in on

FISH AND GAME COMMITTEE

January 29, 1985

Page Six

several of the budget meetings, and they allocate the money the best they can. He said they try to keep the budget down so that it will not necessitate raising hunting lincense fees.

Representative Grady had a question regarding the funding for the panels, bloodmeal, and other preventive tools used by the Department. He asked Mr. Flynn if this came out of the general license fee money and if the Legislature told them how to appropriate that money. Mr. Flynn said that the Legislature can approve, modify, or reject the Departments request of game damage funds. He said that their current budget is \$100,000.00 for game damage and they did request another \$75,000.00 per year and this request was approved. He said that it was general license dollars.

Representative Ream asked Mr. Flynn if the "refuge" farms that he is familiar with in western Montana, are the types of farms or ranches that are causing most of the problems in the entire state. Mr. Flynn replied that it gets to the heart of the problem, because game damage occurs in many parts of our state. He said that it is hard to set laws though, which will affect everyone in the entire state. He said that many of these "refuges" are a problem, but throuwing money out for game damage will not solve the problem and the Department does not want to have the right of telling a person how to manage his land. He said it is a very difficult and complex situation, and that is why it has not been solved before.


Representative Ellison commented that he feels that getting at the root of the problem is the only solution. He asked Mr. Flynn that when they issue kill permits, is it legal to shoot at night. Mr. Flynn stated that he is hesitant to make any comment on this and would like to wait until the hearing on Thursday (1-31-85), so that he can talk to their attorney and find out what authority they have.

There being no further committee questions, Chairman Ream asked Representative Cobb to close. In closing, Representative Cobb stated that all this bill does is take away discretion and give duty. He said that by giving the Department duty, it gives an individual the right to disagree.

FISH AND GAME COMMITTEE  
January 29, 1985  
Page Seven

The hearing on House Bill No. 388 was then closed.

ADJOURNMENT: No executive action was taken so the meeting  
adjourned at 4:45 p.m.

A handwritten signature in cursive script that reads "Bob Ream". The signature is written in dark ink and is positioned above a horizontal line.

BOB REAM, Chairman

DAILY ROLL CALL

Fish and Game COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1-29-85

[illegible]



HB 314

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

January 29, 1985

While the department completely supports the intent of HB 314, I must oppose it because of the constraints it would necessarily place on our efforts to respond to and resolve game damage complaints in a timely fashion.

It is both common sense and courtesy to contact a landowner and solicit his permission when we know we will be herding animals onto or across his property. We always try to do this when we know this in advance. Unfortunately, we do not always know in advance that resolving a problem will involve herding, and making timely contact with some landowners is not always possible.

Most herding we do is from the ground and involves keeping animals out of an area; rarely do we push animals very far. When we do herd by air, it is usually to push animals away from a concentrated food source such as a haystack or an alfalfa field. In these cases, we try to move them to a more remote area on property of the same owner.

It is not unusual that our best opportunity to herd and resolve a problem, at least temporarily, occurs on the first investigative visit. Because we often do not know what to expect, adjacent landowners are usually not contacted in advance (it is time consuming and usually is not necessary). Passage of this bill would sometimes preclude us from "spontaneously" using herding to take advantage of a situation and alleviate a game damage problem. A case in point recently involved bison.

Yellowstone Park bison are infected with a high incidence of brucellosis. This is of great concern to Montana's livestock industry and our department has an agreement with the park to try and keep the bison inside the park or to destroy those animals that wander out. We recently received a complaint that several bison were seen several miles outside the park. We dispatched a helicopter to locate these animals in order that we might direct our personnel to the animals which, we assumed, would have to be destroyed.

After locating the animals, they appeared "willing" to be herded, and we were successful in taking these animals more than 9 miles back to the park.

During this operation, the bison crossed the property of several private landowners. By spontaneously taking advantage of the situation, the problem was solved (at least temporarily), quickly, and in the most cost-efficient manner possible. If HB 314 had been in place, this situation would not have been possible. At the very least, it

Exhibit #1  
p. 2  
1-29-1985

would have required time to get all of the necessary landowners' permission and it would have required another flight, doubling our costs. And, of course, on another day the bison may not have been nearly as cooperative.

Another example would be the situation whereby a landowner with a philosophy of no hunting has created a refuge. In this situation we attempt to herd animals back to the created refuge from which they came.

If the landowner were not to issue permission, we could not put the animals to the source of the problem.

Herding is not as simple as it may sound. Our employees do not know all the landowners in all parts of the state, much less know where all of the ownership boundaries are. Many are not even marked with fences. We can never be sure where we will find the animals and, as the saying goes, we are often only successful in herding them "where they want to go." Also, we can never be quite sure where they will go after the herding has stopped.

As I mentioned earlier, we never intentionally herd animals onto another's property without asking for permission in advance. Rarely, in responding spontaneously to an opportunity, animals may be pushed from one ownership to another. When we are aware of this, we contact the affected landowner immediately and work out any problems this new situation may have created. However, this is the exception. Our department will continue to seek permission in advance whenever possible. We are not aware that our past actions in this regard have caused many serious problems.

Passage of this bill would hamper our abilities to solve certain problems in a timely fashion and would increase our costs on many investigations (requiring extra trips, flights, etc.). For these reasons, I recommend that HB 314 do not pass.

Exhibit #2  
1-29-1985  
H.B# 314

Montana Audubon Council  
Testimony HB 314  
January 29, 1985

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Council.

The Council supports HB 314 with some reservations. It is our understanding that the Department of FWP already uses the technique of herding animals off someone's property to provide immediate relief to landowners experiencing severe damage from wildlife. It is hence logical to include this technique in the list of techniques available to the Department to provide relief to landowners.

Our concern with this legislation is the second provision stating that the Department "may not herd the animals onto the real property of another without first obtaining written permission of the owner...."

I hope that everyone here agrees that it would be unreasonable for the Department to herd animals onto someone else's property intentionally without obtaining permission. Wild animals are wild, however, and it is difficult to predict where exactly they will go when being herded. What happens if they accidentally go onto someone else's land?

If HB 314 makes the Department liable for moving animals onto someone else's land, they may decide to not use this technique at all. Because of the sensitivity of ~~the~~ landowner-Department relations right now, the Department would seemingly create more enemies than friends if it told landowners it could not herd animals off property because of potential liabilities.

The Audubon Council hence supports the main concept behind HB 314. We question<sup>however,</sup> whether or not landowners want to potentially tie the Department's hands when dealing with this common sense issue.

Thank you.

HB 388

Testimony presented by Jim Flynn, Department of Fish, Wildlife & Parks

January 29, 1985

I appear before you today in opposition to HB 388 for many of the same reasons I have stated before this committee in reference to other legislation.

Under Section 87-1-225, MCA, the Montana Department of Fish, Wildlife and Parks is already directed to investigate and study all game damage complaints; i.e., "Upon the request or complaint of any landholder or person in possession and having charge of any land in the state that wild animals of the state, protected by the fish and game laws and regulations, are doing damage to the property or crops thereon, the department shall investigate and study the situation with respect to damage and depredation." We take this charge seriously, and in the past 18 months have responded to several hundred such complaints, supplying more than 1,800 elk panels, 1550 rolls of snowfence, 650 rolls of field wire, 114 gallons of deer repellent and 45 tons of bloodmeal to landowners in our efforts to mitigate wildlife damages. The department is doing what this bill would direct us to do.

A major concern we have with the amendment to the law in HB 388 is the term "...shall mitigate all substantial property damage." This would seem to infer that the department can, in fact, mitigate all substantial property damage. In reality, this is not the case and I would cite some examples for your consideration.

In northwestern Montana, we have a landowner who is unquestionably suffering substantial property damage. He has allowed a lot of public hunting, we have issued extra regular season permits, we have conducted early and late season hunts, we have hired herders and the substantial property damage has not ceased.

The reason it hasn't is because a neighbor on one side will allow no hunting on his land under any circumstances. To complicate things even more, the property lies on the Montana-Idaho border and elk from that state also are part of the problem.

I would submit that even with the law change proposed in HB 388 that we shall mitigate, we could do no more in this case.

And yet, because we are not mitigating the language in this bill would seem to set the stage for a court action against the department because we have not followed the law which requires that we "shall mitigate all substantial property damage."

Another facet to consider is that we can only mitigate to the extent that the legislative appropriation process gives us the tools to mitigate.

We have increased over two bienniums our requests for game damage funds. Even with these increases, we have no excess of funds to address every situation to its fullest.

If the revenues and manpower were without limit, it might be possible to mitigate all cases. However, I question whether the appropriations process would grant such a request if it were made.

Finally, Mr. Chairman, this bill seeks to place a statutory requirement on this agency which we would be unable to fill in all cases, and thus be liable to court action. In addition, it contemplates a tremendous commitment of money and manpower to comply with the requirement.

For these reasons we urge that HB 388 do not pass.

Montana Audubon Council

Testimony HB 388

January 29, 1985

Exhibit # 4

1-29-1985

H.B. # 388

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I'm here today representing the Montana Audubon Council.

The Council opposes HB 388 as written. It is essential that the term "mitigate" and the phrase "all substantial property damage" be defined before we could <sup>potentially</sup> support this legislation.

Clearly, if "mitigate" means that the Legislature supports the Department's programs of putting bloodmeal out or putting up fencing around hay stacks, this bill should be used to "send a message" to the Appropriations Committee to give ~~money~~ the Department more money for this program.

If, however, "mitigate" means financial compensation, the questions posed surrounding HB 191 (also heard in this committee) are to be echoed: who qualifies for compensation and when, what is a reasonable damage claim amount and how is that amount to be assessed, and where does the money come from.

This morning, the Appropriations subcommittee reviewing the Department of FWP budget, allocated one half of the Department's budget request for doing aerial surveys on wildlife populations. The Department requested that money so it could get a handle on game populations, and, in turn, be able to better set hunting quotas and seasons. We suggest, as a positive step towards working on the problems facing landowners today, that this committee actively seek more funding for the Department to get a better handle on its game populations. If you would seek such funding, the problems landowners are experiencing could potentially be alleviated before they are problems—and a positive solution for all would more likely be found.

Thank you.

## VISITORS' REGISTER

FISH AND GAME

COMMITTEE

BILL NO. 314

DATE January 29, 1985

SPONSOR COBB

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Hal Price	Mont Wildlife Fed		X
Janet Ellis	Mont. Audubon Council		X
Ann Humphrey	Mt. Audubon Council		X

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

# VISITORS' REGISTER

# FISH AND GAME

COMMITTEE

BILL NO. 388

DATE January 29, 1985

SPONSOR COBB

[illegible]

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.