

MINUTES OF THE MEETING
FISH AND GAME COMMITTEE
MONTANA STATE SENATE

February 12, 1987

The seventh meeting of the Senate Fish and Game committee was called to order at 1:10 P.M. on February 12, 1987 by Vice-Chairman William Yellowtail in Room 402 of the Capitol Building.

ROLL CALL: All members were present at roll call with the exception of Chairman Ed Smith who was to arrive presently.

CONSIDERATION OF SENATE BILL 219:

Senator Darryl Meyer, Senate District No. 17, Great Falls, MT, chief sponsor of the bill, stated the the landowner in a hunting district where elk permits are awarded shall be issued, upon application, a permit to hunt elk on land owned by him. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the department for the district, these permits shall be awarded by a drawing. The department shall provide for those persons making valid application for special elk permits a method of selecting first, second, and third choice hunting districts for any drawing held pursuant to the section.

PROPOSERS:

Ron Marcoux, Fish, Wildlife and Parks Department, presented written testimony . For the record, the department stands in favor of the bill with amendments. (Exhibits 1 & 1-A)

John C. Hoyt, Jolly Roger Angus Ranch, Belt, MT, stated that the bill does not provide for a permit in a hunting district, but states that the landowner may hunt elk on the land owned by the landowner. Hoyt pointed out that elk are different than deer for the fact that elk attracts many hunters and are destructive. Hoyt stated that his ranch is located in a permit area, and he receives many telephone calls from hunters for a month before the season and the calls continue during all hours of the day and night. Hunters calls are made to ask to hunt on the property or to cross the property to access to public lands. Hoyt must hire a man for two months of the year to schedule, arrange for parking space, and to control the number of hunters within each hunting group. The hunter management problem is unwanted, but the Fish, Wildlife, and Parks Department does not offer an alternative. The elk are destructive of fences and haystacks. During six months of the year, the average elk herd of 200 elk eat grass and destroy property, and the ranch pays the costs without reimbursements. As written, the Fish, Wildlife

and Parks would certainly be deterred from issuing permits. Hoyt suggested an amendment in regards to incorporated land so that the corporation can select a member to be the permit holder.

Michael Curran, Lewis and Clark, Teton, and Cascade County rancher, stated that there are two special hunting districts located in the areas where his ranches are located. Curran allows hunting on the ranches, but restricts the hunters to being attended while on the ranches or crossing the ranches. Fence repair and damage costs must be taken care of each season. Curran stated that he is in a position to police the 120 square miles of land better than anyone else. Currently, there is not real incentive to enforce the law, especially when communication with the Fish, Wildlife and Parks' hotline takes about four days to answer. The response by the department after the four-day time frame does not do any good, especially when the elk carcass was dragged off the land the day the call was made.

Esther Stenberg, Montana Wildlife Federation, distributed written testimony which offered amendments. (Exhibit 2)

Lorna Frank, Montana Farm Bureau, recommended the handling of elk permits in the same manner as antelope permits are handled. The landowner is given preference for special elk permits.

Carol Mosher, representing the Montana Stockgrowers and the Montana Cattlewomen, stated that they support SB 219.

Tony Schoonen, a concerned sportsman, stated that the landowner must be rewarded for allowing hunting on the private land, giving access across private land to public land, and for having a large amount of wildlife on their property. A blanket liability policy was considered by the Landowner-Sportsmen's Board to compensate landowners for wintering wildlife, but the cost was prohibitive at \$3 million. The board also considered a block management system which would reward landowners by allowing fish and game employees or volunteers to help the landowners to direct hunting traffic. Schoonen stated that the block management system idea was tabled, but the SB 219 could be an alternative way of accomplishing the same results. Schoonen stated that the amendments offered by the Fish, Wildlife and Parks Department should be considered.

OPPONENTS

Gene Clauson, Western Montana Fish and Game Association, stated this bill would allow any number of conglomerates and incorporated landowners to subdivide and in doing so, obtain additional hunting permits. Landowners and lawyers could create mischief.

Joe Gutkoski, president, Gallatin Wildlife Association, stated opposition to SB 219 in regards to determining landownership according to acreage. Time-share ownership of land would qualify individuals to receive permits according to the language of the proposed bill. Gutkoski stated he would stand in support of the bill if the amendments recommended by the Montana Wildlife Federation were incorporated into the bill.

QUESTIONS FROM THE COMMITTEE:

Senator Bishop questioned Curran if he allows the general public to hunt elk on his private land. Curran responded that no one hunts on his land without permission. Due to past experience, the ranch is not opened to the public without permission. Liability fears caused Curran to hire a "guide" to transport hunters on the land. If the ranch is not entitled to a permit, the ranch personnel will not be enthusiastic about transporting guided hunts. Senator Bishop stated that he appreciates the fact that Curran allows the general public to hunt on his land.

Hoyt agreed with the concern of out-of-state hunters coming to hunt elk on land under the pretense of being time-share-property-owners. A 640 acre limitation should be a factor that is to be considered.

Senator Meyer stated that the 640 acre suggestion has merit. Many Montana landowners will close up hunting on their property if they are not allowed special elk permits, but at the same time, feed and repair the destruction made by the elk. Issuing permits is one way of rewarding landowners for taking care of the game.

The hearing was closed on SB 219, and the gavel was returned to Senator Ed Smith, Chairman.

CONSIDERATION OF SENATE BILL 265:

Senator Al Bishop, Senate District No. 46, Billings, MT, sponsor of the bill, stated the bill proposes that the Fish and Game Commission is to be the head of the Department of Fish, Wildlife and Parks, and would allow the commission to appoint the director of the department. The bill proposes that the governor shall appoint the commission members from lists of people supplied by sportsmen and agricultural organizations. The proposed law provides that one of the members of the commission is to be experienced in breeding and management of domestic livestock. The commission, and not the governor, will appoint the director, the everyday chief executive officer. Bishop stated that the commission is made up of five "civilians" who are appointed by the governor from each of the five state districts. The commission meets monthly to set policy concerning bag limits, methods

of taking game, and other various duties. These "civilians" will be chosen from lists of people submitted by sportsmen and agricultural organizations. The major change in the law will be that the commission and not the governor will appoint the director. Bishop pointed out that the amendment grandfathered the existing director, Jim Flynn

PROPOSERS

Jeanne Klobnak, Montana Wildlife Federation, supports SB 265 as amended by Senator Bishop. Written testimony was submitted and included exhibits used in testimony. (Exhibit 3)

Robert Vandervere, a concerned citizen lobbyist, stated that the Fish, Wildlife and Parks have been appointed and it has been just like an apple: You can't tell what an apple looks like until you slice it. Maybe you will find something rotten inside the apple. Vandervere stated that he does not believe in the governor being able to appoint the director. It is like giving a political plumb to someone that he likes. The appointment should be made by the commission members. Then, if the director is not liked, he will be fired. In the situation where the governor makes the appointment, the term must be served to completion. Vandervere stated that he likes Mr. Flynn. So far, Flynn has done a pretty good job. The amendment "grandfathering" Mr. Flynn's directorship is satisfactory.

Tony Schoonen, stated that he appreciated the fact that government is representation of the people, and that SB 265 could allow for representation in the appointment of the director. Schoonen hoped that the appointment would be of a professional wildlife manager. Recreationalists must have representation due to the fact that they provide the revenue to finance the department. Political decisions outweigh sound resource management.

There are too many political decisions being made in the Fish, Wildlife and Parks Department; the decisions should be made according to sound resource management data. Schoonen closed by saying, "Is the Schwinden Administration going to be remembered in Montana's history as one that destroyed the university system as well as one of the best wildlife management conservation systems in the Country."

Rich Day, Bozeman, MT, past president of Montana Wildlife Federation and a member of the Gallatin Wildlife Association, stated that the current appointment process lacks access by the common citizen. The most recent appointment was made without public advertisement and without an avenue by the common citizen to have a voice in the appointment process. Day stated that Montana has one of the best wildlife agencies in the nation and is demonstrated by the amount of available game. Day Urges support of SB 265.

Joe Gutkoski, president, Gallatin Wildlife Association, supports SB 265. According to studies by the Wildlife Management Industry, the Gabrielson Commission, and the National Wildlife Federation, a higher degree of professionalism is obtained when directorships are appointed by commissions. Gutkoski supports SB 265.

Bill Meyers, Bozeman, Agricultural Preservation Association of Gallatin County, stated the association supports SB 265. Meyers expressed concern about revision methods in the appointment of commission members. Eighty percent of the Whitetail deer, sixty percent of Mule deer and forty percent of elk are harvested on private land. The association suggests an amendment that would require at least two commission members be currently active in ranching or farming.

Lorna Frank, Montana Farm Bureau, stated two members of the commission should be farmers and ranchers actively engaged in agricultural production. The bureau favors SB 265 with amendments to change the current member to two members having the agricultural background.

Nowell Rossetta, Helena, supports SB 265. Rossetta stated the direction of the Fish Wildlife and Parks Department has become more political. Rossetta stated that he has a high regard for Montana Fish, Wildlife and Park's professionalism and hopes that the Department will have the opportunity to fully represent the sportsmen, landowners, and recreationalists through the passage of SB 265.

OPPONENTS

Gene Huntington, Governor's office, stated the general testimony offered in opposition to SB 265 is the Executive Reorganization Act, which is the law that mandates the organization of state government. In an effort to modernize state government in the 1970's, the state reorganized to limit the 170 independent boards and commissions to 20 agencies. The chain of command gave clear authority and accountability to the Governor. Functions of activity were assigned according to similar interest. These policies continue. Other principles of reorganization included the departments be headed by administrators appointed by the governor and that the boards, commissions, and other multi-member bodies would not perform administrative functions. The principles of the reorganization process provided constitutional standards in providing political accountability to the governor who is elected. Huntington stated the amendment presented by Senator Bishop makes clear the terms of the governor's office, but does not outline intended administration policy. Future governors will be held accountable for the actions of the Fish, Wildlife and Parks because the people of the state expect the governor to be able to respond. Huntington stated

that in Schwinden's "State Capitol for a Day Program" most popular issues are concerning the highways and Fish and Game. The people expect the governor to have policy answers.

QUESTIONS FROM THE COMMITTEE:

Senator Bengtson questioned the philosophy of taking responsibility away from the governor when the common citizen looks to the elected governor for decision making authority.

Senator Smith stated the the Department of Livestock is the only department that survived Executive Reorganization, and, according to subcommittee budget data, is more efficient than any other branch of state government.

Senator Severson asked Senator Bishop what changes in management are made in the proposed bill. Bishop stated management practices must change because of how things are currently done. Both the commission and the director serve at the pleasure of the governor. The commission sets policy, but does not have anyone to oversee the policy on an everyday, executive basis. Bishop pointed out that this creates problems. Bishop gave an example of the Wambach directorship which created vast problems in the Fish, Wildlife and Parks Department.

Senator Smith stated that he vigorously opposed the Executive Reorganization Act in the 1970's because the appointed boards were quasi-judicial: Boards had no authority, hiring or firing power, but could only make suggestions.. The directors could choose to ignore the committee recommendations. Due to lack of authority, some boards like the Board of Institutions choose not to meet at all.

Senator Smith stated in response to Huntington's statement that reorganization made government more responsive and less costly. Smith stated that this has not proven to be the case. The governor has a dictatorship role. The governor appoints the department heads, and the only way to get at the department heads is through the appropriation process.

Senator Yellowtail asked, according to law, what the director's responsibility was to the Fish and Game Commission. Smith replied the responsibility was to work at the pleasure of the governor. Bishop replied that the director is a paid, day-to-day executive officer. The commission members are "civilians" who have the responsibility of setting policy, selling land and setting seasons and bag limits, yet the commission is who the public goes to when problems arise.

Senator Smith asked if the director can refuse to comply with the policies set by the commission. Yes, Bishop stated that the process of appointing a director for the Fish, Wildlife, and Parks Department is an ongoing gripe of the sportsmen,

the process of appointing a director for the Fish, Wildlife and Parks Department is an ongoing gripe of the sportsmen of Montana. The sportsmen want to have representation in the appointment process.

Senator Jergeson asked Bishop to reverse the Wambach scenario and to discuss who would the sportsmen complain to in the opposite situation. Bishop replied that if a director appointed by the commission "dug in his heels," the commission members by virtue of the number of members would be more responsive than the governor would be. The license buying sportsmen provide the revenue.

Senator Bengtson stated that the ordinary citizen wants to look at the elected official to be responsible for policy in all areas. The commission members, responded Bishop, would work together for the common good, regardless of which side of the aisle they represent.

Senator Bishop closed the hearing by arguing the most compelling argument for the commission appointing the director is Bishop's personal experience of knowing the sportsmen's preference in how the Montana, license paying sportsmen have verbally expressed their desire to participate in the decision-making policy. This desire could be accomplished by the proposed legislation. Bishop looked to the professional level of the previous directorship of Frank Dunkle who now heads the Federal Fish and Wildlife Service for the United States. Frank Dunkle served Montana with a great degree of professional expertise.

The hearing was closed on SB 265.

EXECUTIVE ACTION:

Senator Smith announced that executive action will be taken on SB 265 on February 17, 1987.

ADJOURNMENT:

There being no further business before the committee, the hearing was closed at 2:35 P.M.



SENATOR ED SMITH, Chairman

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

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Date: February 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	x		
Senator John Anderson	x		
Senator Judy Jacobson	x		
Senator Elmer Severson	x		
Senator Greg Jergeson	x		
Senator Al Bishop	x		
Senator Esther Bengtson	x		
Senator Wm. Yellowtail Vice-Chair	x		

COMMITTEE ON

DATE

February 12, 1987

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Joe Gutkoski	Gallatin Wildlife Assoc	SB 265	<input checked="" type="checkbox"/>	
Rich Orr	Self	265	<input checked="" type="checkbox"/>	
Tony Schiavone	Montana Wildlife Fed	SB 265	<input checked="" type="checkbox"/>	219
FW KRIEGER	WESTERN MOUNTAIN ASSN	265	<input checked="" type="checkbox"/>	219
Gene Quinn	"	265	<input checked="" type="checkbox"/>	219
Bill Myers	APA	265 219	<input checked="" type="checkbox"/>	
Esther Stierberg	MWF	265 219	<input checked="" type="checkbox"/>	
P. H. Thomas	Anaconda Sportsman	265	<input checked="" type="checkbox"/>	
Scott Russ	Montana Bowhunters Ass'n			
Noel Rosetta	Self	265	<input checked="" type="checkbox"/>	
Robt. Vandenberg	Self	219	<input checked="" type="checkbox"/>	
Ron Marcoux	MT Dept. FWP	219 265	<input checked="" type="checkbox"/>	
Carol Mascher	MT. Stock Growers	219	<input checked="" type="checkbox"/>	
Gene Huntington	MT. Cattle Ranchmen	265		<input checked="" type="checkbox"/>
John C. Hoyt	Bert	219	<input checked="" type="checkbox"/>	
Michael E. Egan	Wolf Creek	219	<input checked="" type="checkbox"/>	
Chuck Johnson	Quint Falls Tribune			
Jimmy Hollan	Self			
Lorna Frank	MT. Farm Bureau	219	<input checked="" type="checkbox"/>	
Pat C. Smart	Sportsman	265	<input checked="" type="checkbox"/>	
Debbie	Bozeman Chronicle			
John F. Purbin	Flat Falls Self			
James Blaylock	Hamilton			
Stan Brackshaw	T.U.			
Gene E. Kibbe	MWF	265 219	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

SB 219
February 12, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

While the department supports the concept of a landowner preference for elk permits, SB 219 provides a preference which is beyond a level that the department can support.

We do have a preference system for landowners currently in place by Commission ARM rules for deer and antelope. It is administered as follows:

1. Landowners must own 160 acres or more in the district for which they apply, verified by wardens with county courthouse record searches.
2. The preference includes both resident and nonresident landowners.
3. The preference is for deer B licenses, deer permits and antelope licenses which are all on a drawing.
4. The preference has been set annually by the commission and may be adjusted according to population levels. The preference has been normally at 15%, but in high population years has been 100%.
5. A landowner can designate any other person for preference as long as the person is immediate family or a ranch employee.
6. Applicants have to apply for their first choice in the drawing.
7. Unsuccessful applicants are entered into the drawing with all of the other nonlandowner applicants so landowners get two drawing chances.
8. No preference is allowed if the land is totally within the boundaries of public land.

The success rates within the preference system for these species have been 80 to 90 percent for landowners on the average, and during years of high population numbers, as mentioned, have reached 100%.

However, the ratio of landowner applicants to quota numbers would be considerably different for elk than for deer and antelope. If SB 219 is passed, there would be two areas of concern. One is that a disproportionate percentage of permits would likely go to landowners. Second, in many areas the number of landowners

exceeds the number of available permits. Thus some landowners would get no permits as well as no nonlandowning sportsmen. The following information is given as an example:

HD 700 (portion of Garfield County - 15 permits, 125 landowners

HD 590 (Bull Mtns) - 15 permits, 40-50 landowners

HD 401 (Sweetgrass Hills) - 20 ES permits, 20 landowners
30 antlerless

HD 204 (Bitterroot) - 30 permits, 40+ landowners

In all but one hunting district in regions 5, 6 and 7, the number of landowners equals or exceeds the number of permits issued.

If a preference system for landowners is instituted, we feel the legislation should be amended. The main items the department would recommend to the committee for amendment would be as follows:

1. A fixed level of 15% preference for landowners for the hunting district.
2. A qualification of regular annual elk residence on the property at least 30 days each year, rather than land used for agricultural purposes, since elk are not as widely distributed as deer and antelope.

With these amendments, we can support SB 219.

SENATE FISH AND GAME
EXHIBIT NO. 1 page 2
DATE 2-12-87
BILL NO. SB 219

AMENDMENT TO SB 219
INTRODUCED (WHITE) COPY

SENATE FISH AND GAME

EXHIBIT NO. 1-A

DATE 2-12-87

BILL NO. SB 219

REQUESTED BY DEPARTMENT OF FISH, WILDLIFE & PARKS

1. Page 1, line 19:

Following: "section"

Insert: "and where elk hunting is by permit only"

2. Page 1, line 20:

Following: "elk"

Strike: "on land owned by him"

Insert: ", provided that:

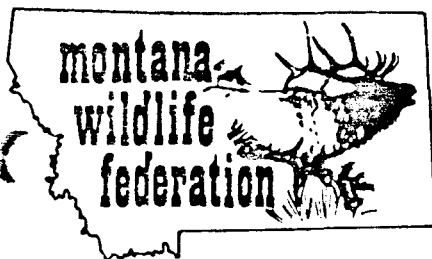
(A) elk regularly spend at least 30 days each year on the land owned by the applicant as verified by the department;

(B) the permit issued under this subsection is valid for the entire hunting district in which the majority of the applicant's land lies;

(C) 15% of the special elk permits available each year in a hunting district shall be available to landowners under this subsection."

BILL NO.

101 elk permit, special drawing districts



EDUCATION - CONSERVATION

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

P.O. Box 3526
Bozeman, MT 59715
(406) 587-1713

Testimony on SB 219

Senate Fish & Game Committee

February 12, 1987

SENATE FISH AND GAME

SENATE NO. 2

DATE 2-12-87

BILL NO. SB 219

Mr. Chairman, members of the Committee, my name is Esther Stenberg. I'm here representing the Montana Wildlife Federation in their support of SB 219.

The Montana Wildlife Federation supports the idea of allowing a landowner the opportunity to secure an elk permit for the same reasons why we allow landowner preference for an antelope permit.

However, the Montana Wildlife Federation can only support the bill if amended in the following ways:

- 1) Restricting only 10% of the total elk permits be made available for landowner preference. In the event that more landowner applications are received than the restricted 10% available a drawing among the landowner applicants will occur. The applications of those unsuccessful in the drawing could potentially be entered in the regular drawing for the remaining 90% of the permits.
- 2) Requiring an eligible landowner to own a minimum of 640 contiguous acres within the designated hunting area. Leased acreages and government lands would not qualify. This is in line with recent Idaho legislation regarding this same issue.
- 3) In the event of a corporate landowner, only 1 permit per corporation will be allowed.
- 4) If the eligible landowner chooses to designate the use of the preference permit to someone other than himself an immediate family member must be designated.

In conclusion, we support the idea of a landowner preference permit for an elk but the bill as it is written leaves too many opportunities for abuse of the bill's intent.

Mr. Chairman, members of the Committee, the Montana Wildlife Federation asks that you only support SB 219 in an amended form. Thank you.

EDUCATION - CONSERVATION

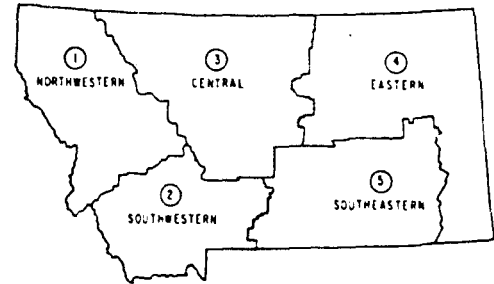
Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION

Testimony on SB 265

Senate Fish & Game Committee

February 12, 1987



Mr. Chairman, honorable members, my name is Jeanne Klobnak. I stand before you today on behalf of the Montana Wildlife Federation (MWF) in their support of SB 265, with the ammendments offered by Senator Bishop.

MWF is a conservation organization dedicated to the promotion of wild-life, wildlife habitat, and sportsmen's interests.

A bit of history offers the most appropriate way to highlight the current frustration of sportsmen regarding the administrative organization of the Department of Fish, Wildlife, and Parks (FWP).

It is not enough to simply say that the resources and enforcement for which FWP is responsible are being compromised under the current system. It is critical to note that this reorganization was never intended by the people, in so far as it affects FWP. This is proven in reflection of the history.

Before 1971, FWP directors were appointed by the statutes under 26-106 (Exhibit A).

In 1971, the intent of Executive Reorganization became implicit with the passage of SB 274. SB 274 mandated that there were to be no more then 20 departments by July 1, 1973.

Also in 1971, SB 298 was introduced -- "A bill for an act entitled: 'An act relating to the appointment, qualifications, duties, & tenure of the Fish & Game Director; repealing Section 26-106 R.C.M., 1947; and providing an effective date.' This bill would allow for the FWP Director to be appointed by the Governor. Research reflects that the bill failed to get out of committee.

Further research seem to indicate that it was not until 1977 that HB791 again attempted to do what SB 298 could not 6 years previous. HB 791 would "make the Dept. Head of the Dept. of Fish & Game a Director appointed by the Governor ...".

On Monday, February 21, 1977, the House State Administration Committee, according to an article in the 2/24 Missoulain, (Exhibit B).



SB 265
Page 2.
2/12/87

Jeanne Klobnak

On February 23, an article in the Billings Gazette described the the situation as follows: (Exhibit C).

In an editorial, a woman in Bozeman used Louis the XIV of France's motto: "L'etat c'est moi!" Translated: "I am the state!" to characterize the Governor's overt methods of reversing policy decisions. She wrote: (Exhibit D).

Another editorial in the Missoulian, speaking to the ammendments which turned the vote on HB 791 around read: (Exhibit E).

The fact is history indicates only too well that the people wanted the FWP Director to remain responsive to the F&G Commission, the only true conduit of wildlife and sportsmen's interests.

The fact was futher illustrated during the following session in 1979 with the introduction of SB 31, which some of those here may recall. However, with the new reorganization firmly in place , the bill did not pass.

I would liX to refer briefly to a letter from the National Wildlife Federation on this subject. (Exhibit F).

A study done on this subject by the Wildlife Management Institute reflects the same conclusions.

In closing, I wold add only this; sports men contribute between 70-80% of the FWP budget, and therefore should have the major input in operating the Department and setting its goals and objectives.

SENATE FISH AND GAME

EXHIBIT NO. 3- page 2

DATE 2-12-87

SR-15

EXHIBIT NO. _____

DATE _____

BILL NO. _____

SENATE FISH AND GAME

EXHIBIT NO. 13-144113

DATE 2-12-87

BILL NO. 265-265

In such areas as the state fish and game commission shall in its discretion deem advisable and consistent with its policies relating to fishing in the state of Montana.

(25) It shall have authority to promulgate and enforce rules and regulations governing uses of lands acquired, or held under easement by the commission, or lands which it operates under agreement with or in conjunction with a federal or state agency or private owner. Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating the use of those lands. Provided further all lease and easement agreements shall itemize uses as listed in subparagraph 13 of this section.

(26) It shall have authority to promulgate and enforce rules and regulations governing recreational uses of public fishing reservoirs and lakes constructed by the commission or on reservoirs and lakes which it operates under agreement with or in conjunction with a federal or state agency or private owner.

Such rules shall be promulgated in the interest of public health, public safety and protection of property in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, water skiing, surf boarding, picnicking, camping, sanitation and use of firearms on such reservoirs or at designated areas along the shore of such reservoirs. These rules shall be subject to review and approval by the state board of health as to public health and sanitation before becoming effective. Copies of such rules shall show such endorsement.

26-106. Compensation of commissioners.

The members of the commission shall receive no compensation for their services as members thereof, except a per diem of twenty dollars (\$20.00) for each member for every day in actual attendance at the meetings of said commission, or in the execution of their duties as members of said commission; provided, however, that in no instance shall any member of said commission other than the chairman receive as said per diem a sum in excess of one thousand five hundred dollars (\$1,500) in any one (1) year, provided that the chairman of the commission shall not receive a sum in excess of two thousand dollars (\$2,000) in any one (1) year, and the members of said commission shall be allowed their actual and necessary traveling expenses, while performing their duties as members of said commission which shall be paid from the fish and game fund of the state of Montana upon presentation of proper vouchers therefor.

26-106. State fish and game director — qualifications — powers — duties. The state fish and game commission shall appoint and employ a state fish and game director. He shall be a person having experience, special training and skill in wildlife protection, conservation, and management. He shall be the secretary of the state fish and game commission, attend the meetings of said commission, and keep a record of all of its transactions, and shall make and keep an inventory, showing the description and value of all property owned by the state and under the administration of said commission. He shall be the administrative agent of the state fish and game commission, custodian of the property and records of the fish and game department, and shall maintain his office at the seat of the state government. He shall de-

Judge's Lobbyists Doing Well

By ARTHUR HUTCHINSON

Missoula State Bureau

HELENA — A handful of

Gov. Thomas L. Judge's key

lieutenants work quietly but

effectively each day to keep the

chief executive abreast of the

legislature's work.

These men are the governor's

lobby, a group whose watch-

word is to keep a low profile,

but who also make sure that the

governor's views on legislation

are passed on to the lawmakers.

The most visible is Jim Flynn,

who carries a title of administra-

tive assistant, but whose duty is

to influence the legislators on

behalf of the governor's pro-

gram.

Another is D. Robert Lohn,

Judge's legal counsel. He

screens all the bills and testifies

before committees on the bills

dearest to Judge's heart.

But the chief strategist and

coordinator of the executive lob-

by is Lt. Gov. Ted Schwinden,

whose office is headquarters for

the executive lobby.

Each afternoon while the

House and Senate are debating

the governor's lobby con-

ducts its meeting in Schwinden's

and only Lohn testified in its fa-

vor. The environmental lobby

that fought the bill was pleased

with its day's work.

But on Tuesday, after the gov-

ernor's lobby went to work, the

committee voted 11-1 to approve

the bill. This occurred after the

administration and the environ-

mentalists met but could not

agree on a compromise.

An earlier indication of the

governor's power was when he

convinced the Senate to confirm

his nomination of former admin-

istrative aide Kent Kleankopf as

director of the Department of

Business Regulation. Kleankopf

was approved, 27-23, although

his chances of confirmation

were ruled only a toss-up after

his appearance before a Senate

screening committee.

Despite these two victories in

the most notable head-to-head

confrontations so far between

Judge and the legislature, the

visible signs are that Judge is

not making any efforts to steam-

roller the legislature.

One indication is that Judge

has told environmentalists he is

willing to compromise on the

fish and game bill to broaden

the authority of the commission,

a concession that came after

strong protests from sports-

men's clubs and guides and out-

fitters.

The 1977 Legislature up to its

midway point has been notably

nonpartisan and the Democratic

governor has taken pains not to

disturb this atmosphere.

"I don't think there's been a

party line vote this session ex-

cept for maybe one or two on

minor things in the House,"

Flynn said. He said that if he

gets a majority of 51 votes in the

House or 24 in the Senate, "they

come about half and half from

both sides."

Flynn and Lohn said they

both try to promote legislation

the governor wants on its merits

instead of its politics.

"We (administration) are

trying to do what we think is

right for Montana," Flynn said.

There are 150 legislators who

are trying to do what they think

is right for Montana.

"I may question their mo-

tives," he said.

"The absence of partisanship

may vanish in the waning weeks

of the legislature, according to

some observers, when the law-

makers come to grips with the

budget.

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In addition, the heads of the

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among this group are William A.

Groff, director of the Depart-

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Judge's Lobbyists Doing Well

By ARTHUR HUTCHINSON
Missoulian State Bureau

HELENA — A handful of lobbyists are working quietly but effectively each day to keep the chief executive abreast of the legislature's work.

These men are the governor's lobby, a group whose watchword is to keep a low profile, but who also make sure that the governor's views on legislation are passed on to the lawmakers.

The most visible is Jim Flynn, who carries a title of administrative assistant, but whose duty is to influence the legislators on behalf of the governor's program.

Another is D. Robert Lohn, Judge's legal counsel. He screens all the bills and testifies before committees on the bills dear to Judge's heart.

But the chief strategist and coordinator of the executive lobby is Lt. Gov. Ted Schwinden, whose office is headquarters for the executive lobby.

Each afternoon while the House and Senate are debating bills, the governor's lobby conducts its meeting in Schwinden's

and only Lohn testified in its favor. The environmental lobby that fought the bill was pleased with its day's work.

But on Tuesday, after the governor's lobby went to work, the committee voted 11-1 to approve the bill. This occurred after the administration and the environmentalists met but could not agree on a compromise.

An earlier indication of the governor's power was when he convinced the Senate to confirm his nomination of former administrative aide Kent Kleinke as director of the Department of Business Regulation. Kleinke's appointment was approved, 27-23, although his chances of confirmation were riddled only a loss-up after his appearance before a Senate screening committee.

Despite these two victories in the most notable head-to-head confrontations so far between Judge and the legislature, the visible signs are that Judge is not making any efforts to stem the tide of legislation.

One indication is that Judge has told environmentalists he is willing to compromise on the fish and game bill to broaden

the authority of the commission, a concession that came after strong protests from sportsmen's clubs and guides and outfitters.

The 1977 Legislature up to its midway point has been notably acquiescent and the Democratic governor has taken pains not to disturb this atmosphere.

"I don't think there's been a party-line vote this session except for maybe one or two on minor things in the House," Flynn said. He said that if he gets a majority of 51 votes in the House or 24 in the Senate, "they come about half and half from both sides."

Flynn and Lohn said they both try to promote legislation the governor wants on its merits instead of its politics.

"We (administration) are trying to do what we think is right for Montana," Flynn said.

It takes 2 of us to feed you about the best fried chicken in town. I tell you how often it



There are 150 legislators who are trying to do what they think is right for Montana.

"I may question their motives," he said.

The absence of partisanship may vanish in the waning weeks of the legislature, according to some observers, when the lawmakers come to grips with the budget.

Despite Judge's lobbying efforts, his residential property tax relief measure is in serious trouble in the Democratic-controlled House.

In numbers, the governor's lobby is much smaller than previously in keeping with the low-profile strategy.

Flynn concedes that he misses the help of former lobbyists for the governor, particularly political specialists. Most notable of these losses were Ronald P. Richards, former executive assistant to Judge, and Evan Barrett, former administrative aide. Richards and Barrett, both former executive secretaries of the state Democratic party, left government service and are lobbying for private interests. Schwinden was heir to their job.

The governor's formal lobby is only part of his influence on the legislature. At the top Judge keeps in constant contact with the legislative leaders and legislators from both parties who want to confer with him.

In addition, the heads of the executive agencies are frequently before the legislature. Chief among this group are William A. Groff, director of the Department of Revenue, and Michael O. Billings, director of the governor's Office of Budget and Program Planning. Both have considerable influence on tax and appropriation bills before the legislature. Another is Steve Brown, lawyer for the Department of Health and Environment, any new controls.

Some observers predict battles ahead for Judge on the fiscal issues, but at midpoints this year, Judge has not lost any lights of consequence or made any new enemies.

SENATE FISH AND GAME

EXHIBIT NO. 3 - proposed

DATE 2-12-77

BILL NO. SB 265

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S. L. FISH AND GAME

EXHIBIT NO. 3 - page 5

DATE 2-12-8

BILL NO. SB 265

F&G bill maneuvering angers sportsmen

By MARK HENCKEL
Of The Gazette Staff

Governor Thomas Judge made a big move toward angling Montana's sportsmen Tuesday when pressure was applied to reverse a legislative committee's ruling on House bill 791.

The bill would strip nearly all the power from the Fish and Game Commission and give it to the director of the Fish and Game Department. The director, appointed by the governor, could then be dismissed at the governor's pleasure.

It was written by the governor's office after the deadline for introducing bills into the legislature and put forward as a committee bill by the House State Administration Committee last week and must be approved by the House and sent to the State Senate by Saturday.

About 20 people turned out Monday to fight the bill in a public hearing before the committee. Their numbers included: former commissioners Les Pengelly, of Missoula, Bob Runyon, of Great Falls, Arnold Rieder, of Boulder, and Dick Cobb, of Helena; Montana Wildlife Federation president Harry McNeal, of Bozeman; Phil Tawney, lobbyist for the Environmental Information Center; and representatives of sportsmen's clubs in Havre, Great Falls, Bozeman and Little.

The public pressure apparently worked Monday as the committee voted 8-5 not to report the legislation to the House floor.

Then the governor's office went to work.

Representatives of Judge's office worked on the committee members between the Monday morning meeting and a meeting Tuesday morning when the bill was again brought before the panel.

The results the second time, after about a 10-minute discussion in which an amendment was tacked on to give the

**'It's politics, I guess,
but son-of-a-gun, it's
politics behind our back'—
Harry McNeal**

commission the authority to approve land purchases, was an 11-1 vote to send it to the floor of the House with a de-pass recommendation.

That made McNeal among others, very angry. "The point is that the governor introduced it just a week ago and is running it down the legislature's throat and not giving the citizen a chance to speak on it," he said.

"The testimony (at the public hearing) was overwhelmingly in opposition. It's politics, I guess, but son-of-a-gun, it's politics behind our back."

The Environmental Information Center's board of directors also was angry Tuesday and came out with a press

release urging the defeat of the bill.

"There were no proponents of the bill outside the governor's office," said EIC board chairman Robert Adams, Helena.

"We see no reason for taking the five citizen commissioners out of the decision-making process and having the department director serve at the pleasure of the governor," he continued.

"The board of the EIC feels we would be working for more effective public participation in government, not concentrating the power in the governor's office in the name of efficiency."

"The protection and management of Montana's fish and wildlife resources should never become a political football."

Commenting on the likelihood of the bill's introduction and the speed necessary to get it acted on in this legislative session, Adams added: "The bill, as now written, should be defeated."

"A bill which affects such wholesale change to the administration of the Fish and Game Department simply should not be rushed through the legislative process with so little time to examine it."

The EIC board will work toward killing the measure when it reaches the House floor, probably Thursday or Friday, but it expects it to be quite a fight.

"The governor's office really put the pressure on them (the committee)," said Tawney. "They lobbied hard for the bill, that's something that happens up here (in Helena)."

"It looks like we're in for a major struggle when it comes up on the House floor. We're hoping the governor will put this thing off for two years and get (Fish and Game director-designate Robert) Wambach to work with the thing and get his feet on the ground."

Among the major points of opposition expressed at the public hearing Monday was that too much of the power in

**'The protection and
management of Montana's
fish and wildlife should never
become a political football'—
Robert Adams**

Fish and Game matters would be taken away from professionals in the department and given to the governor.

"The Montana Wildlife Federation wants to see Montana's wildlife managed by professionals," said McNeal. "Occupying the governor's office does not give a man the ability to manage wildlife."

Referring to an incident in 1975 when Governor Judge was guilty of shooting an illegal elk, he added: "Now we've got a governor who doesn't know what a legal elk is. The next one might not know what an elk is at all."

EDITORIAL PAGE — editorials, letters, opinion

fish and game bill a mischievous varmint

A bill which would plunge the Montana Fish and Game Department deeper into politics is progressing through the House of Representatives.

HB 791 is the governor's bill. It would give Tom Judge and succeeding governors almost complete control over the Fish and Game Department. The bill would emasculate the authority of the Fish and Game Commission by giving almost all its powers to the Fish and Game director.

The director would serve at the governor's pleasure. He would not even need State Senate confirmation.

Opponents of the bill, including former Fish and Game Commissioner Les Pengelly of Missoula, criticize it on the following grounds:

— It would remove a citizens' conduit, through the commission, into decisions affecting wildlife and the environment. The director would make all the crucial decisions.

— The commission would have limited policy-setting and overseeing functions. Under last-minute changes introduced Wednesday, it would set policy for fish and wildlife preservation and propagation, and establish the rules for hunting, fishing and trapping.

The changes were made to soften the bill's revolutionary impact on the department. They do not soften it enough. Most power still would rest in the hands of the governor and the department director.

— Employees would serve at the director's pleasure. With the director serving at the governor's pleasure, and with appeal to the commission on personnel matters no longer possible, the department would become ripe for political spoils system management.

HB 791 would bring to fish and game affairs much the same controls other departments experienced during executive reorganization, when citizen boards were reduced to advisory roles and the strings of power were

concentrated in the governor's hands.

But the Fish and Game Department is different, which is why executive reorganization swept past it. The commission cushions the department's people (and policies) from pressure groups, and simultaneously gives them the independence to speak out in behalf of wildlife and the environment.

The department's magazine, Montana Outdoors, is an example. This excellent publication can only do its job if it factually and courageously tackles important resource issues. It cannot do that without stepping on toes.

From time to time wails ring that Montana Outdoors has injured or embarrassed some important economic interest, and what's a state publication doing that for, and

what's going on around here?

Under a spoils system, this magazine — which enjoys a fine national reputation — in time would be muzzled and reduced to printing boosterish pap. There's no question about that, and there's no question that muzzling this magazine would be a major loss to Montana.

Much the same applies to other Fish and Game Department personnel. The present system gives them the independence to work, to speak out, in behalf of wildlife and the environment. No rationalization about executive efficiency, chain of command, or fixing responsibility outweighs that value.

HB 791 would spread more sickness than it would cure. It should be killed.

— Reynolds

SENATE FISH AND GAME
EXHIBIT NO. 3-page
DATE 2-12-37
BILL NO. SB 26



Judge building his own empire

Dear Editor:

Louis XIV of France inherited his empire. Gov. Judge is building his now, but evidently with the same motto — "L'etat, c'est moi!" Translated: "I am the State!"

Gov. Judge and Lt. Gov. Schwinden seem to be working, both covertly and overtly, to implement this motto. Covertly, via such means as the Montana International Trade Commission and apparently unpublicized agreements with various special interest groups. Overtly, via House Bill 791, their current move to make the Fish and Game Department a creature of the governor's office — a totally controlled agency, unresponsive and unavailable to sportsmen and any other Montana conservationists, unable to freely exercise its responsibilities as manager and custodian of the state's wildlife resource.

HB791, which Gov. Judge submitted to the legislature only last week, would have the fish and game director serve "at the pleasure of the governor," meaning that the director could be fired at any time, without moral or professional cause, if he made a decision or issued a statement contrary to the governor's will. Why does the governor insist on placing an appointee in such a precarious position?

HB791 would strip the Fish and Game Commission — the citizens' board that sets department policy — of almost all its power, leaving it little more than an ineffectual advisory body. Why does the governor insist on this preemption of the democratic process?

In the Feb. 21 hearing before the House State Administration Committee, 22 people testified in opposition to HB791. Only two spoke in its favor. In response to this overwhelming public opposition, the committee voted eight to five to kill the bill. But on Tuesday morning, the committee reversed itself and voted 13 to 2 to pass it. The governor's men had been at work!

If their work in HB791 is successful, watch for the early demise of Montana Outdoors, probably the most outstanding and publicly admired fish and game magazine in the United States. Watch for more \$80,000 grants from the Fish and Game Department to the Montana Livestock Board. Watch for even more blatant pressure from state government for use of 1080 poison on public lands. Watch for Fish and Game Department approval of coal gasification and on-site power generation, without regard to adverse effects on wildlife. Watch for the muzzling for, and see, the sacrifice of our state's unique wildlife treasure to the exploitive demands of development.

Whatever the fate of HB791, whatever the pious clichés about "balancing economic development and environmental protection," we can count on the governor's men to continue to be at work, overtly and covertly, on this and other issues, to make Louis XIV's motto a reality in Montana.

Elizabeth Smith
Bozeman, Mont.

SENATE FISH AND GAME
EXHIBIT NO. 2
DATE 2-21-72
BILL NO. 791

to explain the 96% of the

2/12/87

Testimony on SB 265

MR Chairman and members of the Fish & Game committee, My Name is Noel Rosetta. I live in Helena, Mont. I support SB 165 and also the statements of those who have already spoken ^{today} for the bill.

It seems to me that the direction of Fish Wildlife & Parks ^{Department} in the last few years has become ^{more} political and. ~~in the last few years~~

I have a high regard for the ~~professionals~~ ^{professionals} of the Montana Fish and Game ~~people~~ ^{Department}, and I want them to have the opportunity ^{fully} to represent the department ^{and sportsmen} in ~~that~~ ^{their} professional capacity.

If the director is appointed by the Fish Wildlife & Parks commission, and as the bill directs I believe the professionals can operate more openly and more in the interest of fish and game, and in the public interest.

Under the present arrangement, sportsmen seem to have less and less ^{to} say on department decisions, which is peculiar because we do provide ~~money~~ ^{most} the money for the operation of Fish, Wildlife & Parks.

Noel Rosetta

1100 Missoula

Helena, Mt.

Amendments to SB 265

1. Title, line 8.

Strike: "AND"

2. Title, line 9.

Following: "MCA"

Insert: ";AND PROVIDING FOR IMPLEMENTATION OF THE ACT"

3. Page 4.

following: line 9

Insert: "NEW SECTION. Section 5. Implementation. This act shall be implemented upon the election of a governor other than the current governor or the willful resignation of the current director of the department."

Other suggested amendments to SB 265

Page 2, line 23.

Strike: "One"

Insert: "Two or more"

Page 2, line 24.

Strike: "experienced"

Insert: "actively engaged"

Current Policy

- ** Too many political decisions are being made rather than sound resource management decisions.
 - ** The director does not answer to sportsmen, rather , only to the Governor.
 - ** Key personnel are being hired from out of state. Good people within the Department are left without advancement. This discourages young Montana residents from seeking jobs with the Department.
 - ** This type of appointment is from the old spoils system. It's not professional and it's not representative form of government.
1. Minimum winter range acquisition program at a time when the opportunity was the best to acquire key properties at a lower cost. Withdrawing the 1 million per biennium away from program. Ignoring rare opportunities for key winter range acquisitions.
 2. Park acquisition & development programs out of balance relative to funding. Legislature withdrew all park appropriations in 1986 but park bureau did not reduce in size & activity accordingly.
 3. Private rights favoritism oriented administration. Bending over backwards to accommodate private interests to the detriment of the general public. Emphasis placed on private rights and sportsmen's responsibilities.
 4. School trust lands off limits to the public. Access programs to trust lands is non-existent. No management for wildlife or multiple uses on school lands as prescribed by law.
 5. Irrigators drying up streams favored over in-stream flows for fish. Tolerated drying up of streams as an acceptable policy.
 6. Buffalo hunt opposition as a Department policy. Sided with Cleveland Armory and anti-hunting groups. Ed Francis of CUT ranch supported hunting of bison until he was influenced otherwise by the Department. Sided with Noel Larrievie of "Fund For Animals", against the bison public hunt.
 7. Buffalo fence building - failed to use the US District Court of Wyo. Brimmer Opinion to oppose buffalo fence.
 8. Elk hunts in late seasons are supposedly a burden to the Department.
 9. Outfitter and guide favoritism to the detriment of public hunting opportunity. Outfitter preference allocation for non-resident licenses. Outfitter Council influence on Department out of balance.
 10. Favored Spring Cr. closure to the public by Nelson's Spring Cr. Landowner group.
 11. Fishing access site curtailment due to inability to maintain sites.
 12. MT. St. Assents Act violation relative to citizens right to know and citizens right to participate in government.
 13. Privatization of wildlife. Consistently supported privatization of public wildlife resources.
 14. Non-resident landowner to get resident hunting & fishing license was supported.
 15. Only the director can testify during legislative sessions when there are better informed employees in the Department.
 16. When landowner - sportsmen conflicts arose there were no reasonable settlements.
 17. Verbal statements which indicated that sportsmen had far too much to say in Department policy - also that sportsmen were not a large enough political force to be considered.

Tony Schoonen

Amendments to ~~SB~~ 265

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Strike: "AND"

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Insert: ";AND PROVIDING FOR IMPLEMENTATION OF THE ACT"

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following: line 9

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Tony Schoonen - Botte
Concerned Sportsmen
M.W.F.

S.B. 265

Chairman Smith:-

You and other longtime members
of this committee have always elected
a representative group of government

S.B. 265 would do just that by
allowing the commission to appoint
the next director under the next
governor. Hopefully a professional will be named,
and Recreationists must have more
to say as long as they are the ones
that have to pay.

I will give you an example -
If two neighbors give a man and
one pays 80% of his salary and
the other pays 20% - but the
high road does 80% of the work.
but the man that only paid 20%.
Then you have an idea of how
Recreationists feel about their pay.
80% is too high but here's my
note on the following.

The tax is appropriate as
it now stands if right with the
old split system which certainly
is antiquated but has many strong
and weaknesses.

There are far too many political

Decisions being made rather
than sound Resource management
decisions.

I have a handout that will
give you an example of how
recreationists have been treated
on certain issues.

I would like to close by
leaving one thought with you.

Is the Schwinchen administration
going to be remembered in Mont.
history as one that destroyed
the university system as well
as one of the best wildlife
conservation management systems
in the country.

I thank you and urge your
support of S.B. 265 with the
2d meeting.

219 would permit a non-resident landowner to have a resident permit
1. This would allow any number of conglomerate & corporate owners to subdivide and obtain ownership for any number of non-resident owners. Think of the mischief that some of these large ranches & cattle land owners would do with this.

2. Lots of these landowners are adjacent to forest property & to various forms of environment protection.

Mr. Chairman & committee I hope you will like this bill.

Gene Clason
Minerals, & Co. Inc.

Statement of Intent

SB 219

A statement of intent is required for this bill because authority is granted to the fish and game commission in subsection (2) (d) of section 1 to adopt rules to extend the provisions of the landowner preference for a special elk permit to landowners who own less than 320 acres. It is the intent of the legislature that the commission adopt rules that indicate how the department would determine if a landowner would qualify for a permit under subsection (2) (d). The rules should include provisions for investigating whether a landowner has land that elk use on an annual basis and whether the land is used primarily for agricultural purposes. In addition, the commission should specify the circumstances in which elk use of land justify an extension of the landowner preference for a special elk permit.

Suggested Amendments to SB 219

1. Page 1, line 18.

Following: "(2)"

Insert: "(a)"

2. Page 1, line 20.

Following: "elk"

Strike: "on land owned by him"

Insert: ", provided that:

(i) the permit issued under this section is valid for the entire hunting district or applicable portion in which the majority of the applicant's land lies; and

(ii) the landowner owns at least 320 contiguous acres of primarily agricultural land within the hunting district, excluding any acreage leased on public or private land, where elk use the land on an annual basis.

(b) An applicant who receives approval for a permit under this subsection(2) may designate that the permit be issued to an immediate family member, or in the case of a corporate landowner, designate that the permit be issued to a person employed by the corporate landowner.

(c) Fifteen percent of the special elk permits available under this section each year in a hunting district must be available to landowners under this subsection(2).

(d) The commission may adopt rules to extend the provisions of this subsection(2) to landowners who own less than 320 acres, but who would otherwise qualify under this subsection(2), for circumstances in which use of the land by elk justify such an extension"