#### MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON FISH & GAME

Call to Order: By CHAIRMAN JIM ELLIOTT, on January 15, 1991, at 3:00 p.m.

#### ROLL CALL

Members Present:

Jim Elliott, Chair (D) John Johnson, Vice-Chair (D) Beverly Barnhart (D) Fred "Fritz" Daily (D) Roger DeBruycker (R) Orval Ellison (R) Gary Forrester (D) Bob Gilbert (R) Marian Hanson (R) Vernon Keller (R) Bea McCarthy (D) Bruce Measure (D) John Phillips (R) Ted Schye (D) John Scott (D) Wilbur Spring (R) Bill Strizich (D)

taff Present: Doug Sternberg, Legislative Council Ginger Puntenney, Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

#### **HEARING ON HOUSE BILL 89**

#### Presentation and Opening Statement by Sponsor:

**REP. EDWARD GRADY, House District 47, Canyon Creek,** explained that HB 89 changes the name of the Fish and Game Commission to Fish, Wildlife, and Parks Commission. The agency's name is Fish, Wildlife, and Parks, but the Fish and Game Commission's name was never changed to include Parks.

### Proponents' Testimony:

Erroll Galt, Chairman of the Fish and Game Commission, said the Commission supports HB 89. The 1979 Legislature changed the Department of Fish and Game to the Montana Department of Fish,

HOUSE FISH & GAME COMMITTEE January 15, 1991 Page 2 of 7

Wildlife, and Parks. The intent in 1979 was to also change the Commission's name, but due to technical omissions in the bill, it was overlooked. Changing the Commission's name will clarify the Commission's areas of responsibility. There will be no additional costs associated with this name change. EXHIBIT 1

Janet Ellis, Montana Audubon Legislative Fund, said the Fund supports HB 89 and presented two amendments to the bill. The first amendment was technical. The second amendment would include Parks in the "job description" of the commissioners. EXHIBIT 2

Tony Schoonen, a sportsman and landowner, said the name change is appropriate, as it covers all aspects of the Department of Fish, Wildlife, and Parks.

### Questions From Committee Members:

**REP. JOHN SCOTT** asked Mr. Galt why there would be no additional costs in changing the Commission's name. Mr. Galt referred the question to Mr. Don Hyyppa, FWP. Mr. Hyyppa informed the committee that the Commission's name only appears on the Commission's letterhead and not on any of the Department's property. It will be necessary to make a change in the letterhead, since new commissioners have been appointed. There are no costs associated with this change, except administrative costs.

**REP. BRUCE MEASURE** asked Mr. Galt his opinion of the proposed amendments submitted by the Montana Audubon Legislative Fund. Mr. Galt approved of the amendment changes.

### Closing by Sponsor:

**REP. GRADY** stated that he sees a redirection of parks within the state and that parks have become more visible within FWP. Parks needs to become a more integral part of the Department and the Commission. He approved of the amendments.

## HEARING ON HOUSE BILL 33

# Presentation and Opening Statement by Sponsor:

**REP. MARK O'KEEFE, House District 45, Helena,** said this bill would make it a criminal offense (with the same penalties that would be applied to trespassing) for any individual, without authorization, to knowingly post public land that is under the ownership or control of the state or federal government. This bill simply states that if a person illegally posts state or federal land, it will be a state crime. This bill does not deal with access to state lands.

#### **Proponents'** Testimony:

Scott Snelson, Montana Wildlife Federation, stated the Federation's support of HB 33, as access to public lands in Montana is one of the most critical issues facing Montana sportsmen. The practice of private individuals posting private land is becoming more prevalent, as more landowners are beginning to restrict public access to their property. He proposed an amendment to make it illegal to post private land without the permission of the landowner. EXHIBIT 3

Robert VanDerVere, Helena, said this bill should be passed.

Stan Bradshaw, Montana Trout Unlimited, said this bill has been discussed for a number of years. It is overdue and urged support of HB 33.

Susan Brooke, Montana Stockgrowers and Montana Woolgrowers, supports this bill and the amendment.

Bill Holdorf, Butte, supports this bill in order to alleviate the problem of illegal hunting.

K. L. Cool, FWP, expressed his support of any effort that would deter illegal posting of public land. EXHIBIT 4

Tony Schoonen, supports this bill but feels the committee should research the laws pertaining to the posting of state trust lands. EXHIBIT 5

#### Questions From Committee Members:

REP. BOB GILBERT asked Mr. Cool if this bill would affect a person in agriculture who leases state land. At present, this person may not allow hunting if he does not hunt on the land himself, or does not allow anyone else to hunt. Mr. Cool felt the question should be answered by Mr. John North, Department of State Lands (DSL). Mr. North explained that DSL has a policy that can authorize a lessee of state lands to close that land to trespassing. Another policy, with regard to hunting, is that a lessee can close a state section to hunting, but only if the lessee does not hunt there. If the lessee does hunt there, then it must be open to the public for hunting. This policy is completely independent of this bill. This bill states that it is illegal to post land without authorization, so DSL, in those instances, does authorize posting.

**REP. ROGER DEBRUYCKER** asked **REP. O'KEEFE** if a person has public land (whether state or federal) inside private land and posts the outside, are they in violation of posting state or federal land. **REP. O'KEEFE** said it was his understanding that if a person physically posts the corners of that public land as no hunting and trespassing, he would be in violation of the code, unless he has authorization from DSL. But if he posts his private land which surrounds it, he is not in violation of the code we are adopting.

**REP. MEASURE** asked Mr. North if the DSL lease incorporates that policy. Mr. North said he believes the lease incorporates the first policy, which is that the lessee can close to unauthorized trespass. That is the rule of the landlord. Second, the lease indicates that the Board reserves the right to close land for hunting and the Department has adopted this policy, which has been communicated to the lessee.

REP. ORVAL ELLISON asked Mr. Cool why it is the local law enforcement's responsibility to enforce these violations. Mr. Cool explained that the Department does not have the authority to enforce this section of the law, but it does not preclude them from involvement. FWP notifies law enforcement of any violations: therefore, FWP is involved in the enforcement action but not the specific prosecution. REP ELLISON questioned if FWP enforced trespassing. Mr. Cool stated the Department did enforce on private lands, by state law. REP. ELLISON asked if there was enforcement on state lands. Mr. Cool felt it would be necessary to look at the Codes. Mr. North was not certain either, but stated that when DSL gets a complaint in regards to trespassing on state lands, they would call the county attorney.

### Closing by Sponsor:

**REP. O'KEEFE** approved of the amendment. Enforcement would continue to be done by local law enforcement. FWP wardens will respond to complaints and then pass the complaint on to the appropriate law enforcement agency. This bill has some protection in it for the agricultural community.

### HEARING ON HOUSE BILL 91

#### Presentation and Opening Statement by Sponsor:

REP. BOB GILBERT, House District 22, Sidney, said this bill prohibits a person who receives a moose, mountain goat, or limited mountain sheep special license from receiving another special license for that species for 7 years. It is now possible for FWP to track these licenses, due to computer implementation. This is a fairness issue and cuts down the pool of people that are applying for these licenses each year. This bill would give every citizen a better chance of obtaining these licenses.

#### **Proponents'** Testimony:

K.L. Cool, FWP, spoke in favor of HB 91. EXHIBIT 6

**REP. ELLISON** stated his support of the bill. The only reason we no longer have this bill is because FWP had problems tracking these licenses.

Scott Snelson, Montana Wildlife Federation, said the Federation supports this bill, as it increases the opportunities of sportsmen to obtain one of these licenses.

Tony Schoomen voiced his support of HB 91 as it would put all hunters on equal footing.

### Questions From Committee Members:

**REP. BRUCE MEASURE** asked Mr. Cool if this bill would affect the ram auction. Mr. Cool said the ram auction is addressed in another section of law and will not be affected by HB 91.

**REP. GARY FORRESTER** explained to Mr. Schoomen his understanding of the bill and that an amendment would have to be presented to make any changes he or the sponsor felt were needed. Mr. **Schoomen** said he would offer an amendment. **REP. ELLISON** asked Mr. Cool if this amendment would compound the problems. Mr. Cool said it would and that the Department is opposed at the present time to any expansion of the bill.

**REP. BEVERLY BARNHART** asked Mr. Cool to explain how the ram drawings were done. Mr. Cool explained that all drawings are done randomly, by computer, for each hunting district. It is a complex, but accurate and fair system.

CHAIRMAN ELLIOTT asked Mr. Cool if there would be a dollar loss to the Department because of this bill. Mr. Cool said he did not have a fiscal note with him, but felt it would be appropriate to prepare one. There will definitely be a fiscal impact, but it should not be unrealistic. The largest impact would be the hiring of temporary positions, but the Department would be willing to absorb these costs from another area for the next biennium and transfer FTEs from other areas.

### Closing by Sponsor:

**REP. GILBERT** said that sportsmen throughout the state support this bill. The dollar cost should be minimal. This is an issue of fairness to the sportsman.

CHAIRMAN ELLIOTT stated that Executive Action on HB 91 would be delayed pending receipt of a fiscal note and preparation of the proposed amendments.

### EXECUTIVE ACTION ON HOUSE BILL 89

#### Motion: REP. FRED DAILY MOVED HB 89 DO PASS

#### Amendments, Discussion, and Votes:

REP. TED SCHYE MOVED AMENDMENTS TO HB 89 DO PASS

REP. FORRESTER questioned if Amendment 1 (to strike game, game birds, animals and insert wildlife) was a back door approach by the Audubon Society to force FWP to manage nongame species which are not recognized as game species. This would have a fiscal impact on the Department. Doug Sternberg explained to the committee the definition of wildlife in the fish and game Codes. It is a very broad definition and these amendments would not affect any aspect of the management responsibilities of the Department, but rather speak directly to the knowledge that would be required of a person appointed to the commission. The bill would read that a person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish, parks and outdoor recreation and the requirements for the conservation and protection of fish, wildlife, parks and outdoor recreational resources. The intent of these amendments would not mean that the Department would be forced to manage all other species.

### AMENDMENTS TO HB 89 DO PASS

Recommendation and Vote:

REP. BEA MCCARTHY MOVED HB 89 DO PASS AS AMENDED

HB 89 DO PASS AS AMENDED - UNANIMOUSLY

**REP. ELLISON** requested a copy of the amendment to HB 33. It was agreed that the committee would delay action on this bill until the amendments are received.

HOUSE FISH & GAME COMMITTEE January 15, 1991 Page 7 of 7

## ADJOURNMENT

CHAIRMAN ELLIOTT reminded the committee of the open house at FWP and that three bills are scheduled for hearing on Thursday.

Adjournment: 4:30 p.m.

Jim Elliott, Chair

Ginger Puntenney, Secretary

JE/gp

# HOUSE OF REPRESENTATIVES

# FISH AND GAME COMMITTEE

### ROLL CALL

DATE <u>1-15-91</u>

NAME	PRESENT	ABSENT	EXCUSED
REP. JOHN JOHNSON, VICE-CHAIRMAN			
REP. BEVERLY BARNHART			
REP. FRED "FRITZ" DAILY			
REP. ROGER DEBRUYCKER			
REP. ORVAL ELLISON			
REP. GARY FORRESTER		· · · · · · · · · · · · · · · · · · · ·	
REP. BOB GILBERT			
REP. MARIAN HANSON	$\vee$		
REP. VERNON KELLER			
REP. BEA MCCARTHY			
REP. BRUCE MEASURE			
REP. JOHN PHILLIPS			
REP. TED SCHYE			
REP. JOHN SCOTT			
REP. WILBUR SPRING			
REP. BILL STRIZICH			
REP. JIM ELLIOTT, CHAIRMAN			
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## HB 89 January 15, 1991

## Testimony presented by Errol T. Galt, Chairman Montana Fish and Game Commission

The Fish and Game Commission is pleased to support House Bill 89.

The 1979 Legislature changed the name of the Department of Fish and Game to the Montana Department of Fish, Wildlife & Parks. This change was made to more accurately reflect the agency's responsibilities. The intent in 1979 was to also change the commission's name, but, due to technical omissions in the bill, it was overlooked.

Upon my appointment to the commission two years ago, one of my initial objectives was to change the commission's name to accurately reflect our responsibilities in fisheries, wildlife and parks. This was suggested to both Governor Stephens and Department Director K. Cool and both readily agreed. On November 9, 1989, the day following the state centennial celebration, the full commission concurred in this proposal to change our name.

Both our commission and our department have responsibilities beyond the management of fish and game species. They include the 60-unit state park system and Parks Division which were transferred from the Department of Highways in 1965. They also include the snowmobile program, community grants program from the federal land and water conservation fund, the care of the state capital grounds, wildlife species the management of nongame and other responsibilities.

Changing our commission's name will reflect contemporary responsibilities and more accurately portray the commission's role to the public we serve. This bill is timely because of the increased attention the public, the administration and our commission are giving parks matters. The State Park Futures Committee, in its report to Governor Stephens and to you, also recommends this name change.

There will be no additional cost associated with the name change proposed in this legislation. The benefits to the commission, the department and the people who deal with us should be significant.

I urge passage of House Bill 89. Thank you.

Proposed Amendments to House Bill 89 Montana Audubon Legislative Fund January 15, 1991

EXHIBIT_	2	- <u>P</u> 3-	1062	_
DATE	- 1-5		4	
HB	89			

- -1. Page 2, line 18-19. Strike: "game, game birds, animals" Insert: "wildlife"
- Page 2, line 17.
  Following: "fish," Insert: "parks,"
  - Page 2, line 19. Following: "animals," Insert: "parks,"

Fish & Game Committee January 15, 1991 Testimony on HB 89

22 pg 1/15/91 HB 89

Mr. Chairman and Members of the Committee,

My name is Janet Ellis and I am the lobbyist for the Montana Audubon Legislative Fund. The Audubon Fund is composed of the nine Montana Chapters of the National Audubon Society. Currently our membership stands at about 2,500.

We support HB 89 enthusiastically. The Fish and Game Commission makes decisions governing the Montana Department of Fish, Wildlife & Parks. These decisions affect all wildlife in the state, including, game, nongame, predators and furbearers. The decisions also impact our state park system.

We support this name change and would suggest several amendments that, we feel, will compliment this legislation:

1) Our first amendment is technical.

2) Our second amendment asks that this be more than a symbolic name change. We ask that "parks" be included in the items that commissioners are "informed, interested, or experienced in." We feel that some interest, at a minimum, of commissioners in parks is important. We do not feel that the only things that parks do is facilitate "outdoor recreational" facilities. Including parks in the "job description" of commissioners is important.

We want to thank you for listening to our testimony on this issue. We also want to thank Fish, Wildlife & Parks Chairman Galt for this brilliant idea.

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#### Proposed amendment

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF ILLEGALLY POSTING OF PUBLIC AND <u>PRIVATE LAND</u>; PROVIDING THAT A PERSON WHO KNOWINGLY POST STATE OR FEDERAL <u>OR POSTS WITHOUT</u> <u>PERMISSION OF THE LANDOWNER</u>, LAND AS BEING PRIVATE PROPERTY OR AS CLOSED TO HUNTING OR TRESPASSING IS GUILTY OF A CRIME; AND PROVIDING A PENALTY."

<u>New Section.</u> Section 1. Illegal posting of public <u>and private</u> <u>land</u>. (1) A person commits the offense of illegal posting of lands if without authorization <u>of the appropriate government agency or</u> <u>the existing landowner</u>, he knowingly posts land that is <u>under the</u> <u>ownership or control of the state or federal government <u>or another</u> <u>landowner</u> as:</u>

- (a) private property;
- (b) closed to trespassing; or
- (c) closed to hunting.

(2) A person convicted of illegal posting of public or <u>private</u> land shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

<u>NEW SECTION.</u> Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 45, chapter 8, part 1, and the provisions of Title 45, chapter 8, part 1, apply to [section 1].

EXHIBIT\_4 DATE 1-15-91 HB\_\_\_\_ 33

### HB 33 January 15, 1991

## Testimony presented by K. L. Cool, Dept. of Fish, Wildlife & Parks to House Fish and Game Committee

The department supports efforts to deter illegal posting of public land, just as we support enforcement of illegal trespass on private lands. Both the BLM and U.S. Forest Service have regulations prohibiting illegal posting of their lands; this bill would also make it a violation of state law to illegally post federal land. The bill prohibits unauthorized posting of state lands, as well.

Each year our department receives complaints from Montanans who suspect illegal posting. Those complaints are forwarded to the appropriate land management agency or local authority. It is, however, often difficult to identify a responsible party, particularly when orange paint is used.

This bill assigns enforcement responsibility to local governments. Our department will continue to cooperate with local enforcement authorities, should this bill become law.

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	TED SCHWINDEN, GOVERNOR 	
	(406) 444-2074	1625 11TH AVENUE HELENA, MONTANA 59620
October 23	, 1985	

#### MEMORANDUM

TO: Lands Division Administrator and Bureau Chiefs Forestry Division Administrator and Bureau Chiefs Operations Division Administrator and Area Managers Legal Staff

FROM:

# RE: Hunting on School Trust Lands

Dennis Hemmer, Commissioner

The Department's policy on hunting on school trust land is:

The Board has reserved hunting and fishing access. Strictly speaking no one is allowed to hunt or fish on state land. However, it is not realistic to expect the lessee to keep everyone off. The ressee may post the lesse to protect is reasoned interest. If it is posted no one, including the lessee may hunt on the lease. The lessee may allow hunting on the tract. However, if hunting is allowed, everyone must be allowed to hunt. The lessee may require everyone to check in before going on the tract to keep track of who is on it. However, no one may be denied.

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The lessee may not charge for hunting. All evidence that a lessee is charging for hunting should be submitted to the Lands Division Administrator. The evidence will be pursued, and if there is sufficient evidence, the lease cancelled. Lessees have known since 1982 (see attached letter to all lessees) that they may not charge for hunting on their leases.

Questions have arisen as to what the Department of Fish, Wildlife and Parks' wardens should enforce on state land. Enforcement should be as it has been before. Any trespasser should be directed to leave the tract if it is posted. Any evidence of charging to hunt on state land should be submitted to the Department.

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(2) A lessee or licensee shall not be entitled to compensation for those conservation or improvement measures placed on state lands using state or federal monies, except for the amount the lessee or licensee personally expended on such measures. Proof of payment may be required.

4x.5 pg 2012 1115-194 HB 33

26.3.154 LIEN ON CROPS AND IMPROVEMENTS (1) As provided in section 77-6-112, MCA, the state has a lien on all improvements and crops growing or separated upon state lands for any payments due it for that year. This lien shall have priority over all liens except a thresherman's lien or a seed lien and in those cases only to the extent of the indebtedness as evidenced by the contract, excluding any future advances. Any person acquiring an interest in such improvements or crops shall take subject to the lien. The department or sheriff of the county where the land is located may demand payment of monies due and if not paid may seize such property and sell as much of it as is needed to meet the indebtedness at a public sale, giving at least three days notice.

26.3.155 SALES (1) The board may sell any land under lease or license, except those lands classified as forest lands, under the same terms and conditions as land not under lease or license. The board shall notify the lessee prior to such sale and at least 6 months prior to possession being given to the purchaser and such notice shall be made only during the period of May 1 through October 31 of any calendar year. The lessee or licensee shall be entitled to compensation for improvements as provided in ARM 26.3.152. The purchaser will be given possession of land sold on March 1 next succeeding the date of the sale unless the lease or licensee expires prior to that date or the lessee or licensee and purchaser agree in writing on another date.

26.3.156 WEEDS, PESTS AND FIRE PROTECTION (1) A lessee or licensee of state land shall keep the land free of noxious weeds and pests and assume responsibility for fire prevention and suppression necessary to protect the forage, trees and improvements. The lessee or licensee shall perform these duties at his own cost and in the same manner as if he owned the land. In the event that any state land shall be included in a weed control or weed seed extermination district, the lessee or licensee shall be required to comply with section 7-22-2149, MCA, which requires that the lessee or licensee be responsible for all assessments and taxes levied by the board of county commissioners for the district. The lessee or licensee of state land must comply with Montana County Noxious Weed Management Act under Title 7, Chapter 22, Part 21, MCA. Failure to comply with this rule may result in cancellation of the lease or license, subject to the appeal procedures provided in ARM 26.3.148.

26.3.157 RESERVATIONS (1) The state reserves to itself and its representatives and authorized lessees and licensees the right to enter upon state lands for the purposes contained within the lease or license. The state also reserves the right for itself and representatives to enter upon state lands for any lawful purpose including inspections.

(2) Representatives of the Montana historical society have the right to enter any state lands at any reasonable time, upon notification to the department, to perform their duties in connection with the State Antiquities Act, Title 22, Chapter 3, Part 4, MCA. Any person discovering an object or site of historic, prehistoric, archeological, paleontological, scientific, architectural or cultural interest on state land shall report such discovery to the Montana historical society and the department and take all steps necessary to preserve such site or object. Wilful abuse of such sites or objects may constitute sufficient grounds for cancellation of the lease or license.

(3) The state reserves the right to sell or otherwise dispose of any interest other than that for which the lessee or licensee has leased or licensed the premises, including hunting or fishing access privileges on state land. The second secon

26.3.158 WATER RIGHTS (1) If a water right is or has been developed on state land by the lessee or licensee for use on the leased or licensed land, such water right shall belong to the state. The lessee or licensee shall be entitled to compensation for the reasonable value of the improvements associated with the water right by any new lessee, licensee or purchaser if such improvements are sold to a new lessee or licensee or purchaser as provided in ARM 26.3.152. This shall not be construed to make the state liable for the value of any water right. Any water rights hereafter secured by the lessee and licensee on state lands shall be secured in the name of the state of Montana.

EXHIBIT\_ DATE 1-15-91 HB\_\_\_\_\_9

### HB 91 January 15, 1991

### Testimony presented by K. L. Cool, Dept. of Fish, Wildlife & Parks To House Fish and Game Committee

Licenses for moose, sheep and goat are issued by the department through computerized random drawings. Over 26,000 sportsmen apply for 1,600 licenses. Overall, their drawing odds are about one in 15. In a few districts, their drawing odds are in excess of one in a hundred. In these districts, a sportsman would receive one hunting license in a hundred years.

There are, of course, those lucky sportsmen who receive a license two years in a row or several licenses within a few years. That seems unfair to many sportsmen when many applicants will not obtain a license in a lifetime. This was a major area of interest in many of our customer contacts during the department's public involvement process on license fee increases.

An element of fairness can be gained with the passage of HB 91. It would prevent a sportsman from obtaining another license for 7 years. Seven years is reasonable for administrative reasons. A longer period of time would be administratively difficult and costly. A period of less than seven years would make the waiting period ineffective. An additional benefit of the waiting period is the increase of drawing odds for those who can still apply for the drawings.

Montana sportsmen consider our moose, sheep and goat drawings one of the premier attractions of hunting. Obtaining one license produces a lifetime of memories. With fairness as a goal, we support the passage of HB 91.

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VISITORS' REGISTER

Fish and Jame COMMITTEE

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Junet Ellis	Helena	~	
Jon Schoorg	Ramsey		
Bill Andon	Butt	V	
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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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BILL NO. AB 33	DATE5-	91	
SPONSOR <u>O'Keefe</u>			
NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
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Kim Enkerus	Grazing District	V	
End Gatt K.L. Cool	MT. FUT WL & PANKS	•	
Scott SNELSON	MT NILOLIFE FEDERATTA		
MORule	HO 45	X	
Stan Bradshaw	Trout Unlimited		
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BUD BUGNI	PAICELY PEAN Statsman		
Bill Haldon	Butte		

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