

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FISH & GAME

Call to Order: By **CHAIRMAN DOUG WAGNER**, on February 16, 1995, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Douglas T. Wagner, Chairman (R)
Rep. William Rehbein, Jr., Vice Chairman (Majority) (R)
Rep. Emily Swanson, Vice Chairman (Minority) (D)
Rep. Charles R. Devaney (R)
Rep. Jim Elliott (D)
Rep. Daniel C. Fuchs (R)
Rep. Marian W. Hanson (R)
Rep. Hal Harper (D)
Rep. Chase Hibbard (R)
Rep. Dick Knox (R)
Rep. Rod Marshall (R)
Rep. Brad Molnar (R)
Rep. Robert J. "Bob" Pavlovich (D)
Rep. Bob Raney (D)
Rep. Robert R. "Bob" Ream (D)
Rep. Paul Sliter (R)
Rep. Bill Tash (R)
Rep. Jack Wells (R)

Members Excused: None.

Members Absent: None.

Staff Present: Doug Sternberg, Legislative Council
Mary Riitano, Committee Secretary

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

Committee Business Summary:

Hearing: None.
Executive Action: HB 94 TABLED
HB 262 TABLED
HB 486 TABLED
HB 348 DO PASS AS AMENDED
HB 451 TABLED
HB 439 DO PASS AS AMENDED
HB 339 DO PASS AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 000; Comments: N/A.}

EXECUTIVE ACTION ON 94

Motion: REP. BRAD MOLNAR MOVED TO TABLE HB 94.

Discussion:

REP. JACK WELLS asked if the statements by the main proponent had been clarified during the second hearing.

Vote: TABLE. Motion carried 16 to 1 with REP. BOB REAM voting no. REP. PAUL SLITER was absent for the vote.

EXECUTIVE ACTION ON 262

Motion: REP. REAM MOVED TO TABLE HB 262.

Discussion:

CHAIRMAN DOUG WAGNER said he would not accept the motion; it was out of order on this bill.

REP. REAM stated that the table motion on the last bill had been out of order because there was no opportunity to discuss the issue. REP. REAM withdrew his motion to table HB 262 out of respect to the committee.

Motion: REP. BOB PAVLOVICH MOVED HB 262 DO PASS.

Discussion:

REP. MOLNAR said that when he was a lobbyist, this issue was the first one that he handled. He said the testimony for this bill was not much different than testimony presented then. He understood that the word "disease control" would be stricken and replaced with "control." Bison mingled with elk and both could be carriers of brucellosis. It was proper to control both species through public hunting. There were people who did not like public hunting. However, it made little difference whether the Department of Fish, Wildlife and Parks (FWP) or the public controlled bison through hunting, the bison were dead in either case.

REP. MOLNAR said that if people cannot hunt bison because it is large and shaggy, he suspected that elk would be the next species not hunted. Extremely poor judgment has been used to deal with the situation and the issue has returned to legislature year after year. Each time promises were made that the park service, the governor, or congressional people would take action. In the meantime, sportsmen's money has been used to slaughter buffalo but yet sportspeople did not pull the trigger. He desired to have the ability to shoot buffalo in a public hunt when they roam

out of the park. **REP. MOLNAR** did not believe in hunting buffalo for disease control. He could not find any basis for not passing the bill.

CHAIRMAN WAGNER said the Department of FWP had proposed amendments. **REP. MENAHAN** had agreed to their amendments. **REP. BOB RANEY** also indicated that he wanted to amend HB 262 and **Mr. Sternberg, Legislative Council**, distributed a copy of the amendments. **EXHIBIT 1**

REP. DICK KNOX opposed the motion for several reasons. Currently, Governor Racicot has taken action to achieve a long-term solution to the bison problem. The problem would continue to exist if current policies were maintained and if public hunting was established. The park service, unless they were forced, would not take action. This has been demonstrated clearly over past years. Montana cannot prevail in the issue of controlling bison population through hunting. No matter how the hunt is structured, Montana would stand alone. Virtually the entire national news media was stacked against Montana on this issue. He supported the concept of a fair chase hunt in certain areas but maintained that it would only control a small portion of the overpopulation problem. Every time there is a hard winter, the same problem will be experienced. The bison will leave the park. The only way to take care of the problem is to force the park service to take actions within the park. Supporting Governor Racicot's suit may force the park to finally take action.

Motion: **REP. RANEY MOVED TO REMOVE THE WORD "DISEASE" FROM ALL PLACES IT APPEARED IN HB 262.**

Discussion:

REP. RANEY said he had reviewed FWP amendments and did not want to move them. His amendment would change the license to a wild buffalo control license. This was a buffalo control bill not a disease control bill.

REP. WELLS said his amendment was the same as the first FWP amendment. He asked if **REP. RANEY** agreed. **REP. RANEY** agreed. FWP's proposed amendment would strike "disease control." It would then be called a wild buffalo license. He said that would be acceptable. However, he believed it was more acceptable to call it a wild buffalo control license. He did not think it was appropriate to classify it as a hunt. Eventually, he hoped "that something similar to a hunt" would be feasible. It would never occur on private land, but the potential exists on some public land surrounding the park.

Vote: **RANEY AMENDMENT.** Motion carried 15 to 3 with **REPS. KNOX, HIBBARD,** and **SLITER** voting no.

Motion: REP. RANEY MOVED TO CHANGE THE WORD "HUNT" TO "PARTICIPATE" ON PAGE 1, LINE 16.

Discussion:

REP. WELLS commented that it sounded like a roundup was being proposed. REP. RANEY said he planned to offer another amendment that would amend 87-1-215, Section 1. It would remove the language, "The legislature finds that the management through hunting of wild buffalo or bison is not appropriate but" so that the legislature would not be mandating that it was not suitable. In Section 2, subsection (b), he planned to add the language, "evaluate and identify potential locations on public land for a free-ranging bison herd in Montana comprised of bison that originate in Yellowstone National Park; to develop plans for maintaining that herd and provide for public control actions for wild buffalo or bison through seasons approved by the Fish, Wildlife and Parks Commission." It is important to refrain from calling it a "hunt;" it is actually bison control. The last amendment he planned to offer was to require a report to the 55th Montana Legislature. He proposed the effective date to be October 1995 which would allow the department time to work on the details of a public hunt and control bison on privately owned land.

REP. KNOX understood the direction REP. RANEY was going with the amendments. Should HB 262 pass and become law, it would probably be good legislation. However, he was not interested in it passing. If HB 262 passed, it would remove the small amount of leverage Montana has against the park, and the overpopulation problem would remain. There is a potential for a large amount of damage to the livestock industry which is the largest segment of Montana's economy. Five states require brucellosis testing of Montana's breeding cattle. Over a period of time, if the National Park Service is not forced to take corrective action within the park, Montana will experience heavy consequences.

REP. CHASE HIBBARD agreed with REP. KNOX. He did not oppose a bison hunt. Ultimately, a bison hunt outside the boundaries of the park would be a good idea. Currently, however, Montana must force the National Park Service to take ownership of this problem and take action within park boundaries regarding disease and population control. If a hunt is established, the park service would be "off the hook."

Substitute Motion: REP. HIBBARD OFFERED A SUBSTITUTE MOTION TO TABLE HB 262.

Discussion:

CHAIRMAN WAGNER stated that he wanted to ask how FWP amendments compared to REP. RANEY's proposed amendments. He said that FWP amendments allowed for the capture of wild, disease free buffalo

from the park to be relocated to Montana for the purpose of a fair chase hunt.

Vote: Substitute motion failed 10 to 8 on a roll call vote with REPS. SWANSON, DEVANEY, ELLIOTT, FUCHS, HIBBARD, KNOX, MARSHALL, and REAM voting yes.

Vote: RANEY AMENDMENT. Motion carried 10 to 8 with REPS. HANSON, KNOX, DEVANEY, MARSHALL, WELLS, HIBBARD, FUCHS, and SLITER voting no.

Motion: REP. RANEY MOVED TO AMEND 87-1-215. THE LANGUAGE "THAT THE MANAGEMENT THROUGH HUNTING OF WILD BUFFALO OR BISON IS NOT APPROPRIATE BUT" WOULD BE STRICKEN. SECTION 2, SUBSECTION b WOULD BE STRICKEN AND REPLACED WITH "SHALL EVALUATE AND IDENTIFY POTENTIAL LOCATIONS ON PUBLIC LAND FOR FREE-RANGING BISON HERDS IN MONTANA COMPRISED OF BISON WHICH ORIGINATE IN YELLOWSTONE NATIONAL PARK; DEVELOP MANAGEMENT PLANS FOR MAINTAINING THAT HERD AND PROVIDE FOR PUBLIC CONTROL ACTIONS OF WILD BISON AND BUFFALO THROUGH SEASONS APPROVED BY THE FISH, WILDLIFE, AND PARKS COMMISSION." THE REQUIREMENT OF REPORTING TO THE 53RD LEGISLATURE WOULD BE CHANGED TO THE 55TH LEGISLATURE. THE EFFECTIVE DATE WOULD BE CHANGED TO OCTOBER 1, 1995.

Discussion:

REP. BILL REHBEIN expressed opposition to the amendment. He said that it was acceptable for FWP to kill the bison at the border and haul them away. He did not want bison on the rangeland in Montana.

REP. WELLS referred to the antelope in the early 1900's, which numbered about 1,000. They did not cause damage but ate a lot of grass and hay. Currently, the population exceeds 1,000. With proper management, bison could be controlled in certain areas.

{Tape: 1; Side: B; Approx. Counter: 000; Comments: Lost 10 seconds.}

REP. WELLS did not like the idea of removing park service responsibility. He wanted to keep them responsible for the park but give Montana the opportunity to help by forming a herd management program. The problem needs to be solved through a combination of efforts by the park and Montana.

REP. REHBEIN said that a number of Montanans want to help control the bison herd. If buffalo were allowed to be relocated, there would be more competition on rangelands between cattle and bison. He agreed that there are too many buffalo as well as too many deer. His concern was enlarging the herds already in Montana so that private landowners would have to support additional buffalo.

REP. KNOX referred to the CMR area outside of Yellowstone Park. It includes millions of acres. Within its boundaries, there are significant amounts of deeded land. If there were buffalo in the

CMR, management would be impossible. He did not understand how a public bison herd could be established when Montana has no leverage on the park service nor area designated for bison hunting. If this program was implemented, the park service would need very large holding facilities constructed. Bison would need to be corralled before moving them. The facilities would have a negative visual impact. This action would take the pressure off of the park to take care of its problem.

CHAIRMAN WAGNER said he wanted to listen to FWP's opinion on the proposed amendments and their ability to handle the situation. He stated that he had a bison bill on hold. He had been involved with this issue with **REP. MENAHAN** and the department. HB 262 may be a useful tool for the state of Montana but he did not want to take actions that may upset the governor's lawsuit or remove park responsibility. Eradication of disease is the main issue and the park is examining it closely. The park would also have to deal with elk because they could carry the disease as well. He desired that FWP have the ability to establish a fair chase hunt and see the National Park Service continue its efforts. The current superintendent of the park has indicated there may be a possibility of areas designated for a fair chase hunt.

CHAIRMAN WAGNER asked Pat Graham, Director, Department of Fish, Wildlife and Parks for comments. **CHAIRMAN WAGNER** believed Montana could have both hunting established and the park continue working on disease eradication. **Mr. Graham** said **REP. RANEY's** amendments differ from FWP amendments. FWP amendments strike Sections 1, 2, 3, and 4 of the bill and leave the basic intent of the bill intact. It was his understanding that **REP. RANEY's** proposed amendments add potential locations to establish a free-ranging bison herd and maintain hunting adjacent to the park. **CHAIRMAN WAGNER** said that was correct.

CHAIRMAN WAGNER asked if this could be accomplished through FWP but not undermine current progress. **Mr. Graham** said amendments should also resolve conflicts regarding livestock issues. Authority should be given to the Department of Livestock or Department of FWP to establish management zones outside the park in which hunting could occur. He thought the committee should consider designating management zones to eliminate conflicts with the Department of Livestock's authority. The amendments did not change his interpretation of the bill and maintained hunting adjacent to the park. The desired result is to get federal agencies to take action inside the park and resolve the problem.

REP. HAL HARPER said he was not "enamored" with the bill. He did not want to undermine the governor's effort or undercut Montana's bargaining position. He expressed a desire to identify a solution to the problem. He emphasized the point that **REP. WELLS** made regarding the problem being addressed both inside and outside the park. He asked **Mr. Graham** if a joint effort was needed to arrive at a final and permanent solution. **Mr. Graham** said yes. FWP has taken considerable action, but the problem

cannot be solely addressed outside the park. Diseased buffalo have been allowed to reside in Montana jeopardizing the state's brucellosis-free status. Individual states have taken action requiring testing of Montana cattle. FWP needs a firm plan to help control bison that includes a trapping facility near the border of the park to capture and test bison for disease. They are waiting to take action until the Environmental Impact Statement (EIS) is completed. During the interim, FWP was examining ways that buffalo could be handled at the borders of the park. The lawsuit should indicate that Montana wants immediate action.

REP. HARPER asked if it was possible to increase leverage or offer an incentive by passing a bison control bill. Perhaps, it would indicate that Montana is willing to take care of its land outside park boundaries. **Mr. Graham** did not believe it would work. The issue is twofold. Montana cannot control the bison population. Game wardens are not an effective way to control it. FWP uses them because they believe it would be a temporary solution until the park develops a plan. They want a better system of collecting, handling, and testing the bison. Some bison wander 25 miles out of the park and this was not helping Montana maintain its brucellosis-free status. Using either game wardens or hunters to control the population was ineffective. He emphasized that action must be taken inside the park; the lawsuit has shifted focus from Montana to the federal park.

REP. HARPER stated that he supported the amendments because, if the bill passed, it would complete desired objectives.

REP. MOLNAR remarked that he did not like the amendments. Regions would need to be established similar to the elk regions. The purpose should not be to establish hunting but rather to control bison populations migrating from the park. When the bison leave the park it is Montana's problem; therefore, Montana should implement a plan to handle the issue.

REP. KNOX said the issue is important to the area of the state that he represents. If a hunt is instituted, he believed it would apply pressure to the park. Not many people outside of Montana are affected by the problem. However, Montana would lose the battle in the arena of public opinion. The park service has been responsive to the majority of people in the United States and they have expressed their opinion regarding buffalo hunting. He asked **Mr. Graham** about discussions with people from Yellowstone Park regarding cooperation of handling the bison population. **Mr. Graham** explained that FWP is examining an interim plan. The long-term plan needs to include action within the park. **REP. KNOX** asked if there was a realistic possibility that the National Park Service would consent to management plans being executed inside the park boundaries. **Mr. Graham** said the intent was to move forward and seek commitment for action.

REP. RANEY commented that HB 262 could be the "hammer" to make the park service cooperate with Montana. Currently, there is nothing encouraging the park service to cooperate. He did not know how effective the lawsuit would be. Last time there was a bison hunt, 1,000 permits were issued. Next time the hunt would not be conducted on private land. Control action by Montana citizens would need to occur in defined areas outside of the park.

REP. RANEY said winning the battle against negative public opinion was impossible while continuing the status quo. In order to raise this issue to a point where America will pay attention, Montana citizens should harvest the bison. Perhaps this would force the park service to negotiate. He stated that corralling, testing, and releasing buffalo for a fair hunt would be an enormous task and would not occur while federal agencies were handling the problem. He felt the plan proposed by FWP would not work and would make further delays. **REP. RANEY** wanted to allow citizens to hunt, thereby swaying public opinion. As a result, public opinion may become critical of park management.

REP. REAM asked **Mr. Graham** about commitments made by the federal government.

{Tape: 2; Side: A; Approx. Counter: 000; Comments: Lost 10 seconds.}

Mr. Graham said one commitment is to complete the EIS. Another commitment is that the problem would be addressed by next winter. The governor had been in contact with park management. The proposal being discussed established temporary trapping and quarantine facilities outside the park on private land for the purpose of testing the bison for brucellosis.

REP. REAM commented that for 30 years the state has had to deal with mismanagement of Yellowstone Park. Governor Racicot was courageous in filing the lawsuit. It was the first "glimmer of hope" in obtaining sincere commitment for action from the park. He also pointed out that not all bison migrate out of the park. The bison herd being discussed is located in northern Yellowstone Park and near West Yellowstone. He maintained that it would be a mistake to pass the bill at this time because it would jeopardize the governor's objectives in filing the lawsuit.

REP. REHBEIN said it is a serious problem and currently FWP is handling it in the only feasible way. Sportsmen would like to be a part of the solution. He suggested that sportsmen could "stand side-by-side" with FWP and help slaughter and haul away the bison.

REP. PAVLOVICH believed FWP through rulemaking authority could organize the details. The first time a bison hunt was reinstituted, there was not problem. Problems arose when environmentalists and the press arrived. He expressed support

for **REP. RANEY's** amendments. It did not matter if FWP or hunters controlled the bison population.

REP. BILL TASH said that he had the opportunity to attend the international symposium on brucellosis. Currently, there are about 4,300 head of bison and about 100,000 head of elk inside Yellowstone Park. A large part of the problem is poor management of Yellowstone Park's ecosystem. He opposed the amendments. The problem exists within the park.

REP. JIM ELLIOTT said that when he was chairman of the Fish and Game Committee, three bison bills were heard. He agreed with **REP. TASH** that it is a park problem. Four years ago thousands of elk left the park and people wanted to feed them because they were starving. At that time, bison were leaving the park and Montana sportspeople were harvesting them. On the news during that time, hunters were shown killing the buffalo. The reasons bison hunting discontinued were because of negative press coverage and antihunting sentiments.

REP. ELLIOTT stated that if Montana reinstated a bison hunt, there would again be media coverage. It would not be the state of Montana or the park that received negative publicity. Hunters would receive the negative media coverage. He desired to protect hunters from the antihunting sentiment permeating the United States. The bill discontinuing bison hunting was passed for two reasons. The first reason was to apply pressure on the park to manage the herds, and the second reason was to remove the basis for negative press coverage. If HB 262 passed, Montana would suffer the same repercussions experienced during the last bison hunt.

REP. EMILY SWANSON believed everyone desires the same objectives, including the park managing its own problems, having a free-ranging bison herd, and establishing a fair chase hunt. She presumed that was **REP. RANEY's** intention with the proposed amendments and expressed her support. However, the bill was premature. If the emphasis remained on keeping management of bison and brucellosis within the park, she was concerned that Montana would never have a free-roaming bison herd available for a fair chase hunt.

REP. HIBBARD said Montana would get national media coverage if a hunt was instituted. He agreed with **REP. ELLIOTT**. Hunting bison may help take care of the problem, but would speed the demise of sport hunting. The vast majority of people in the United States do not have a definite opinion regarding hunting. As a result, these people are vulnerable to press coverage. The media controls the content of the news and tells the public what they want to hear. HB 262 was not a good bill; the amendments may provide improvements, but he said he would still vote against it.

Motion: **REP. ELLIOTT MOVED TO INDEFINITELY POSTPONE COMMITTEE ACTION ON HB 262.**

Discussion:

Committee members discussed the ramifications of postponing committee action and the manner in which the bill could be introduced on the House floor.

Vote: POSTPONE ACTION. Motion failed 9 to 9 on a role call vote with REPS. WAGNER, REHBEIN, FUCHS, HARPER, MOLNAR, PAVLOVICH, RANEY, SLITER, and WELLS voting no.

Discussion:

CHAIRMAN WAGNER believed that HB 262 was a timely bill. Montana sportsmen are paying for hunting licenses. A portion of that revenue is spent on bison control. He wanted to see the bill pass in an acceptable form. However, he did not support **REP. RANEY's** amendments because as bison migrate out of the park, they are diseased and will impact Montana's livestock industry. **REP. RANEY** said that **CHAIRMAN WAGNER** should support his amendments. The Department of Livestock was included in his amendments. If they fail, the Department of Livestock would not be included in a plan of action. His amendments did not preclude shooting bison because they were diseased. He restated his proposed amendments and maintained there would be controls put into place to regulate the herd.

CHAIRMAN WAGNER asked if FWP's amendment regarding establishing a bison range outside the park was included, would damage still occur to cattle. **John Munding, Department of Fish, Wildlife, and Parks**, replied if bison hunting was to be established on public land adjacent to the park, the committee needed to direct either the Department of Livestock or the Department of FWP to designate those areas in a manner that superseded current regulations. Currently, bison may not legally enter the state of Montana from Yellowstone National Park. He explained that the committee had to organize a few of the details or it would place the two departments in direct conflict. **REP. RANEY** asked **Mr. Munding** if this was being accomplished in his proposed amendments. **Mr. Munding** said no.

REP. TASH asked **REP. RANEY** if he had collaborated with legislative staff, Department of Livestock, or Department of FWP when composing his amendments. **REP. RANEY** said no. **REP. TASH** commented that it was added reason not to vote for the amendments.

Motion: REP. REAM MOVED TO SEGREGATE THE EFFECTIVE DATE.

Discussion:

REP. REAM said if people were genuinely interested in compromise, the effective date should be delayed for two years to allow the legal action to proceed.

Vote: RANEY AMENDMENTS EXCLUDING THE DATE. Motion failed 13 to 5 on a roll call vote with REPS. SWANSON, HARPER, PAVLOVICH, RANEY, and REAM voting yes.

Motion: REP. REAM MOVED THAT THE EFFECTIVE DATE BE OCTOBER 1, 1997 FOR HB 262.

{Tape: 2; Side: B; Approx. Counter: 000; Comments: Lost 10 seconds.}

Discussion:

REP. PAVLOVICH commented tha HB 262 would become effective after the 199 Legislature. REP. REAM said the 1997 legislature had the option of changing that. However, if they did nothing, HB 262 would become effective October 1, 1997. REP. PAVLOVICH agreed but wanted to give hunting an opportunity to work. REP. REAM stressed that the legal action should be completed to support the governor's objectives. In this way, the pressure would not be removed from the park service.

Vote: EFFECTIVE DATE MOTION. Motion failed on a roll call vote 9 to 9 with REPS. WAGNER, REHBEIN, FUCHS, HARPER, MOLNAR, PAVLOVICH, RANEY, SLITER, and WELLS voting no.

Motion: REP. HARPER MOVED A CONCEPTUAL AMENDMENT THAT SAID "THIS ACT BECOMES EFFECTIVE ONLY ON THE FOLLOWING: (1) AN AGREEMENT SIGNED BY THE STATE OF MONTANA AND NATIONAL PARK SERVICE AND OTHER APPROPRIATE FEDERAL AGENCIES TO PROVIDE A BISON MANAGEMENT PLAN AND (2) REGULATIONS WOULD BE APPROVED BY THE APPROPRIATE STATE AGENCIES TO ACCOMPLISH OBJECTIVES."

Discussion:

REP. HARPER explained the amendment would arrange the details of establishing a hunt. The agreement must be reached and signed. The argument of removing pressure from the park service was valid if the committee passed the bill in its current form. His concern was "the harder we badger the park service, the further the solution was away." The agreement must include management inside and outside the park.

REP. RANEY did not perceive how Montana could make an agreement with Yellowstone Park regarding hunting within the state. The legislature needed to make that decision. Montana's hunting season could not be contingent upon a bison management agreement. REP. HARPER said the problem needs to be solved through equal and cooperative action inside and outside of the park. A mutual agreement would help the situation. Some people believe hunting is the answer, but everyone desires a good solution to the problem.

REP. RANEY said that hunting was being handled in a separate way. Management, control, and the agreement with federal agencies was handled in another manner. It did not make sense that Montana

could have a hunting season provided there was an agreement with federal agencies that a hunt would be established. **REP. HARPER** said he could not support the bill until such an agreement was reached. The amendment that he proposed made it possible for him to vote in favor of the bill. An agreement has to be reached before the problem will be solved.

CHAIRMAN WAGNER asked **Mr. Sternberg** for clarification of **REP. HARPER's** proposed amendment. **Mr. Sternberg** explained that, in Section 5, language would be added to make the bill effective upon an agreement being reached and signed between the state of Montana and appropriate federal agencies regarding management plans for wild bison and upon adoption of the appropriate state regulations.

REP. KNOX expressed concern that the agreement had not been specifically defined. An agreement may not address the problem and the park service could be "off the hook." He asked **Mr. Graham** for his comments regarding the content of an agreement that would keep pressure on the park to take action. **Mr. Graham** explained that the current agreement was called the Interim Plan, which all involved parties have signed. After the EIS was completed, a more formal agreement would be put into place. Also, three states have agreed with federal agencies to proceed with the tri-state brucellosis program to address the disease problem. It was a series of agreements that, over time, would hopefully resolve the existing problems.

REP. REAM said the agreement could take the form of a cooperative management plan. He asked **Mr. Graham** about the length of time it would take to complete. **Mr. Graham** replied about 18 months.

REP. HIBBARD commented that perhaps language such as "results were achieved" to help clarify the agreement. The intent was good but trying to construct language may be extremely difficult.

REP. ROD MARSHALL asked if the committee had voted on FWP amendments. **CHAIRMAN WAGNER** said no.

REP. HARPER stated that it did not make sense to vote on his amendment if conceptually it did not work. He felt that an agreement was the way to handle issue. However, he could not devise proper the language. An agreement, such as he discussed, was needed. **REP. HARPER** withdrew the motion for his amendment.

Motion: **REP. MARSHALL MOVED FWP AMENDMENTS DO PASS.**

Discussion:

CHAIRMAN WAGNER asked **Mr. Sternberg** to explain the amendments. **Mr. Sternberg** said the effect of the amendments would be to change the description of the license that would be offered from "special wild buffalo disease control license" to a "special wild buffalo license." The words "disease control" were removed

throughout the bill. Corresponding changes would be made in the title. Rather than repeal 87-2-215, the section was amended. The new Section 1 offered in HB 262 would be replaced with the original language with two changes. Subsection (2)(b) would read, "shall evaluate and identify potential locations for public wild buffalo or bison herds in Montana, to be composed of wild buffalo or bison that originated in Yellowstone National Park and that have been certified as disease-free by the state veterinarian." Additional language would read, "develop management plans for initiating and maintaining public wild buffalo or bison herds; obtain local government and landowner concurrence in the management plans; and provide for public hunting of wild buffalo or bison through seasons approved by the commission." The license and fee provisions would be left intact. Sections 3 and 4 would be removed.

REP. RANEY said the amendments were similar to the ones he offered earlier with one difference. It would be very costly to locate an area for wild buffalo and to corral, contain, test, and release bison to that designated area. Afterwards, people would be able to hunt the bison in a fair chase situation. The manner he proposed was simpler. People would be allowed to shoot bison near Yellowstone with FWP game wardens monitoring the situation.

REP. WELLS said the language stated that the department was responsible and shall develop rules to implement the plan. It did not require the department to take all of the proposed actions. He thought the effective date should be 18 months later because of the EIS that is being completed and the current work being done by the department.

Vote: FWP AMENDMENTS. Motion carried 13 to 5 with REPS. MOLNAR, RANEY, HARPER, SWANSON, and REHBEIN voting no.

Discussion:

Mr. Sternberg stated that, as a technical point, by adopting FWP amendments **REP. RANEY's** amendments were superseded.

CHAIRMAN WAGNER asked **Mr. Sternberg** the reason for the proposed effective date. **Mr. Sternberg** said the sponsor of the bill wanted it effective upon passage and approval.

REP. SWANSON said she understood the hunting season to be eliminated through the passage of FWP amendments. The ability for the commission to establish hunting once areas have been designated remained in the bill. Given that fact, it would not make a difference when the bill was effective.

REP. RANEY said "absolutely nothing" was left in the bill. He commented that perhaps that was the intent. The proposal was to find bison that could be certified as disease-free, haul them to a designated area in Montana, and allow hunter's a fair chase hunt.

Motion/Vote: REP. ELLIOTT MOVED THAT HB 262 BE TABLED. Motion carried 11 to 7 with REPS. WAGNER, FUCHS, MOLNAR, PAVLOVICH, RANEY, SLITER, and WELLS voting no.

EXECUTIVE ACTION ON 486

Motion: REP. CHARLES DEVANEY MOVED HB 486 DO PASS.

Discussion:

REP. ELLIOTT said that until recently, he represented a large portion of the Flathead Indian Reservation. He stated that much work had gone into the original agreement. He had never received complaints from his constituents about the joint agreement between the state and tribes, although people in Lake County had experienced trouble. REP. ELLIOTT recapitulated events leading to the agreement originally negotiated by Governor Racicot when he was attorney general.

{Tape: 3; Side: A; Approx. Counter: 000; Comments: Lost 10 seconds.}

The agreement achieved was mutually acceptable to both parties. If HB 486 passed, this legislation would be vetoed by the governor. The agreement was reached because a joint license and enforcement was needed to simplify hunting and fishing on tribal land. On the reservation there is a "checkerboard" of ownership; some land is privately owned and some is owned by the tribes. The agreement saved the state costly litigation. Washington state chose to litigate for years the matter of Native American rights. They lost every single case. In good faith, the agreement was reached between the state of Montana and tribe.

Substitute Motion: REP. ELLIOTT MADE A SUBSTITUTE MOTION THAT HB 486 DO NOT PASS.

Discussion:

REP. KNOX supported the do not pass motion. He repeated much of the same sentiment as REP. ELLIOTT. Currently, a truce exists. If any part of the agreement is rescinded, it would destroy the agreement, trust, and good faith already established.

REP. HARPER stated that if the state rescinded the agreement it would be "a cold day in hell" before any of the tribes made an agreement with the state again.

Vote: DO NOT PASS. Motion carried 9 to 8 with REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, MARSHALL, SLITER, and WELLS voting no. REP. PAVLOVICH was absent for the vote.

Motion/Vote: REP. HIBBARD MOVED THAT HB 486 BE TABLED. Motion carried 9 to 8 with REPS. WAGNER, REHBEIN, DEVANEY, FUCHS, HANSON, MARSHALL, SLITER, and WELLS voting no. REP. PAVLOVICH was absent for the vote.

EXECUTIVE ACTION ON 348

Motion: REP. HARPER MOVED THAT HB 348 AND THE PROPOSED AMENDMENTS DO PASS.

Discussion:

REP. HARPER distributed a copy of the amendments and explained them. Agricultural people were contacted before drafting the amendments. The language "protect and preserve natural resources" was stricken to ensure that the bill would not conflict with agricultural interests. Subsection (3) was added, "Nothing in this section may be construed to restrict or interfere with existing water rights or private property rights" to further clarify the bill. Subsection (ii) was stricken, "preserve a diversity of recreational opportunities." **EXHIBIT 2**

REP. MOLNAR asked REP. HARPER the reason subsection (ii) was stricken. REP. HARPER explained that concerns had been raised regarding the potential impact on agricultural operations. REP. MOLNAR asked about the concerns raised. REP. HARPER said that he could not articulate those concerns. The agricultural community requested that it be removed; therefore, it was removed.

Motion: REP. HARPER MOVED TO SEGREGATE AMENDMENT NUMBER SEVEN.

Discussion:

REP. HIBBARD said that "red flags" had been raised for certain agricultural groups. He asked REP. HARPER if the amendments addressed the concerns of these people and removed their opposition. REP. HARPER said the amendments addressed every concern they expressed to him. He did not know about their support or opposition to the bill. REP. HIBBARD asked if the bill accomplished his objectives. REP. HARPER believed that HB 348 would achieve the desired results.

REP. TASH remarked that the amendments did not satisfy his concerns. He is concerned about agricultural interests as well as reaching a consensus between involved parties. Currently, the commission has the authority to adopt and enforce rules for all public bodies of water and preservation of natural resources. He questioned the need to broaden their rulemaking authority. It may send the wrong signal.

REP. WELLS asked why the last amendment's language was proposed for deletion when it appeared in other portions of the bill. Mr. Sternberg explained that the first section dealt with rulemaking

authority for the Department of FWP and the second section dealt with rulemaking authority for the Board of Outfitters to implement the recommendations of FWP Commission.

Vote: AMENDMENTS 1-6. Motion carried 13 to 5 with REPS. WAGNER, REHBEIN, DEVANEY, SLITER, and TASH voting no.

Discussion:

REP. HARPER said the paper he handed out was prepared by the Department of FWP to explain and answer questions regarding the need for the bill. **EXHIBIT 3**

REP. TASH declared his opposition to the bill as amended. Many of his constituents are water users. Through cooperative agreements, people have managed to effect a good working relationship on the Beaverhead for both irrigation users and recreational use. Currently, his area has the opportunity to release water from Clark Canyon Reservoir, which guaranteed stream flow during periods of drought. Consensus was reached to satisfy everyone's water usages, and trust has been established over the years. HB 348 would place Montana in the middle of some of these agreements. The first agreement was with United States government; there are 15 years remaining on that agreement and to pay off the dam. HB 348 did not invite trust and cooperation; therefore, he opposed the bill.

Motion: **REP. HARPER MOVED HB 348 DO PASS AS AMENDED.**

Discussion:

REP. MOLNAR agreed with **REP. TASH**. HB 348 did not get people together to solve problems to ensure that all people were represented. On other issues, people have gone to the commission for assistance and received no response. Each area should take care of problems on a local level and not relinquish authority to the commission. He expressed opposition to the bill.

REP. HIBBARD asked **REP. HARPER** the reason for the bill. **REP. HARPER** said that the paper he handed out addressed the question. The rulemaking section in this bill used the negotiated rulemaking procedure. That procedure is an informal process whereby anyone with an interest in the rules being proposed could participate in the procedure. Normally in rulemaking authority, FWP decided on proposed rules, notices were sent to the secretary of state, and there was a period of public comment. If department overrode the majority of negative public opinion on a rule, FWP only needed to give the reasons in writing. He said the Big Horn River is a crowded river with many boats and waders on it. If jet skies were racing around on it, potentially they could jeopardize the safety of many others. HB 348 handled those types of recreational conflicts.

REP. HIBBARD gave the scenario of a motorboat club riding on a river. Because of the increased use, waves from those boats began eroding a person's property. With HB 348, FWP could take steps to eliminate that activity.

{Tape: 3; Side: B; Approx. Counter: 000; Comments: Lost 10 seconds.}

REP. HIBBARD asked if HB 348 would address those problems through the negotiated rulemaking process. **REP. HARPER** said yes. **REP. HIBBARD** said if HB 348 did not pass, the problems could still be addressed through regular rulemaking process. **REP. HARPER** said no, they could not. Current law provides for public protection when there is a threat to health, safety, or property. However, improper use of motorized craft or excessive recreational use of a body of water was not addressed. HB 348 provided for the regulation of recreational uses.

REP. HIBBARD asked about the people who could be involved in the negotiated rulemaking process. **REP. HARPER** replied that anyone who had an interest could be involved in the negotiated rulemaking process.

REP. TASH remarked that specific instances needed to be dealt with on an individual and local basis. He appreciated the purpose and intent of the negotiated rulemaking process. However, he wondered how many people would actually attend those meetings. Issues could be handled more effectively if people met on a local level to discuss and resolve problems. He respectfully disagreed with **REP. HARPER** that the only way to handle these conflicts was through negotiated rulemaking process. There were other ways. A task force was appointed to deal with the problems at the Big Horn Basin. If issues would be dealt with in this manner, all concerns get represented rather than mandating laws to take care of problems which only might benefit a few.

REP. REAM emphasized the planning that went forward on the Smith River as a good example of landowners, recreationalists, and outfitters working together to control recreation. HB 348 did not manage the water itself or the use of that water, but rather the recreation on it. There are growing conflicts. During last summer, FWP had hearings because some issues became very intense. HB 348 would handle problems on a case-by-case basis. Rules would not apply to the entire state. It would also help facilitate negotiated rulemaking between all involved parties on a particular body of water. **REP. REAM** believed it was a good bill and a necessary tool for the department to work with the public. Currently, FWP does not have the authority to limit recreational activity.

REP. HIBBARD commented he had seen many changes around Montana's bodies of water. There has been an enormous increase in the amount of recreational activities. He thought the negotiated rulemaking process was good. It involved many people and

addressed their concerns. This may be as good as or better method than sitting on the "ditch bank" solving problems. He expressed support for the bill.

REP. KNOX said he had worked with the stockgrowers and they indicated their interests would be unaffected. Since they endorse it, **REP. KNOX** felt comfortable supporting the bill.

REP. TASH said people are very dependent on some of the resources. He expressed concern over "needless legislation." If an error was going to be made, it should be made on the side of a conservative position. Even if agricultural interests were addressed, he maintained that he would take "no position" stance on HB 348.

REP. REHBEIN stated that he would take a "no position" stance on HB 348.

CHAIRMAN WAGNER commented that he would also not take a position on the bill. He said it was a bad bill. Perhaps, agriculture was unaffected, but recreation was affected. He declared it was unneeded legislation and that people did not send legislators to make more laws expanding FWP. There have been problems with certain bodies of water. However, those dilemmas should be solved on a local level without mandating new laws.

REP. HARPER emphasized that HB 348 did not deal with water rights or water usage. The Stockgrowers Association mentioned that the amendments took care of their concerns. The negotiated rulemaking process is very informal. That process should take place on a local level. However, some cases have been impossible to resolve on a local level. HB 348 would be "site specific." He mentioned that hovercrafts would soon be invading our rivers. HB 348 would give FWP the ability to regulate hovercrafts as well as jet skis and other motorized boats. **REP. HARPER** wanted to preserve the quality of Montana recreational experiences.

Vote: DO PASS AS AMENDED. Motion carried 10 to 8 with REPS. **WAGNER, REHBEIN, DEVANEY, HANSON, MOLNAR, SLITER, TASH, and WELLS** voting no.

EXECUTIVE ACTION ON 451

Motion: **REP. ELLIOTT** MOVED HB 451 DO PASS.

Discussion:

REP. ELLIOTT received a letter from the Montana Wildlife Federation which thanked him for supporting the bill to expand the mountain lion season. Basically, the bill accomplished two objectives. HB 451 would allow a person to purchase mountain lion tags over-the-counter. It would also extend the mountain lion season to the general big game hunting season. He said

there were many mountain lions in the state and did not feel any damage would be done by extending the season for population control measures.

REP. MARIAN HANSON said that the problem with mountain lions is growing, and she expressed support for the bill.

REP. REAM asked **Mr. Graham** if mountain lion hunting during the general season could be conducted with hounds or if that decision would be left to the commission. **Mr. Graham** said currently hounds are allowed during mountain lion season. The commission would take action regarding the use of dogs during the general hunting season.

REP. MARSHALL stated he opposed the bill. If dogs were used in the big game season, game would be scared away. This would lessen the chances a hunter had in shooting one. If dogs were not used, it would be difficult to discern whether or not a mountain lion was female, male, or cub.

REP. ELLIOTT said it was not the intent of the bill to use dogs during the general season. He hoped that the commission would take care of the issue. The use of hounds in present law prohibited people who cannot afford or want to keep hounds from hunting mountain lions. His constituents wanted to see the season opened up to the average sportsman who was in the woods and encountered a mountain lion.

REP. WELLS believed that the current mountain lion season did not prohibit people from hunting them if they did not have dogs. The possibility of shooting a mountain lion in the general season was rare. He felt people should be hunting mountain lions during mountain lion season.

REP. REAM said line 21 read, "The commission shall set the season for the Class D-2 license to coincide with the general big game hunting season." This would exclude late season hound hunting. He asked **REP. ELLIOTT** if that was his intent. **REP. ELLIOTT** did not believe it was his intent. He referred the question to FWP. **Mr. Graham** said it appeared that would be the case. A person would be forced to use dogs during the general season or not at all. Hound season may be eliminated.

Motion: **REP. ELLIOTT** MOVED TO REPLACE THE WORD "SET" ON PAGE 1, LINE 21 TO "EXTEND."

Discussion:

Mr. Sternberg explained the amendment. He said on page 1, line 21, the word "set" would be stricken and replaced with "extend." Also the word "coincide" would be stricken and replaced with "include."

{Tape: 4; Side: A; Approx. Counter: 000; Comments: Lost 10 seconds.}

Vote: REP. ELLIOTT AMENDMENT. Motion carried unanimously.

Motion/Vote: REP. ELLIOTT MOVED HB 451 DO PASS AS AMENDED. Motion failed 14 to 4 with REPS. ELLIOTT, FUCHS, HANSON, and REHBEIN voting yes.

Motion/Vote: REP. SLITER MOVED THAT HB 451 BE TABLED. Motion carried unanimously.

EXECUTIVE ACTION ON 439

Motion: REP. RANEY MOVED TO RECONSIDER THE TABLED ACTION ON HB 439.

Discussion:

REP. RANEY distributed a copy of proposed amendments. He said the present language in the bill stated that the game warden may not enter private land for investigatory purposes without the written permission of the landowner or an agent of the landowner. The amendment would add the following language to that section, "This subsection may not be construed to impair or impede the ability of a game warden to enter private property during the course of a lawful pursuit or when the game warden has probable cause to believe that a fish and game violation has occurred or is about to occur." EXHIBIT 4

REP. REAM commented that the amendment was not different than the current law.

Vote: RECONSIDER ACTION. Motion carried 13 to 5 with REPS. ELLIOTT, HIBBARD, REAM, SWANSON, and WELLS voting no.

Motion: REP. RANEY MOVED HB 439 AND AMENDMENTS DO PASS.

Discussion:

REP. REAM said that he was unsure what the bill accomplished with the proposed amendments. Currently, FWP had the ability to enter land under the aforementioned conditions. The current practice was to get permission before entering private property. He asked if the bill, with the added amendments, accomplished anything. Bob Lane, Attorney, FWP, said it would require probable cause for a game warden to enter property. Currently, it is not required for game wardens to enter onto open fields to conduct patrols or investigate. HB 439 removed the "open field doctrine" that FWP used. Oregon requires probable cause before entering onto property which has caused considerable difficulties.

REP. REAM said the amendment did not really accomplish anything; the game warden would still need to obtain written permission. Mr. Lane said they would not need written permission under the circumstances set forth in the new language. However, currently

the open field doctrine allowed game wardens to go into open fields to investigate. Under the bill, to even enter open fields, game wardens would need written permission or have probable cause. The issue was whether game wardens could continue under the open field doctrine or could only search with probable cause.

REP. TASH spoke in favor of the amendments. He felt that HB 439 would help wardens properly carry out their duties, especially in eastern Montana.

REP. ELLIOTT asked **Mr. Graham** how undercover operations would be affected. **Mr. Graham** said probable cause would be required to enter onto property. He referred the question to **Mr. Lane**. **Mr. Lane** said undercover operations could not be completed under the provisions of the bill.

REP. HIBBARD said currently Montana does not have this proposed law and game wardens are not restricted in entering onto private land. He asked **REP. TASH** to clarify his earlier comments in regards to eastern Montana. **REP. TASH** explained that there needed to be cooperation between landowners and game wardens. Some game wardens have been in eastern Montana a long time. They felt this was necessary legislation to mandate them to contact landowners. In the eastern part of the state when new game wardens arrive, they have not established rapport with the landowners. Some people felt it was necessary to mandate the requirement for investigative purposes.

REP. HIBBARD said perhaps for those reasons, the legislation may be helpful. However, there may be an unscrupulous landowner that would not give permission to enforcement personnel to enter his land. This could affect surrounding landowners if this person was conducting illegal activities. He expressed opposition to the bill.

REP. TASH said he understood that FWP currently had the authority to investigate illegal activities especially in cases of "hot pursuit." He asked **Mr. Lane** for comments. **Mr. Lane** said the bill did not deal with all different aspects of investigative activities, undercover investigations, or hot pursuit. There would have to be enough evidence for probable cause before game wardens could enter onto the property.

REP. TASH asked if this legislation would gain more enforcement procedures based on probable cause. **Mr. Lane** said that under current law, wardens could investigate matters on private property. They cannot go into buildings, but just around on the property. If the bill passed, game wardens would not be able to do this. They would have to know the crime was committed and have evidence before entering the property or the warden would need to obtain landowner's permission. **REP. TASH** said if the bill was passed it would limit the ability of game wardens to enforce game laws. **Mr. Lane** agreed.

REP. ELLIOTT gave the scenario of a rogue outfitter pursuing a bear. The bear goes down the mountain entering private property. While pursuing the bear, several peoples' property were entered. The undercover agent in that circumstance would have to obtain written permission from each property owner to investigate. There were thousands of parcels of land where he lived. HB 439 would make enforcement impossible. REP. ELLIOTT welcomed game wardens' protection and felt that they were not abusing his property rights or their privileges.

REP. REHBEIN said he had received a call from a lady who wanted game wardens off her property. There may be a problem with game wardens. They could make the effort to contact landowners and get a blanket permission slip.

REP. WELLS said HB 439 "tied the hands of game wardens." He did not believe that the committee would like to limit other law enforcement officer's abilities. The lady that REP. REHBEIN referred to should contact the game warden's supervisor and take care of it on a department level.

CHAIRMAN WAGNER said Mr. Lane felt there would be problems with undercover work. He wondered why an investigation would be started if there was not already suspicion of illegal activity. He stated that the amendment was broad. He asked Mr. Lane for comments. Mr. Lane said the language clearly did not allow undercover operations. The game wardens do not always have probable cause prior to entering into undercover operations. Undercover operations provide probable cause. CHAIRMAN WAGNER thought the amendment dealt with different land ownerships.

REP. REAM said probable cause had a legal definition, but suspicion did not necessarily mean the same thing. He said HB 439 was a bad bill. If it passed, the committee would be severely limiting law enforcement agents. Some of the most serious crimes were discovered through undercover operations. HB 439 would also not allow unannounced inspections of game farms.

Vote: DO PASS AMENDMENTS. Motion carried 13 to 4 with REPS. ELLIOTT, MOLNAR, SWANSON, and WELLS voting no. REP. PAVLOVICH was absent for the vote.

Motion/Vote: REP. REAM MOVED THAT HB 439 BE TABLED AS AMENDED. Motion failed 10 to 7 on a roll call vote with REPS. SWANSON, ELLIOTT, HARPER, HIBBARD, MOLNAR, REAM, and WELLS voting yes. REP. PAVLOVICH was absent for the vote.

Motion/Vote: REP. SLITER MOVED HB 439 DO PASS AS AMENDED. Motion carried 10 to 7 with REPS. SWANSON, ELLIOTT, HARPER, HIBBARD, MOLNAR, REAM, and WELLS voting no. REP. PAVLOVICH was absent for the vote.

{Tape: 4; Side: B; Approx. Counter: 000; Comments: Lost 10 seconds.}

EXECUTIVE ACTION ON 339

Motion/Vote: REP. MOLNAR MOVED TO RECONSIDER THE TABLED ACTION ON HB 339. Motion carried 9 to 7 with REPS. REHBEIN, SWANSON, ELLIOTT, HARPER, HIBBARD, RANEY, and REAM voting no. REPS. KNOX and PAVLOVICH were absent for the vote.

Motion: REP. MOLNAR MOVED HB 339 DO PASS AS AMENDED. .

Discussion:

Mr. Sternberg said his notes did not reflect whether the bill had been amended. He asked if amendments were adopted. REP. MOLNAR replied yes. Language was stricken and all that remained was on page 2. Sections 1 and 3 were removed.

Vote: DO PASS AS AMENDED. Motion carried 9 to 7 with REPS. REHBEIN, SWANSON, ELLIOTT, HARPER, HIBBARD, RANEY, and REAM voting no. REPS. KNOX and PAVLOVICH were absent for the vote.

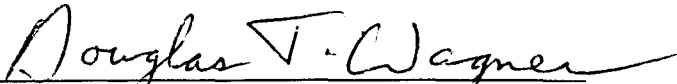
HOUSE FISH & GAME COMMITTEE

February 16, 1995

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ADJOURNMENT

Adjournment: 7:10 p.m.



REP. DOUG WAGNER, Chairman



MARY RIITANO, Secretary

DW/mr

HOUSE OF REPRESENTATIVES

Fish and Game

ROLL CALL

DATE February 16, 1995

NAME	PRESENT	ABSENT	EXCUSED
Rep. Doug Wagner, Chairman	✓		
Rep. Bill Rehbein, Vice Chairman, Majority	✓		
Rep. Emily Swanson, Vice Chairman, Minority	✓		
Rep. Charles Devaney	✓		
Rep. Jim Elliott	✓		
Rep. Daniel Fuchs	✓		
Rep. Marian Hanson	✓		
Rep. Hal Harper	✓		
Rep. Chase Hibbard	✓		
Rep. Dick Knox	✓		
Rep. Rod Marshall	✓		
Rep. Brad Molnar	✓		
Rep. Bob Pavlovich	✓		
Rep. Bob Raney	✓		
Rep. Bob Ream	✓		
Rep. Paul Sliter	✓		
Rep. Bill Tash	✓		
Rep. Jack Wells	✓		



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 348 (first reading copy -- white) do pass as amended.

Signed: Douglas T. Wagner
Doug Wagner, Chair

And, that such amendments read:

1. Title, line 7.

Strike: "PROTECT AND PRESERVE NATURAL RESOURCES"

Insert: "ADDRESS IMPACTS CAUSED BY RECREATIONAL USERS"

2. Page 1, line 18.

Strike: "protect the resource"

Insert: "address impacts caused by recreational users"

3. Page 1, line 28.

Strike: "protect the resource"

Insert: "address impacts caused by recreational users"

4. Page 2, line 21.

Strike: "protect and preserve natural resources"

Insert: "address impacts caused by recreational users"

5. Page 2, line 27.

Insert: "(3) Nothing in this section may be construed to restrict or interfere with existing water rights or private property rights."

6. Page 3, line 21.

Following: "(i)"

Strike: "protect and preserve natural resources"

Insert: "address impacts caused by recreational users"

-END-

mm
2/17

Committee Vote:

Yes 10, No 8.

411334SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that House Bill 339 (first reading copy -- white) do pass as amended.

Signed: Douglas J. Wagner
Doug Wagner, Chair

And, that such amendments read:

1. Title, line 5.
Following: "ISSUED"
Strike: "BY DRAWING"
2. Title, lines 6 and 7.
Strike: "NONRESIDENTS" on line 6 through "THAT" on line 7
3. Title, lines 8 through 10.
Following: "BASIS;" on line 8
Strike: remainder on line 8 through "YEARS;" on line 10
4. Title, line 10.
Following: "AMENDING"
Strike: "SECTIONS 87-2-506,"
Insert: "SECTION"
Following: "87-2-702"
Strike: ", AND 87-2-704"
5. Page 1, lines 14 through 26.
Strike: section 1 in its entirety
Renumber: subsequent section
6. Page 2, line 12 through page 3, line 2.
Strike: section 3 in its entirety

-END-

mm
2/17

Committee Vote:
Yes 9, No 7.
(2 Absent)

411337SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Fish and Game report that **House Bill 439** (first reading copy -- white) **do pass as amended.**

Signed: Douglas T. Wagner
Doug Wagner, Chair

And, that such amendments read:

1. Page 2, line 1.

Following: second "landowner"

Strike: "; and"

Insert: ". This subsection may not be construed to impair or impede the ability of a game warden to enter private property during the course of a lawful pursuit or when the game warden has probable cause to believe that a fish and game violation has occurred or is about to occur."

-END-

mm
2/17
Committee Vote:
Yes 10, No 7.
(1 Absent)

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HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 262 NUMBER 1

MOTION: TABLE HB262

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney	✓	
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson		✓
Rep. Hal Harper		✓
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar		✓
Rep. Bob Pavlovich		✓
Rep. Bob Raney		✓
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash		✓
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 262 NUMBER 2

MOTION: POSTPONE ACTION INDEFINITELY

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney	✓	
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson	✓	
Rep. Hal Harper	MR ✓	✓
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar		✓
Rep. Bob Pavlovich		✓
Rep. Bob Raney		✓
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 262 NUMBER 3

MOTION: RANEY amendments, excluding the date

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney		✓
Rep. Jim Elliott		✓
Rep. Daniel Fuchs		✓
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard		✓
Rep. Dick Knox		✓
Rep. Rod Marshall		✓
Rep. Brad Molnar		✓
Rep. Bob Pavlovich	✓	
Rep. Bob Raney	✓	
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash		✓
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 262 NUMBER 4

MOTION: AMENDMENT, OCTOBER 1, 1997 EFFECTIVE DATE

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney	✓	
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson	✓	
Rep. Hal Harper		✓
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar		✓
Rep. Bob Pavlovich		✓
Rep. Bob Raney		✓
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 262 NUMBER 5

MOTION: TABLE 1B262

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority	✓	
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney	✓	
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson	✓	
Rep. Hal Harper	✓	
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar		✓
Rep. Bob Pavlovich		✓
Rep. Bob Raney		✓
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 486 NUMBER 6

MOTION: DONOT PASS

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney		✓
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall		✓
Rep. Brad Molnar	✓	
Rep. Bob Pavlovich	ABSENT	
Rep. Bob Raney	✓	
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash	✓	
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 348 NUMBER 7

MOTION: DO PASS AS AMENDED

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney		✓
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard	✓	
Rep. Dick Knox	✓	
Rep. Rod Marshall	✓	
Rep. Brad Molnar		✓
Rep. Bob Pavlovich	✓	
Rep. Bob Raney	✓	
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash		✓
Rep. Jack Wells		✓

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 439 NUMBER 8

MOTION: TABLE AS AMENDED

NAME	AYE	NO
Rep. Doug Wagner, Chairman		✓
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority	✓	
Rep. Charles Devaney		✓
Rep. Jim Elliott	✓	
Rep. Daniel Fuchs		✓
Rep. Marian Hanson		✓
Rep. Hal Harper	✓	
Rep. Chase Hibbard	✓	
Rep. Dick Knox		✓
Rep. Rod Marshall		✓
Rep. Brad Molnar	✓	✓ <i>mc</i>
Rep. Bob Pavlovich	GONE	
Rep. Bob Raney		✓
Rep. Bob Ream	✓	
Rep. Paul Sliter		✓
Rep. Bill Tash		✓
Rep. Jack Wells	✓	

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Fish and Game Committee

DATE FEB 16, 1995 BILL NO. 339 NUMBER 9

MOTION: RECONSIDER ACTION

NAME	AYE	NO
Rep. Doug Wagner, Chairman	✓	
Rep. Bill Rehbein, Vice Chairman, Majority		✓
Rep. Emily Swanson, Vice Chairman, Minority		✓
Rep. Charles Devaney	✓	
Rep. Jim Elliott		✓
Rep. Daniel Fuchs	✓	
Rep. Marian Hanson	✓	
Rep. Hal Harper		✓
Rep. Chase Hibbard		✓
Rep. Dick Knox		GONE
Rep. Rod Marshall	✓	
Rep. Brad Molnar	✓	
Rep. Bob Pavlovich		GONE
Rep. Bob Raney		✓
Rep. Bob Ream		✓
Rep. Paul Sliter	✓	
Rep. Bill Tash	✓	
Rep. Jack Wells	✓	

Amendments to House Bill No. 262
Introduced Reading Copy

Requested by Rep. Wagner
For the Committee on Fish & Game

Prepared by Doug Sternberg
February 16, 1995

1. Title, line 4.

Strike: "DISEASE CONTROL"

2. Title, line 5.

Strike: "AND FOR REGULATION OF THOSE LICENSES"

Insert: "; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS
TO DEVELOP MANAGEMENT PLANS FOR ESTABLISHMENT OF PUBLIC WILD
BUFFALO OR BISON HERDS, COMPOSED OF DISEASE-FREE WILD
BUFFALO OR BISON, AND TO PROVIDE FOR PUBLIC HUNTING OF WILD
BUFFALO OR BISON DURING SEASONS APPROVED BY THE FISH,
WILDLIFE, AND PARKS COMMISSION; REQUIRING A REPORT TO THE
55TH LEGISLATURE"

3. Title, line 5.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS 87-1-215 AND"

4. Title, line 6.

Strike: "REPEALING SECTION 87-1-215, MCA;"

5. Page 1, lines 10 through 28.

Strike: section 1 in its entirety

Insert: "Section 1. Section 87-1-215, MCA, is amended to read:

"87-1-215. Wild buffalo as species in need of management --
policy -- department duties. (1) The legislature finds that the
management through hunting of wild buffalo or bison is not
appropriate but that significant potential exists for the spread
of contagious disease to persons or livestock in Montana and
damage to persons and property by wild buffalo or bison.
Therefore, it is the purpose of this section to designate wild
buffalo or bison, which have not been reduced to captivity, as a
species in need of management and to set out specific
departmental duties for management of the species.

(2) The department:

(a) is responsible for and shall develop rules to implement
the management of wild buffalo or bison in this state that
threaten persons or property other than through the transmission
of contagious disease;

(b) shall:

(i) evaluate and identify potential locations for public
wild buffalo or bison herds in Montana, to be composed of wild
buffalo or bison that originated in Yellowstone national park and
that have been certified as disease-free by the state
veterinarian;

(ii) develop management plans for initiating and

maintaining public wild buffalo or bison herds;

(iii) obtain local government and landowner concurrence in the management plans; and

(iv) provide for public hunting of wild buffalo or bison through seasons approved by the commission;

(c) shall develop rules to manage and reduce the number of wild buffalo or bison that leave Yellowstone national park.

(3) The department of livestock shall, within its statutory authority, regulate wild buffalo or bison in this state that pose a threat to persons or livestock in Montana through the transmission of contagious disease.

(4) The department of fish, wildlife, and parks and the department of livestock are strongly urged to enter into an agreement with the national park service for the long-term management of the Yellowstone national park herd. If the national park service does not proceed in good faith in a timely manner to enter a long-term management agreement that in the determination of the department of fish, wildlife, and parks and the department of livestock responds adequately to the needs of Montana, the departments are strongly urged to take appropriate court action. The department of fish, wildlife, and parks and the department of livestock shall prepare a joint report to the ~~53rd~~ 55th legislature regarding the present state of bison management in Montana and any progress on an agreement for the long-term management of the Yellowstone national park herd."

{Internal References to 87-1-215: None.}

6. Page 2, line 15.

Strike: "disease control"

7. Page 3, line 2.

Strike: "disease control"

8. Page 3, lines 8 through 12.

Strike: sections 3 and 4 in their entirety

Renumber: subsequent section

Amendments to House Bill No. 348
Introduced Reading Copy

Requested by Rep. Harper
For the Committee on Fish & Game

Prepared by Doug Sternberg
February 13, 1995

1. Title, line 7.

Strike: "PROTECT AND PRESERVE NATURAL RESOURCES"

Insert: "ADDRESS IMPACTS CAUSED BY RECREATIONAL USERS"

2. Page 1, line 18.

Strike: "protect the resource"

Insert: "address impacts caused by recreational users"

3. Page 1, line 28.

Strike: "protect the resource"

Insert: "address impacts caused by recreational users"

4. Page 2, line 21.

Strike: "protect and preserve natural resources"

Insert: "address impacts caused by recreational users"

5. Page 2, line 27.

Insert: "(3) Nothing in this section may be construed to restrict
or interfere with existing water rights or private property
rights."

6. Page 3, line 21.

Following: "(i)"

Strike: "protect and preserve natural resources"

Insert: "address impacts caused by recreational users"

7. Page 3, line 22.

Strike: subsection (ii) in its entirety

Renumber: subsequent subsections

Present Fish, Wildlife and Parks Commission
Authority and Proposed Authority Under HB 348

Prepared by FWP (February 14, 1995)

The existing law authorizes the commission to adopt and enforce rules governing recreational uses of "public waters".....
The rules must be adopted in the interest of public health, public safety, and protection of property..... The law does provide for public protection when there is a threat that clearly relates to one of these categories. Improper use of a motorized craft that threatens safety of other users, or the damage of a wake from motorized craft to docks or to shoreline property are examples where the commission is authorized to develop and enforce rules.

Clearly there are important public issues that are not addressed by health, safety and protection of property. Excessive numbers of user groups may result in sufficient conflict that none of the user groups finds satisfaction in their activity. Although health, safety, and property may not be threatened, the recreational experience can be destroyed for a large segment of user groups.

For example excessive numbers of float boats, canoes, tubes, etc. on a stream may virtually eliminate the opportunity for anglers to use the stream for fishing. At the same time large numbers of wading anglers may seriously limit the opportunity for some boating experiences. Some minimal regulation on numbers, time of use, or location of use may preserve the quality and opportunity of the experience for both groups.

Recreational activities have different needs. Some areas are particularly suited for an activity while others are less suited. An example might be a moderate sized stream that is especially productive for fishing. Anglers appreciate the area for its solitude as well as the fish populations. Some jet ski operators may consider this stream a challenge but their presence could virtually destroy the fishing experience. Some regulation may be necessary to preserve the fishing experience on this particular water. Opportunity for challenging jet ski operation may be preserved in another location.

The new authority granted by this bill is necessary to allow the commission to act on these issues. The jet ski - fishing conflict does not threaten health, safety or property, it simply affects the quality of a recreational experience.

Also, the proposed amendment clarifies the commission's authority to adopt and enforce rules which consider the impact of recreation uses on the lake, river and stream resources. Under present law the commission may adopt rules to protect property, but it is not as clear as it could be that this includes impacts to the public property of the resource itself. This bill will clarify the authority to control recreational use that affects various natural resources - for example heavy boat use in an area may threaten an important waterfowl nesting site during the spring months, or excessive number of wading anglers in a location may be destructive to spawning grounds for a fish. These are examples where regulations may be necessary to protect resource values.

Amendments to House Bill No. 439
Introduced Reading Copy

Requested by Rep. Grinde
For the Committee on Fish & Game

Prepared by Doug Sternberg
February 16, 1995

1. Page 2, line 1.

Following: second "landowner"

Strike: "; and"

Insert: ". This subsection may not be construed to impair or
impede the ability of a game warden to enter private
property during the course of a lawful pursuit or when the
game warden has probable cause to believe that a fish and
game violation has occurred or is about to occur."