Oppose

EXHIBIT 27
DATE 2.17.05
HB 603

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TOTAL NUMBER OF PAGES INCLUDING THIS COVER 10

To ~~Desk~~ 76

TO	ORGANIZATION	FAX NUMBER
Tom Facey &	House of Representatives-Fish, Wildlife and Parks – Standing Committee	406 444-4825

~~George~~ Golie – Chairman FWP
(Please give a copy to each person on the Committee.)

FROM: Katie Boyce **DATE:** February 17, 2005

RE: House Bill 603

MESSAGE:

Please find attached Mr. Lovell's letter dated February 17, 2005 with regard to the above-referenced matter.

If you have any questions, please contact our office.

If you do not receive all of the pages, please call 406-256-9300 as soon as possible.

Client/Matter Reference:

Verbal Confirmation Required? Yes: [ ] No: [X]

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February 17, 2005

Rep. Tom Facey
Montana House of Representatives
(H) Fish, Wildlife and Parks--Standing Committee
P.O. Box 200400
Helena, MT 59620-0400

Sent Via Facsimile Only @ (406) 444-4825

Re: H.B. 603 "require trapping education"

Dear Tom:

I'm writing to oppose H.B. 603, which comes on for hearing before the Fish & Game Committee at 3 p.m. today. A trapper and former municipal animal damage control officer, I am also a private attorney who voluntarily provided assistance to the Montana Trapping Advisory Committee commissioned by Governor Marc Racicot. The committee's recommendations led to the Fish, Wildlife & Parks Commission's adoption of vastly modified regulations in the 1999-2000 season. Annexed is a *Montana Outdoors* article titled, "Moving Forward," which describes the committee's consensus-based process.

The committee's primary job was to find ways to reduce conflicts between trapping and other recreational activities as well as to find ways to reduce the number of incidental or nontarget catches of pets and wildlife. As the article states:

> Perhaps the most impressive steps were suggestions for reducing capture of pets and nontarget wildlife. These included setbacks and trap set restrictions, landowner notification, as well as seven separate provisions for increasing educational efforts on trapping. Taken together, the committee's plan *probably represents the most comprehensive set of rules in the nation directed at reducing incidental capture of pets and wildlife. (emphasis supplied).*

Please make no mistake: trapping is now and always has been highly regulated in Montana. Montana trappers have been leaders in helping frame the current regulations and policies. I oppose H.B. 603 because it is special interest legislation whose genesis excluded rather than included collaboration and consensus from the FWP and the trapping community.

The Montana Trappers Association is part of a network of state and national trappers' associations that work very closely with the International Association of Fish and Wildlife

Agencies in on-going research regarding modern trapping technology and methods. A substantial wealth of data derived from objective, scientific research demonstrates that the trapping equipment and methods widely used in Montana are both safe and humane. It is precisely because Montana trappers care deeply about public safety and the welfare of our renewable natural wildlife resources that we assist and promote this type of scientific research.

The MTA is also a leader in voluntary trapper education. Its youth trapper camp is a national role model. The people of Montana have many reasons to be proud of the trapping community, which plays a vital role in maintaining healthy wildlife populations within our diverse and delicate ecosystems.

FWP Commission already has authority to regulate trapping.

The FWP Commission already has legislative authority to regulate trapping. *See* § 87-1-301 (1)(a). MCA, providing that the commission "shall set the policies for the protection, preservation, management and propagation of ... furbearers ...[and] nongame species ... and for the fulfillment of all other responsibilities of the department as provided by law. *Also see* § 87-1-301 (1)(b), providing that the commission "shall establish the ... trapping rules of the department." Indeed, pursuant to such authority, the commission has adopted significant and at times complex trapping regulations that are presently based on sound biology and sound public safety considerations.

H.B. 603 proposes a new subsection (7) to § 87-1-301, MCA, which is both unnecessary and potentially subject to future judicial and administrative misinterpretation and mischief. The bill must be tabled or this specific language deleted to protect the Commission's present jurisdiction.

Mandatory trapper education

H.B. 603 has placed me, the FWP and the trapping community in a difficult political situation. But for the use of special interest legislation, I likely would support mandatory trapper education on certain terms. I anticipate that the department will support the notion of trapper education to avoid the false impression that it is opposed to such education. I do not cotton to special interest legislation and I think that this aspect of H.B. 603 overshadows its merit. Passage of H.B. 603 in its present form and without substantial modification would send the wrong message to the wrong people. I believe the better course is to table this bill and to admonish its proponents to work with the department and the trapping community for consensus-based legislation in 2007.

The specific language of the bill is problematic.

The bill imposes a radical impediment upon *all* licensed furbearer trappers prior to commencement of the next furbearer season, which commences about eight months from now on November 1, 2005. You will note that the bill fails to "grandfather" existing licensed adult trappers. The net result is that if H.B. 603 is adopted as written, none of the current holders of the 3,600 or so class c trapping licenses would be able to obtain licenses for the 2005-2006 season without first completing a now non-existent course.

I question the rational for this radical approach. It appears punitive in nature and designed simply to be an impediment to prevent current licensees from getting new licenses. I cannot recall any other time in Montana history where such an education requirement was imposed upon current holders of other FWP licenses or permits.

I am also troubled by the apparent lack of consideration given to the FWP budget and the budgeting process. In the same vein, I question whether sufficient time exists for the department to adopt a course of instruction, to train instructors and to offer appropriately priced courses statewide to the public before November 1, 2005. Shouldn't the department be given a year or two to ramp up?

Other provisions of H.B. 603 work a disservice to Montanans. Why limit trapper education to mere adoption of "national models?" Montana is a national leader in safe, effective trapping methods. Trapping is in our blood, a tradition and heritage that predates statehood. Why should Montanans be forced to follow a course of instruction adopted by largely eastern urban interests? The Commission must have the freedom to establish a course of instruction that is based upon sound biology, sound public policy and what is best for Montana. Any such legislation should also assure that MTA has a place with the department at the decision-making table.

A possible alternative to the language set forth in H.B. 603 follows:

§ 87 –2-105, MCA

(4)(a) Commencing January 1, 2007, a trapping license may not be issued to a person who is born after January 1, 1995, unless the person authorized to issue the license determines proof of completion of:

(i) a Montana trapper safety and education course established in subsection (8);
(ii) a trapper safety and education course in any other state or province.

(b) The provisions of subsection 4(a) shall not apply to persons born before January 1, 1995, who possessed a valid class c trapper's license prior to January 1, 2007.

(8) The department shall provide for a course of instruction including the safe handling of traps and trapping equipment and for that purpose shall cooperate with the Montana Trappers Association and any other reputable organization having as one its objectives the promotion of trapper safety and education. The department may designate as an instructor any person it finds to be competent to give instructions in trapper safety and education, including the handling of traps. A person appointed shall give the course of instruction and shall issue a certificate of completion from Montana's trapper safety and education course to a person successfully completing the course.

H.B. 603 appears aimed at modifying stockmen's rights

The irony of H.B. 603 is that for all of the emotional hype surrounding the bill none of its provisions would have prevented the death of the dog near Victor, Montana, which is the incident that helped spawn the bill. The dog was running at large and trespassing on private land. It was dispatched by a person who claimed a right to do so under § 87-1-401, MCA. This statute authorizes a livestock owner or his agent to kill a trespassing dog seen harassing livestock.

The Victor case presents a legal controversy over whether the dog was justifiably dispatched for harassing livestock. The dog was shot in the head. It did not die as a result of a "trapping incident" or a conflict between trappers and other lawful recreationists. It was dispatched for a specific reason under a specific law. As such, this incident no more necessitates modification of trapping regulations than it necessitates modification of gun ownership or gun use laws. The proponents of H.B. 603 evidently want new regulations to diminish a stockman's right to dispatch trespassing dogs that harass livestock.

I urge you to exercise great care in assuring that no legislation or FWP regulation interferes with Montana's strong public policies forbidding stray dogs and authorizing livestock owners to kill trespassing dogs harassing livestock. These have been fundamental aspects of Montana stock law since statehood. *See e.g., Granier v. Chagnon, (1949) 122Mont. 327, 203 P.2d 982.* ("It matters not whether the sheep-stealing dog be a patrician or a plebian dog. Each suffers the same fate.") The fact that such a dog is captured in a predator trap should have no effect on the livestock owner's right to dispatch the dog. A dog trespassing at night in the vicinity of livestock is no different from its wild canine relatives. Such a dog is as much a predator as its feral cousins and each should be treated accordingly for the sake of livestock and the economic well being of the livestock owner.

Laws already exist to assure that justice is served.

Contrary to the dog owners' public claims and certain media statements, the legal framework already exists to see that justice is served in that case. Law enforcement reportedly submitted a 20-page incident report to the county attorney. (Think of the countless crimes of assault or injury to humans that result in police reports consisting of a page or two.) The county attorney is clearly within his rights to charge the person who dispatched the dog with misdemeanor animal cruelty in violation of § 45-8-211, MCA. The person so charged obviously would have the right to defend such a charge by claiming that the shooting was justified under § 87-1-401. Absent justification for the killing of the dog, conviction will surely occur. *See State v. Walter, (1994) 266 Mont. 429, 880 P.2d 1346.* The prosecutor is also within his discretionary rights not to prosecute the person who dispatched the dog if the evidence suggests that a conviction is not likely.

At the same time, the county attorney is clearly within his rights to charge the dog owners with a misdemeanor for allowing the dog to run at large and a second misdemeanor under § 45-8-211 for neglect contributing to the dog's death. The public policies and laws of this state recognize that pet owners are the primary custodians of their pets. Pet owners must be held accountable for their own abuse and neglect in causing or permitting their pets to run at large. As a simple

economic policy, the damages caused by such incidents must be borne by the pet owners, who are in the best position to prevent such damages from occurring in the first place. Shifting the blame to others allows pet owners to escape accountability.

Conclusion

I urge you to vote against H.B. 603 for the foregoing reasons. Please do not hesitate to contact me if you have any questions or if I can be of any assistance.

Yours truly,

Lance Lovell
Lovell Law Firm, P.C.

enc. As stated

G FORWARD

by JOHN FRALEY

DONALD M. JONES

DONALD M. JONES

New regulations proposed by a citizen-based Trapping Advisory Committee promise to make trapping more compatible with other outdoor activities.

ways to eliminate or reduce these conflicts. The committee could suggest increased education or regulation changes to meet these goals.

The committee included 10 citizen members and four agency staff, assisted by a neutral facilitator (see sidebar). Members were chosen based on their ability to represent interests specific to the issue and their commitment to working with others in a problem-solving effort. They hailed from across the state and included trappers, nontrappers, and those with concerns about trapping.

One of the committee members, Peggy Shunick, got involved because she wanted to learn more about trapping issues. Shunick has never trapped furbearers but she has maintained an open mind about it. As a dog trainer and sheep rancher, Shunick had a couple of concerns. First, she wanted assurance that her dogs would not be harmed by traps when out in the field. And as a sheep rancher, she acknowledged that predator trapping or removal of problem animals is necessary to protect livestock. Once, a

black bear killed eight sheep at her place near Evaro.

"The biggest thing I trapped in the past was a packrat," says Shunick. "I never really opposed trapping, especially of nuisance animals. I grew up in Illinois; you can't have the racoons eating all the corn. It's a difficult issue, but we have to be practical." When the committee meetings began, Shunick expected a lot of conflicts because of the broad interests represented. But she was pleasantly surprised.

"We really came together well," she said. "Some of the members represented groups and had to follow the policy of their particular organization. Others, like me, had more of a personal interest."

Shunick says that at first committee members began suggesting solutions. Things quickly got better when they started defining problems, drafting statements of agreement, and developing themes. After that, solutions could be formulated to address the specific issue. Shunick is an expert in wildlife/human issues. She holds a Master's Degree in Animals and Public Policy, and is in the doctoral program at the University of Montana. She says this path is typical when committees address conflicts about natural resources.

"We determined that most conflict between trapping and other uses occurs where people spend a lot of time," she says. "So we focused on roads, campgrounds, and residential areas. We looked at simple ways to remove the potential for conflict."

Shunick says that the best solutions included "setbacks"—areas where no traps could be placed—and trap equipment changes that would reduce incidental take of nontarget wildlife and domestic pets. These recommendations included a 30-foot setback from roads, and a restricted entry on sets using body-gripping traps, known as conibears. Restricted entry sets allow target animals access while keeping larger animals, such as dogs, from reaching the bait.

In preparing for her work on the committee, Shunick attended a Trapper Education Course sponsored by the Montana Trapper's Association and FWP. She believes the course should be mandatory for all first-time trappers. This recommendation received unanimous support by the committee, but legislation will be required to make it a reality.

JUDITH E. STROM

A dog trainer and sheep rancher, Peggy Shunick wanted to be sure her dogs wouldn't be harmed by traps when out in the field.

The committee held public meetings across the state to discuss the recommendations. Shunick attended the meeting in Kalispell and helped facilitate the meeting in Missoula. The committee also received written messages from a wide range of people. The comments surprised Shunick.

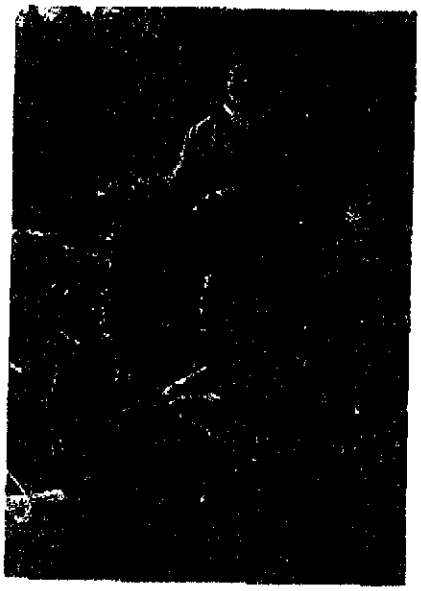
"The trappers, especially, surprised me," she says. "They are compassionate and articulate, and they submitted hand-written letters with good logic. I didn't see the same kind of effort from the people opposed to trapping. Their arguments were based more on emotion, and just didn't fit together. The trappers seemed more mature and well-grounded."

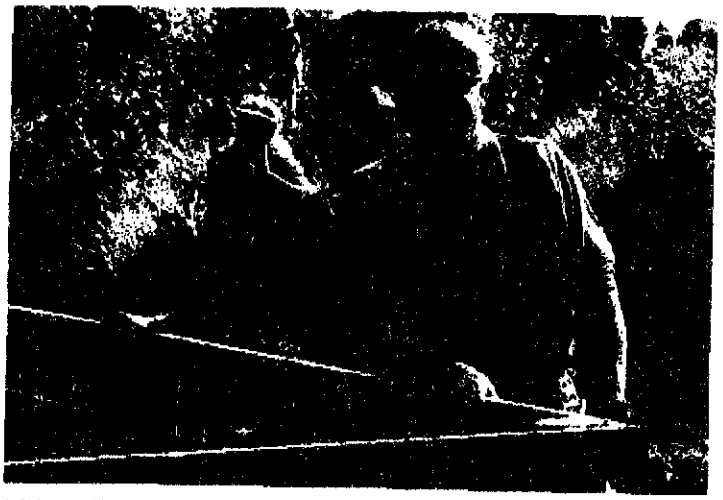
Another committee member, Melissa Tuemmler of Ulm, has been a trapper for decades. She is an officer of the Montana Trapper's Association and has been a volunteer trapper education instructor. As an avid cat owner, she shares the concern of pet owners. The committee looked to her for the wording used in many of its recommendations. "At about the mid-point in the process," she says, "I sat down with my husband, who is also a trapper, and we worked out specific language for many of the issues."

In a crucial step, Tuemmler worked with a lawyer who is a Montana Trapper's Association member to craft definitions of water set, ground set, and other sets. These careful definitions set the stage for interpreting the rest of the proposed rules.

The committee took Tuemmler's suggestions along with others and put together a comprehensive set of draft regulations. Like Shunick, Tuemmler felt the committee functioned well. "I believe everyone came in with an open mind with a willingness to listen and to work out compromises," she says. "I think that's why we were able to come up with commonsense ways to address each issue."

After the public input process, the regulations were refined once again. The committee's final recommendations provided the Montana Fish, Wildlife & Parks Commission with a blueprint for reducing conflicts between trapping and other recreational uses that could serve as a model for other western states. Showing confi-





Melissa Tuemmler (left) is a long-time trapper and an officer in the Montana Trapper's Association, while Dave Pauli (above) is the Northern Rockies Regional Director for the Humane Society of the United States. Both Tuemmler and Pauli felt the advisory committee process was good for all parties with a stake in the trapping issue.

dence in the committee's work, the FWP Commission adopted many of the provisions (see sidebar).

Perhaps the most impressive steps were suggestions for reducing capture of pets and nontarget wildlife. These included setbacks and trap set restrictions, landowner notification, as well as seven separate provisions for increasing educational efforts on trapping. Taken together, the committee's plan probably represents the most comprehensive set of rules in the nation directed at reducing incidental capture of pets and wildlife

Tuemmler believes that all groups benefited from the process. "People could see that we worked hard to make sure nontarget animals were protected," she says. "People I've talked to feel good about the additional protection for their pets. I believe we've given sound assurance to the public that trappers were willing to make reasonable changes."

Although the FWP Commission didn't adopt the committee's recommendations for offset jaws on foothold traps and breakaway devices on snares, Tuemmler feels these too would help reduce the problem with nontarget wildlife.

Tuemmler says her only disappointment was the campaign some people conducted to bring out-of-state comments into the FWP Commission process. In fact, the majority of people commenting negatively about trapping were from other states. Comments came from at least two dozen states, ranging from California to New York to Hawaii to Florida. Most were "cookie cutter," reflecting a national Internet campaign orchestrated by animal rights groups. Four major animal rights groups also sent detailed comments. In an unprecedented move, an official of a California-based group traveled to Montana to testify in person to the FWP Commission.

Going into the process, Tuemmler believed that one committee member, Dave Pauli of Billings, would be difficult to work with because of his ties to a national animal rights group. Working with Pauli proved to be her biggest surprise in the process. "He should be highly commended," she says. "He brought a lot of knowledge to the proceedings and didn't seem to let his animal-rights ties cloud his objectivity."

Pauli brought a complex background to the committee. A past-president of the Wisconsin Trapper's Association, Pauli's career has gone from wildlife damage control to municipal animal control to his current position as the Northern Rockies Regional Director of the Humane Society of the United States (HSUS), which is the largest anti-trapping organization in the nation. HSUS has actively campaigned to stop fur trapping, and its published positions strongly oppose hunting. Yet even with this tie, Pauli maintains a program of humane trapping and translocation instruction in over a dozen states and countries.

When asked about his dual role, Pauli admits to having internal conflicts. But he explains that he can be a reality check both to animal rights advocates and to trappers. "I spend time with both sides," he says. "I think all activities can be pursued, but groups should self-regulate and anticipate problems." On the issue of trapping, Pauli says, "I'm not an abolitionist, I'm a reformist."

Pauli believes that the advisory committee process was good for trappers and for those with concerns about trapping because people heard both sides of the issue "up-front and personal." He says that trappers learned that a number of people have negative feelings about trapping, and on the other hand, nontrappers learned that trappers are just neighbors, not stereotypes.

"I thought we got through a lot of tough issues," Pauli says, "and we

New Regulations

GEORGE ROBERTS

- **Set Definitions:** Water set, ground set, and other sets (including elevated sets) are now clearly defined. These definitions provide the basis for interpreting and enforcing trapping regulations.
- **Body-Gripping Ground Sets:** Ground sets on public land must have a trigger recessed at least 7 inches within a secure enclosure with openings no greater than 52 square inches each.
- **Ground Sets Along Public Roads:** Ground sets using 7-inch by 7-inch or larger body-gripping traps are prohibited within the right-of-way or, if there is no right-of-way, within 30 feet of the centerline of any publicly owned and maintained road.
- **Cross-Country Ski Trails:** Body-gripping ground sets must be set back 30 feet along designated trails.
- **Hiking Trails:** Body-gripping ground sets must be set back 30 feet from active, designated hiking trails.
- **Public Campgrounds:** Ground sets, including snares, are prohibited on public land within 1,000 feet of a designated public campground or fishing access site accessible by highway vehicle.
- **Occupied Dwellings:** Ground set traps including snares are prohibited within 1,000 feet of an occupied dwelling without written notification of the occupant.

In addition, the FWP Commission refined regulations concerning mandatory harvest data reporting and turning in of marten and bobcat skulls, use of exposed bait, and trapping on FWP Wildlife Management Areas.
Be sure to check the 1999-2000 furbearer regulations for exact wording on these new regulations.

Trapping Advisory Committee

Joe Axtell, *Bozeman*
Sean Boushie, *Columbia Falls*
Marty Connell, D.V.M., *Billings*
Kevin Feist, *Kalispell*
John Hughes, *Roundup*
Dave Pauli, *Billings*
Peggy Shunick, *Arlee*
Melissa Tuemmler, *Ulm*
Jay Parrott, *Great Falls*
Craig O'Gorman, *Broadus*

generated a good set of recommendations." After that, he says, the process was less positive. "I was disappointed in the final decision. I was optimistic that the FWP Commission would adopt our proposed rules as a package. Ultimately, I felt that a lot of the committee's recommendations fell by the wayside."

Pauli was also disappointed that the Trapping Advisory Committee did not adopt a mandatory trap check recommendation, perhaps one of the most controversial issues considered. The majority of the committee felt a mandatory check would not be necessary with the new regulations on education, trap setbacks, and the existing state law prohibiting waste of fur. "I believe a mandatory check provides a good tool for wardens to use with people who are abusing the recommended check," says Pauli. "I see it as something that can be selectively enforced in problem situations. I agree with the 'should be checked every 48 hours'; let's just make it 'must be checked' and move on."

Is trapping better off after the Trapping Advisory Committee process? You be the judge. We have more progressive trapping regulations, which go farther in protecting nontarget animals. We have a greater public awareness of trapping and other recreation issues, and perhaps a better sense of responsibility on the part of trappers and other users of the woods and trails. We have more rules for a traditional practice, but trapping has been a highly regulated activity anyway. And we have the sense that increased education is needed for everyone involved

What does Melissa Tuemmler say to trappers who feel they were sold out in the process? "I think that, overall, we're ahead," she says. "No one wants to be overly regulated in what they do, including dog owners, skiers, hunters, or hikers. But the public needs to know that trappers are sincere and that we are concerned with ethics and responsibility. In the long run, I think everyone will feel good about what we've done." ■