EXHIBIT 8
DATE 2/4/2011
HB 369

Testimony HB 369

Introduction- Chair, committee members my name is Mike Mehn. I am a citizen here in Helena. I retired from FWP enforcement 1 month ago after a 27 year career as a game warden, criminal investigator and enforcement training officer.

I am here in strong opposition to HB 369. If passed this bill will hinder the enforcement of rules, statutes and regulations on matters related to hunting, fishing, trapping, commercial activities, water and land use. On the surface of reading this draft bill, it appears someone or somebody's have felt mistreated by a game warden or not happy with the court's ruling. I can assure you that FWP and the Peace Officers Standards and Training Council does investigate allegations of wrongdoing by its officers, though there is another side to each and every story. As far as prosecutions begun by game wardens, we have the prosecutors, judges, jurors and defense attorneys to ascertain guilt or innocence. I do not believe we need to change statutes because of a perception of unfairness or inferred misconduct.

Game wardens attend the Montana law enforcement academy the same as other law enforcement officers and they are the only officer within the state that are also required to have a minimum of a Bachelors degree in a related field. They also follow the same state and federal constitution as other officers. As you can see by the statute 87-1-506, they are not given any extra authority above and beyond other law enforcement officers. In fact all peace officers within MT are ex-officio game wardens, i.e. same authority.

It is the Judges or Jurors who decide if Justice was done properly when a violator is brought before the court. Of the approximate 3,600 citations issued by game wardens/yr, the average conviction rate the past 5 years has been 92%. The non-convictions would of course include plea agreements, persons who leave the state, or those found not guilty. I

would encourage you to research conviction rates for other law enforcement agencies and you would probably see this as above the average conviction rate.

More specifically in this bill, as for Section 1- Perhaps this section should be amended as it is unclear to me if this refers to leaving evidence of species or sex on a game animal in the field or being able to ascertain if a game animal is lawful to take.

Section 2- This appears to be an unfunded mandate for the counties to pay court costs when a person with a game or fish violation is found not guilty. The County Attorney prosecutes (or decides not to prosecute) most of these violations. A reminder here is that persons who cannot afford an attorney are provided one and 50% of game or fish violation fine moneys goes to the county with the rest going to the state general fund. An avenue for parties who feel they have had their rights violated would be to sue the state. I am fairly sure that a Montana game warden and their agency rarely come to the State of Montana Tort Claims bureau for assistance

Section 3 – To remove negligently from penalties would make it extremely difficult to prosecute anyone who violates fish or game statutes. A violator would merely have to say his or her unlawful take or method was an accident or mistake. Examples such as: can't discern between species, antler types, shooting long distances at game, shooting towards roads or houses, trespassing, etc. would be no problem if you use the excuse, you didn't mean to.

Section 5- Checking stations- Wardens follow policy in the officer Red manual which gives guidelines, statute and FWP policy. Nowhere in the Inspection at check station statute does it say the word roadblock and search and seizure guidelines apply at check stations (such as probable cause). As an aside a recent case tested this statute and the use of probable cause to stop a vehicle who avoided a check station. The case was upheld in the State Supreme Court.

Section 6- Enforcement powers of wardens- Are able to execute search warrants without being mandated to have deputies with them, but typically they do have other officers from other agencies if safety, area to be searched is large or numerous suspects will be on the premises.

To ask wardens to not seize suspected game, fish or other wildlife until a court determines it was unlawfully taken is to ask an officer to not take evidence, somehow win the case in court and then ask the person to bring it in when the case is done is absurd. Seized evidence is returned to a person if they are found not guilty. In the case of meat, it is donated to food banks.

Paragraph 3 begins with new language that says a warden may not... is probably is in regards to undercover or covert work. FWP has 3 covert and 6 overt investigators. The criminal investigation section has an extensive policy manual that covers: safety, ethics, violations, entrapment, taking a game animal, etc. I was a part of rewriting this manual in 2004. The final copy had FWP legal office and the Attorney General office blessing. I am sure the supervisor of the investigators would supply copies of this to the committee if requested. Undercover work is probably the most misunderstood and least used part of any law enforcement work. An officer working undercover does not tell suspects he is an officer and he or she may have to buy or sell drugs, solicit sex or take or attempt to take wildlife to successfully prosecute violators.

In summary, this bill would make it easier for violators or opportunists to take unlawful game, fish or furbearers and it would hinder the 70 + field game wardens from doing their job protecting our natural resources. I recommend a do not pass vote. Thank you

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