

Senate Bill 83  
February 21, 2011  
Presented By Joe Maurier  
Senate Fish and Game Committee

Mr. Chairman and committee members, I am Joe Maurier, Director of Montana Fish, Wildlife & Parks. I am here in opposition of Senate Bill 83.

SB83 establishes a requirement that FWP pay the Montana Department of Transportation (MDT) for expenses related to the removal and disposal of wildlife carcasses from roads and highways. In accordance with MCA 60-2-203, MDT is the state agency responsible for maintaining public roads and highways in Montana.

Montana funds fish and wildlife management activities exclusively with its hunting and fishing license revenues, combined with significant federal funding collected on behalf of the states through an excise tax imposed on the manufacture of hunting and fishing equipment. This unique "user pays/user benefits" system has been in place for over 70 years, since passage of the historic Pittman-Robertson Act in 1937, and was created in order to provide for sustained fish and wildlife management across the nation in perpetuity.

The federal funding (over \$23 million to FWP in 2010) is allocated to the states by the US Fish and Wildlife Service (USFWS); however, in order to receive these funds, state game and fish agencies must remain in control of both funding sources at all times, and only use these funds for functions required to manage fish and wildlife resources. Should a state fail to comply with either of these requirements, the USFWS will suspend any further federal funding until the adverse condition (known as a "diversion") has been corrected. In a January 7, 2011 letter to FWP, the USFWS confirmed that passage of SB83 "would be treated as a diversion of license fees", and so would render FWP ineligible to receive further federal funding.

FWP is charged with managing the wildlife resources of the state, and for insuring that wildlife populations remain sustainable for the continued benefit of the public. Removal of wildlife carcasses from the roadside is not a wildlife population management activity, and does not serve a wildlife management purpose. Therefore, payments made by FWP to an outside entity for activities that are not directly associated with management of the State's wildlife constitute a loss of control relative to hunting and fishing license revenue.

For the reasons described, I recommend the committee vote Do Not Pass on the bill.



USFWS/R6/WSFR

## United States Department of the Interior

### FISH AND WILDLIFE SERVICE Mountain-Prairie Region



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Art Noonan, Deputy Director  
Montana Fish, Wildlife, and Parks  
P.O. Box 200701  
Helena, Montana 59620-0701

Dear Mr. Noonan:

This responds to your letter dated December 29, 2010, requesting our views regarding proposed Senate Bill 83 (SB83): "An Act requiring the Department of Fish, Wildlife, and Parks to reimburse the Department of Transportation for costs related to wildlife carcass removal and disposal from certain public highways; requiring the Department of Transportation to keep a record of wildlife carcasses removed; amending Sections 60-2-203 and 87-1-201, MCA; and providing an effective date."

Specifically:

Section 1(3) states - "The department shall keep a record of the number of wildlife carcasses removed from any road or public highway for which the department is responsible for maintenance or the cost of maintenance pursuant to 60-2-204. The department must be reimbursed by the Department of Fish, Wildlife, and Parks for any costs incurred for the removal and disposal of those wildlife carcasses pursuant to 87-1-201."; and

Section 2(11) states - "The department shall reimburse the department of transportation for any costs incurred for the removal and disposal of any wildlife carcass that is found along a road or public highway for which the department of transportation is responsible for maintenance or the cost of maintenance pursuant to 60-2-203 or 60-2-204."

In our opinion, the activities described in SB83 Section 1(3) and Section 2(11) are not functions of the State fish and wildlife agency required to manage the fish and wildlife resources for which it has authority under State law as defined in 50 CFR 80.4(b).

Art Noonan, Deputy Director

2

50 CFR 80.4 *Diversion of License Fees* states -

"Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency..."

(b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.

(c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.

(d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:

(1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and

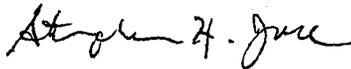
(2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency..."

Therefore, the payment of funds by Montana Fish, Wildlife, and Parks would be treated as a diversion of license fees rendering Montana Fish, Wildlife, and Parks ineligible to further participate in the benefits of the Pittman-Robertson Wildlife Restoration Act Program until the diverted funds are returned in accordance with 50 CFR 80.4(d)(1&2).

As you know, Montana Fish, Wildlife, and Parks received over \$22 million from the Wildlife and Sport Fish Restoration Program in 2010.

Thank you for the opportunity to comment on proposed SB83. Please keep us informed of the progress of the bill and any changes that may be proposed. You may contact me or Steve Jose, Grants Fiscal Officer, at any time for further assistance on this matter at (303) 236-4411 or (303) 236-7394, respectively.

Sincerely,



Acting  
David McGillivray  
Chief, Division of Wildlife and  
Sport Fish Restoration