EXHIBIT 3
DATE 3-21-13
SB 256 + 305

MONTANA AND U.S. COURT RULINGS ON THE QUESTION OF LIABILITY FOR ACTS OF WILDLIFE

Excerpted from Montana Judge E. Wayne Phillips ruling dismissing all ten claims brought against the state in Park County Stockgrowers v. Montana (2013).

BARRETT V. STATE NEW YORK (1917) "Wherever protection is accorded [to wild animals] harm may be done to the individual. Deer or moose may browse on his crops; mink or skunks kill his chickens; robins eat his cherries. In certain cases the Legislature may be mistaken in its belief that more good than harm is occasioned. But this is clearly a matter which is confided to its discretion. It exercises a governmental function for the benefit of the public at large, and no one can complain of the incidental injuries that may result."

SICKMAN ET AL. V. U.S. (U.S. 7TH CIRCUIT 1950) Claim for depredation, nuisance, and damages to crops by federally regulated migratory birds rejected.

RATHBONE V. MONTANA (1960) A property owner in the State of Montana "must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse."

STATE V. SACKMAN (MONTANA 1968) Discretion to act in response to a report of an elk damaging property remains with Fish, Wildlife & Parks.

KASALA V. KALISPELL PEE WEE BASEBALL LEAGUE (MONTANA 1968) In considering the criteria of what should constitute interference with a property owner's peaceful enjoyment of property, courts have held "that it is the ordinary and reasonable person's complaint that should serve as a basis for what is a nuisance."

CHRISTY V. HODEL (U.S. 9TH CIRCUIT 1988) Montana sheep ranchers requested compensation for the killing of their sheep by grizzly bears because they were precluded from defending their sheep since the bears were protected by the Endangered Species Act. "The Federal Government does not 'own' the wild animals it protects, nor does the government control the conduct of such animals." "... the losses sustained by the plaintiffs are the incidental, and by no means inevitable, result of reasonable regulation in the public interest."

STATE V. HUEBNER (MONTANA 1992) "Montana's Constitution and law mandate special considerations to ensure that our wild places and the creatures that inhabit them are preserved for future generations."

STATE V. BOYER (MONTANA 2002) "Montana has also recognized in numerous decisions, the State's power to protect public wildlife resources through regulations designed for that purpose."

PARK COUNTY STOCKGROWERS ASSOCIATION V. MONTANA (2013) "Montana's Constitution contains no provision safeguarding against threats to personal safety caused by naturally occurring conditions such as native wildlife. To the contrary, Montana's Constitution, laws, and regulations provide special considerations to assure that our wild places and the creatures that inhabit them are preserved for future generations." (citing State v. Boyer 2002)

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