



United States Department of the Interior



FISH AND WILDLIFE SERVICE Mountain-Prairie Region

IN REPLY REFER TO
FWS R6-WSFR

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APR 4 2013

Adam Brooks, Bureau Chief
Federal Assistance & Compliance Bureau
Montana Department of Fish, Wildlife & Parks
P.O. Box 200701
Helena, Montana 59620-0701

Dear Mr. Brooks:

This responds to your letter received in our office on March 29, 2013, requesting our views regarding proposed "Senate Bill 256" (see enclosure). As your letter states, Senate Bill 256 (SB 256) would require the Montana Department of Fish, Wildlife & Parks (FWP) to "Direct payment to private property owners for any and all loss or damage to private property caused by wild buffalo or bison."

In particular, Section 1 of proposed SB 256 would amend Section 87-1-216, MCA to read: "... (7) The department is liable for all costs incurred, ~~including costs arising from protecting public safety~~, and any damage caused to private property by wild buffalo or wild bison, including damage that occurs as a result of the department's failure to meet the requirements of subsection (5). This may include costs arising from protecting public safety."

Wildlife and Sport Fish Restoration Program (WSFR) federal regulations that apply to this situation include the following:

50 CFR 80.10 – "States acting through their fish and wildlife agencies are eligible for benefits of the Acts only if they pass and maintain legislation that:

(c) Requires that revenue from hunting and fishing licenses be:

(1) Controlled only by the State fish and wildlife agency; and

(2) Used only for administration of the State fish and wildlife agency, which includes only the functions required to manage the agency and the fish- and wildlife-related resources for which the agency has authority under State law."

50 CFR 80.11 - "A State becomes ineligible to receive the benefits of the Acts if it:

(c) Diverts hunting and fishing license revenue from:

(1) The control of the State fish and wildlife agency; or

(2) Purposes other than the agency's administration.

50 CFR 80.21 - "The Director may declare a State to be in diversion if it violates the requirements of § 80.10 by diverting license revenue from the control of its fish and wildlife agency to purposes other than the agency's administration. The State is then ineligible to receive benefits under the relevant Act from the date the Director signs the declaration until the State resolves the diversion..."

If proposed Senate Bill 256 becomes law, it is our opinion that the use of fish and game funds to pay for all costs incurred and any damage caused to private property by wild buffalo or bison would constitute a diversion of hunting and fishing license revenues per the regulations above. This would render the FWP ineligible for further participation in the benefits of the WSFR until resolution of the diversion issue. As you know, FWP received over \$17.9 million in WSFR funds in Federal Fiscal Year 2012.

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

Sincerely,



David McGillivary
Chief, Wildlife and Sport Fish Restoration

Enclosure