



"It does not require a majority to prevail, but rather an irate, tireless minority keen to set brush fires in people's minds." --Samuel Adams

Who Owns the Animals?

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Montana Wolf Recovery Plan

9/25/02

WHO OWNS THE WILDLIFE - THE FEDS OR THE STATES?

The testimony on HB 283, January 30, 2003 of Helen Franklin before Montana House Natural Resources Committee quote below is very complete and contains many legal citations. Franklin argues very effectively that Montana has the right to manage wolves without interference from USFWS or any other federal agency. HB 283 was intended to do just that. The bill as originally written would declare the wolf a predator unless USFWS delisted the wolf before 01/01/04. The bill has been completely gutted and as amended it merely directs the Montana Attorney General to research our legal options. The AG is already on record via the testimony of his second in command, Tweeten, as being opposed to any assertion of Montana's sovereign right to manage the wolf independent of the direction or approval of the federal government.

"Time after time I see legislators struggling to balance the demands of endangered and threatened species with the economic impacts and other effects of these actions on the cultures and industries of a region. We lost a \$30 billion dollar timber industry in the Pacific Northwest with the listing of the spotted owl and in the wake of that loss; states were told they could replace those jobs by building their tourism industries. The loss of an entire industry cannot be compensated through the promotion of tourism. In many areas of your state, tourism is a byproduct of your rich culture and heritage. Aside from Yellowstone National Park, people come to Montana because they watch big sky cowboy movies with Robert Redford and Tom Selleck and they come to enjoy the many benefits of your big game industry.

Thanks to the research of New Mexico State University Policy Department on resident species and federal authority in States, several of the following Federal laws support the rights of the Montana State Legislature in that the State may manage wildlife populations as they see fit without fears of usurping federal authority--because there is no federal authority over States.

In the disclosing of these and other laws, I hope the Committee and other members of the Legislature can find the means to reestablish the defensible boundary between State and Federal authority.

As you form your decisions on wildlife management, the scientific data should always support the definition of "endangered species".

Definitions ESA § 3(6)

(C)(6) The term "endangered species" means any species, which is danger of extinction throughout all or a significant portion of its range.

"The loss of an entire industry cannot be compensated through the promotion of tourism"

ENVIRONMENTAL QUALITY COUNCIL

January 27, 2006

Exhibit 14

"the State may manage wildlife populations as they see fit without fears of usurping federal authority---because there is no federal authority over States."

"except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 6(c) of this Act only to the extent that such regulations have also been adopted by such State".

"It is essential that the dilution of the authority of state and local governments be

(20) The term "threatened species" means any species, which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

ESA §§ 3(5)(C) critical habitat shall not include the entire geographical area, which can be occupied by the threatened or endangered species.

With respect to any previous legislation passed, the issue of resident species and the State's role in Federal fish and wildlife listings, the State, and only the State will determine whether to list and manage a species.

The definition of resident species can be found in:

50 CFR 81.1 Definitions.

(p) Resident Species. For the purposes of the Endangered Species Act of 1973, a species is a resident in a State if it exists in the wild in that State during any part of its life.

ESA §§ 4(d) PROTECTIVE REGULATIONS. Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations, as he deems necessary and advisable to provide for the conservation of such species. The secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants, with respect to endangered species:

(Conservation: Opposed to rapid change; moderate; avoiding extremes.)

The Federal departments and agencies are aware that they have no jurisdictional authority over States on resident species. ESA, Sec. 6(c)(1) (See document packet) is about cooperation and consultation with states and says nothing about enforcement of federal laws. The USFWS can list a species and write rules, regulations and policy, but they cannot enforce any regulation within States unless the State gives permission and passes a law for adoption and enforcement. This is also backed up in the Code of Federal Regulations (CFR).

Title 43 CFR part 24 (policy statement) (See document packet)

§ 24.2 Purpose. (a) . . . This policy is intended to reaffirm the basic role of the States in fish and resident wildlife management, especially where the States have primary authority and responsibility, and to foster improved conservation of fish and wildlife.

(b) . . . Moreover, in recognition of the scope of its activities in managing hundreds of millions of acres of land within the several States, the Department of the Interior will continue to seek new opportunities to foster "good neighbor" policies with the States.

§ 24.3 General jurisdictional principles.

(b) The exercise of Congressional power through the enactment of Federal fish and wildlife conservation statutes has generally been associated with the establishment of regulations more restrictive than those of State law. The power of Congress respecting the taking of fish and wildlife has been exercised as a restrictive regulatory power, except in those situations where taking of these resources is necessary to protect Federal property. With these exceptions, and despite the existence of constitutional power respecting fish and wildlife on Federally owned lands, Congress has, in fact, reaffirmed the basic responsibility and authority of the States to manage fish and resident wildlife on Federal lands.

Again, they have no authority to manage resident species within States and Congress has reaffirmed this.

43 CFR 24.4 (i) Federal agencies of the Department of the Interior shall:

Prepare fish and wildlife management plans in cooperation with Sate fish and wildlife agencies

halted and that the provisions of the 10th amendment be accorded proper respect."

where appropriate and other Federal (non-Interior) agencies where appropriate. Where such plans are prepared for Federal lands adjoining State or private lands, the agencies shall consult with the State or private landowners to coordinate management objectives.

43 CFR 24 is full of this type of language, but this is a primary example in how it instructs Federal agency personnel to facilitate the cooperation of state fish and wildlife agencies for the preparation of management plans. Federal employees tell the state agencies to "consult with the State" (Legislature) to "coordinate management objectives" (promulgate the laws) needed to list and manage a threatened or endangered species.

59 FR 34275. Notice of Interagency Cooperative policy regarding the role of state agencies in the Endangered Species Act Activities. (See document packet)

(page 2) 1. Utilize the expertise and solicit the information and participation of State agencies in all aspects of the recovery planning process for all species under their jurisdiction.

This entire process must be applied to every action regarding the State's participation in the listing and management of a resident species.

ESA §§ 11(h). . . No proceeding or determination under this Act shall preclude any proceeding or be considered determinative of any issue of fact or law in any proceeding under any Act administered by the Secretary of Agriculture. (See document packet)

The ESA does not override any laws made by the U.S. Department of Agriculture.

Under Title 7, US Code for the Department of Agriculture APHIS was amended in 2001 and allows that predatory and other wild animals may be eradicated and controlled. Listed among those animals were mountain lions, wolves, coyotes, and bobcats.

In 1979 The General Accounting Office made a recommendation to Congress and urged that listing authority be removed from U. S. Fish and Wildlife Services.

56 FR 58612, No. 224 . (See document packet)

The Senate Report to the 1979 amendments, however, stated, "the committee is aware of the great potential for abuse of this authority and expects the FWS to use the ability to list populations sparingly and only when biological evidence indicates that such action is warranted" (S.Rep.No.151, 96th Cong., 1979)

The listing of so many species is due, primarily, to the perpetual hysteria of nongovernmental organizations threatening to file suit. In many cases, the supporting "scientific" data comes from none other, than these same nongovernmental organizations or other organizations purporting to have a vested interest. As of October 2002, new standards of information became mandatory.

Federal Register Volume 67, No. 36. (See document packet)

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies. (In packet of information) The use of modeling as primary science will no longer be tolerated. Federal agencies must provide sound statistical data that will support scientific evaluation. The more important the information, the higher the quality standards to which it shall be held. There is also a provision for filing complaints against agencies and the agencies must report as to how such complaints were handled.

MONTANA LAW

Montana State Constitution, Article II Section 2. Self-government.

The people have the exclusive right of governing themselves as a free, sovereign, and independent state.

The Federal government and Congress recognize this statement of sovereignty.

As I researched your state laws, I found one phrase that held consistent throughout all of the Montana Code. "For the protection and benefit of public health, safety or welfare."

Title 2, Chapter 1, Sec 402. Legislative declaration. (2) The legislature further finds that: (a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state.

(b) The state government has an obligation to the public to do what is necessary to protect the rights of Montana Citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) The 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

Title 87, Chapter 1, Section 709. Cooperation with United States for wildlife restoration. The department, in the name of the state and with the approval of the governor, shall have the power to enter into the cooperative agreements on federally owned lands with the government of the United States or some department. . . . for the purpose of carrying on any wildlife restoration under the provisions of said Pittman-Robertson Act. . .

The state of Montana does reserve to itself, acting through its legislature, the right to direct the department to abandon any wildlife restoration projects created and established as the state of Montana may in its judgment think proper.

MONTANA ESA

Title 87, Chapter 5, Sec. 102 Definitions. (5) "Management" means the collection and application of biological information for the purposes of conserving populations of wildlife consistent with other uses of land and habitat.

Title 87, Chapter 5, Sec. 103. Legislative Policy. (2) That species or subspecies of wildlife indigenous to this state, which may be found to be endangered within the state should be protected in order to maintain and to the extent possible enhance their numbers.

The State ESA makes no provision for the management of an endangered species that is introduced and the Canadian gray wolf is not listed as indigenous wildlife to this State.

Title 87, Chapter 5, Sec. 107. (1)(a) On the basis of investigations on nongame wildlife the department shall recommend to the legislature a list of those species and subspecies of wildlife indigenous to the state which are determined to be endangered within this state.

(2)The department may propose legislation to specifically include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife.

Montana laws prohibit the introduction of wildlife to the state.

Title 87, Chapter 5, Section 701. Purpose. The legislature finds that in order to protect the native wildlife and plant species of Montana and to protect the agriculture production of Montana, it is necessary to provide for the control of the importation for introduction and the transplantation or introduction of wildlife in the state. Serious threats, known and unknown, to the well being of native wildlife and plant species and to agriculture production, resulting from the introduction of wildlife

into natural habitats, necessitate the prohibition of the importation for introduction and the transplantation or introduction of wildlife into natural habitats unless it can be shown that no harm will result from such transplantation or introduction. Any importation for introduction or the transplantation or introduction permitted must be conducted in a manner to assure that the introduced or transplanted population can be controlled if harm arises from unforeseen events.

Title 87, Chapter 5, Section 702. Definitions. (5) "Transplantation" means the release of or attempt to release, intentional or otherwise, wildlife from one place within the state into natural habitats in another part of the state.

Title 87, Chapter 5, Section 711. Control of importation for introduction and transplantation or introduction of wildlife. (1) Except as otherwise provided, the importation for introduction or the transplantation or introduction of any kind of wildlife is prohibited unless the commission determines, based upon scientific investigation and after public hearing, that a species of wildlife poses no threat of harm to native wildlife and plants or to agriculture production and that the transplantation or introduction of a species has significant public benefits.

Title 87, chapter 5, Sec. 716. The commission and the department shall consult with the departments of agriculture and livestock in all matters relating to the control of wildlife species that may have a harmful effect on agriculture production or livestock operations in the state.

References similar to these are cited throughout this Chapter of law. The Montana Fish and Game Commission have the power to allow the introduction of species, but the Commission is also held to the laws that protect agriculture and native wildlife.

Occasionally, the best information is not available when decisions are made to pass laws and the legislature must rely on the information at hand. The State of Montana allowed certain provisions for any oversights.

Title 1, Chapter 3, Sec. 214. Wrong—Remedy. For every wrong there is a remedy.

Title 1, Chapter 3, Sec. 218. Vigilance. The law helps the vigilant before those who sleep on their rights.

Title 1, Chapter 3, Sec. 222. Impossibilities. The law never requires impossibilities.

The basis of all wealth in this country was founded on natural resource industries and Montana is no exception. It is impossible to maintain your industries of big game and livestock production if you do not take the immediate and necessary measures to control the gray wolf population in this State. Montana considers the big game industry significant to the extent that the State officially declared the third week of September in observance to hunting heritage.

Title 1, Chapter 1, Sec. 226. Official observance of Montana's hunting heritage.

Canadian gray wolves are beautiful creatures; but they don't put meat on the table or money in the bank. The primary concerns of the majority of your constituents are economic stability and the protection of small business and industries. Passing HB 283 is the first step towards the restoration of essential natural resource industries in Montana."

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