



Montana Legislative Services Division

Legal Services Office

March 7, 2012

TO: Environmental Quality Council
FR: Helen Thigpen, Staff Attorney
RE: Summary of county bounty statutes and local authority to regulate wildlife

During the wolf management update at the January 2012 Environmental Quality Council (EQC) meeting, the EQC received testimony during public comment about the county bounty program and how the program could be utilized to manage wolves at the local level in Montana. As a result, the EQC asked staff to summarize the county bounty program and to respond to the testimony during its March EQC meeting. The following information is provided in response to the EQC's request.

Based on the information reviewed below, it appears that counties have the authority to establish a county bounty program for the purpose of paying bounties on predatory animals killed in the county. However, the county bounty statutes do not appear to authorize a person to take, harvest, or kill an animal, including a wolf or mountain lion, outside of the process provided for in Title 87, MCA. Thus, while livestock owners may seek to establish a fee for the purposes of paying bounties through a county program, the provisions of Title 87, MCA, regarding the taking of wildlife remain in effect.

The county bounty program was enacted in 1921 and is codified in Title 81, chapter 7, part 2, MCA. Together, the county bounty statutes provide that a county may impose a fee upon the livestock of the county for the purpose of paying bounties on predatory animals, including wolves and mountain lions. Once established, the Board of County Commissioners must impose the fee on all livestock in the county.

The process for establishing a bounty program begins with a petition signed by the owners or agents of the owners of not less than 51% of the livestock in the county. Specifically, § 81-7-201, MCA, provides:

County fee for bounties on predatory animals. Whenever the owners or agents of the owners of not less than 51% of the livestock of any county in this state present a petition to the board of county commissioners asking for the imposition of a fee upon the livestock of the county for the purpose of paying bounties on predatory animals killed in the county, the board of county commissioners shall impose the fee on all livestock in the county.

The petition must recommend to the Board of County Commissioners the amount to be paid on each predatory animal. Section 81-7-202, MCA, provides that the amount for each predatory animal may not exceed \$100 for a wolf or a mountain lion, \$20 for a wolf pup or a mountain lion kitten, \$5 for a coyote, and \$2.50 for a coyote pup. The petition must be presented to the Board of County Commissioners by August 1 of each year, and if a sufficient number of signatures are

obtained, the Board must issue an order granting the petition. The order establishes the fee that will be assessed against the livestock owners and the amount of the bounties to be paid for the killing of each animal.

Pursuant to § 81-7-202(2), MCA, the Board of County Commissioners may appoint stockowners in the county to be bounty inspectors. Bounty inspectors inspect the animal to verify that the animal was killed within the county. The inspector makes this verification by an affidavit, which must be "corroborated by at least two reputable stockowners of the county to the effect that they know or have good cause to believe that the animal was killed within the county." The bounty inspector must indicate on the affidavit whether the inspector approves or disapproves the claim and "shall cut from the skin or pelt the four feet." To collect the bounty, the person claiming the bounty must present the inspector's endorsed affidavit to the county auditor or clerk if there is not a county auditor, who then presents the claim to the Board of County Commissioners for action. The funds for the bounty are paid out of the county bounty fund as provided in § 81-7-203, MCA.

Title 87, MCA, vests the Department of Fish, Wildlife and Parks (FWP) with the authority to "supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state" *See* § 87-1-201, MCA. Title 87, MCA, also vests FWP with the authority to manage wolves pursuant to the Nongame and Endangered Species Conservation Act. *See* §§ 87-5-101 through 87-5-112, MCA. In addition, the Fish, Wildlife, and Parks Commission (Commission) is responsible for setting the "policies for the protection, preservation, management, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law." *See* § 87-1-301, MCA. The Commission also establishes the hunting, fishing, and trapping rules for FWP.

As the EQC is aware, wolves were delisted from the federal Endangered Species Act through the enactment of the Department of Defense and Full-Year Continuing Appropriations Act of 2011. Through the adoption of this legislation, wolves are no longer protected as an endangered species in Montana and Idaho and in portions of Oregon, Utah, and Washington. As a result, the State is authorized to manage wolves that were once solely under federal protection. *See* § 87-5-131, MCA (providing that following delisting, FWP "shall manage the wolf as a species in need of management until the department and the commission determine that the wolf no longer needs protection as a species in need of management and can be managed and protected as a game animal"). Moreover, the State must manage wolves in accordance with state and federal law and the Gray Wolf Conservation and Management Plan. This includes the licensing provisions provided in sections 87-2-523 and 87-2-524, MCA, authorizing residents and nonresidents, to acquire a license to hunt and possess a wolf carcass. Collectively, these laws and regulations allow wolves to be taken in various instances such as during a lawful hunt, upon authorization of FWP when problem wolves attack livestock, and for the protection of human life and dogs.

It appears that at least two counties in Montana are currently considering the county bounty program as a means to regulate wolves and mountain lions at the local level.¹ However, the county bounty statutes do not provide an exception to the authority of FWP or the Commission to regulate or manage wildlife in the State of Montana. Likewise, Title 87, MCA, does not reference the county bounty statutes or provide a different process to allow certain animals to be taken under the authority of the county. As a result, there initially appears to be a conflict between the county bounty statutes and the statutes regarding the management of wildlife in Title 87, MCA. However, upon closer examination, the county bounty statutes only appear to authorize the establishment of a county bounty program and do not authorize a person to take an animal such as a wolf or mountain lion outside of the process provided for in Title 87, MCA.

The county bounty statutes cannot be construed without consideration of the provisions in Title 87, MCA, which specifically address the management of wildlife. A general premise of statutory construction is that statutes must be read together in order to achieve legislative intent. As noted by the Montana Supreme Court, when interpreting a statute, a court's "goal is to ascertain and give effect to the legislative intent." *Barnard v. Liberty Northwest Ins. Corp.*, 2008 MT 254, ¶ 17, 345 Mont. 81, 189 P.3d 1196. In addition, a court will read all parts of the statute as a whole and will strive to give effect to all of its provisions. *Barnard*, ¶ 17. The same reasoning applies to a larger statutory scheme and to the body of law in which the statute fits. According to the Montana Supreme Court, it "will harmonize statutes relating to the same subject in order to give effect to each." *Montana Trout Unlimited v. Beaverhead Water Company*, 2011 MT 151, ¶ 31, 361 Mont. 77, 255 P.3d 179. As a result, a court construing the meaning or scope of the county bounty statutes would also need to consider Title 87, MCA.

In addition, § 1-2-102, MCA, provides that "[i]n the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it." Thus, because the provisions of Title 87, MCA, appear to more specifically address the management of wildlife and the circumstances in which certain animals may be taken, the provisions of Title 87, MCA, would likely govern in a dispute over the authority provided through the adoption of a county bounty program. Also, it is important to note that the provisions of § 87-5-106, MCA, remain in effect and provide that it is "unlawful for any person to take, possess, transport, export, sell, or offer for sale nongame wildlife deemed by the department to be in need of management."

Finally, the authority of local governments to regulate wildlife may also be relevant to this discussion. The Montana Constitution and various statutes provide certain powers to local

¹See Perry Backus, *Ravalli Republic*, See http://missoulian.com/news/state-and-regional/bitterroot-ranchers-want-bounty-system-for-wolf-lion-kills/article_ed138026-5ddb-11e1-b196-0019bb2963f4.html; See also helenair.com/news/local/ranchers-want-bounty-on-predators/article_89df30ea-4c2e-11e1-a245-001871e3ce6c.html (last accessed March 6, 2012); See also Eve Byron, *Helena Independent Record*, http://helenair.com/news/local/ranchers-want-bounty-on-predators/article_89df30ea-4c2e-11e1-a245-001871e3ce6c.html (last accessed March 6, 2012).

governments while specifically denying others. The authority of a local government to regulate in a particular area depends largely on whether the local government is vested with general powers or self-governing powers (a distinction that is relevant to any question of local government authority). Article XI, section 4, of the Montana Constitution provides that local governments without self-governing powers have those powers that are provided or implied by law. As a result, general powers governments usually must receive a specific grant of legislative authority before they may regulate in a particular area. Local governments vested with self-governing powers may take any action not prohibited by law and thus have more power to regulate.

With respect to local governments with general powers, it does not appear that the Legislature has authorized local governments to regulate in this area. There is no specific grant of authority in Montana law that appears to authorize a local government to manage wildlife or animals classified as species in need of management, such as wolves. That power has been vested in FWP and the Commission through the adoption of various statutes in Title 87, MCA. It is important to note that all but three counties in Montana are vested with general powers authority. In addition, although local governments with self-governing powers have more authority to regulate, Montana law specifically denies self-governing entities any power that applies to or affects Title 87, MCA. *See* § 7-1-111, MCA (powers denied to a local government with self-governing powers). Based on this information, it appears that although a county is authorized to enact a county bounty program, local governments have not been provided with the authority to regulate wildlife or animals classified as species in need of management.

In summary, it appears that counties have the authority to adopt a county bounty program for the purpose of paying bounties on predatory animals killed in the county. However, the county bounty statutes cannot be construed without consideration of the provisions in Title 87, MCA, which specifically address the management of wildlife in Montana.