



ENVIRONMENTAL QUALITY COUNCIL

PO BOX 201704
HELENA, MONTANA 59620-1704
(406) 444-3742

GOVERNOR STEVE BULLOCK DESIGNATED REPRESENTATIVE PATRICK HOLMES	HOUSE MEMBERS BRADLEY MAXON HAMLETT--Vice WILLIS CURDY JANET ELLIS STEVE GUNDERSON THERESA MANZELLA KERRY WHITE	SENATE MEMBERS CHAS VINCENT--Chair MIKE LANG MIKE PHILLIPS JP POMNICHOWSKI CARY SMITH GENE VUCKOVICH	PUBLIC MEMBERS SCOTT ASPENLIEDER JOHN C. BRENDEN KYLIE PAUL MATT VINCENT	COUNCIL STAFF TREVOR GRAFF, Research Analyst JASON MOHR, Research Analyst HOPE STOCKWELL, Research Analyst NADINE SPENCER, Secretary ERIN BILLS, Legal Staff JOE KOLMAN, Legislative Environmental Analyst
---	---	--	--	---

TO: Environmental Quality Council Members
FROM: Erin Bills, Legal Staff
DATE: December 21st, 2017
RE: Overview and history of section 87-4-915(5)(a), MCA, referred to as the "bird dog statute"

I. Introduction

During its September 2017 meeting, the Environmental Quality Council (EQC) directed committee staff to provide an overview and history of the "bird dog statute" after reviewing a proposed administrative rule clarifying the statute.¹ The Department of Fish, Wildlife, and Parks (FWP) published MAR Notice No. 12-473 on May 12, 2017, proposing to amend the rule clarifying permit requirements for dog training on game bird populations.² This rule was proposed in response to both written and verbal complaints regarding massive dog training occurrences.³ The EQC objected to the rule and FWP agreed to not adopt the rule and to work with the EQC to draft legislation to address language concerns currently in statute.⁴ Legal staff reviewed the legislative history of this provision and submits this memorandum to the EQC for its consideration.

II. Legislative history and overview of the bird dog statute.

In 1983, the Montana Legislature passed Senate Bill 448 containing a section enacting what is now 87-4-915(5)(a), which will be referred to as the "bird dog statute" for purposes of this memorandum. At the request of the bill sponsor, Senator Leo Lane, the bill was explained to the Montana State Senate Fish and Game Committee on February 19, 1983 by then Senator Tom Towe. The bill required the Department of Fish, Wildlife, and Parks to make rules for game animal farms, game bird farms, and fur farms in Montana. The intent was to create rules that

¹ Section 87-4-915(5)(a), MCA.

² 12 Mont. Admin. Reg (May 12, 2017).

³ *Id.*

⁴ 12 Mont. Admin. Reg (Nov. 9, 2017).

"address procedural items necessary for a timely and efficient processing of applications and licenses and provide the information necessary for administration of the criteria provided in those sections."⁵

The legislation was the result of polarized opinions that developed in the early 1970s. The controversy was, in part, the culmination of court proceedings that occurred in 1977 between the Department of Fish and Game (now known as the Department of Fish, Wildlife, and Parks), and the Big Horn Game Ranch. As a result of the controversy, Governor Schwinden, with the concurrence of the Montana Legislature, created a thirteen member Game Farm Task Force to design legislation clarifying regulation of game farm operators. The Game Farm Task Force was comprised of sportsmen, big game farm operators, ranchers, bird farm owners, and state officials from the departments of fish and game and agriculture. Task force members agreed that the Department of Fish, Wildlife, and Parks was the appropriate agency to administer the laws relating to their operations.⁶

The written record of the legislation is sparse in relation to the bird dog statute specifically. Most of the testimony relates to the overall package and game farm issues. Today, the statute remains as drafted in 1983 and provides that:

"(5) (a) Dogs may be trained in open fields at any time without permission of the director only if: (i) live game birds are not killed or captured during training; and (ii) the training is more than 1 mile from any bird nesting or management area or game preserve."⁷

Section 87-4-915 authorizes the Department of Fish, Wildlife, and Parks to make rules that clarify when a permit is required.

III. Overview of the administrative rule clarifying permit requirements for dog training on game bird populations.

Due to the EQC objection and the department's withdrawal of the proposed rule, the rule implementing the bird dog statute remains the same as was adopted in 1972. Review of the legislative history did not reveal any amendments or testimony specific to this section. The administrative rule language provides:

(1) Dogs may be trained in open field at any time without permission of the director

⁵ S. Fish and Game Comm., *Minutes of the Meeting*, (Mont. 1983).

⁶ *Id.* Testimony submitted by Keith Kelly, Director, Department of Agriculture and Chairman of the Governor's Game Farm Task Force (Exhibit 6).

⁷ Section 87-4-915(5)(a), MCA.

provided: (a) no live game birds are killed or captured during training; and (b) the training is more than 1 mile from any bird resting or management or game preserve.⁸

To address both verbal and written complaints submitted to the Department, amendments were proposed to provide clarity for when a permit is required. The EQC objected to the rule and FWP agreed to not adopt the rule and to work with the EQC to draft legislation to address language concerns currently in statute.

CI0099 7356jkra.

⁸ Mont. Admin. R. 12.6.204 (1972).