



GAME FARMING: BEFORE THE COURT AGAIN

On New Years Eve the Montana Supreme Court released a decision against an appeal filed by game farmers over a 2005 First Judicial District Court ruling concerning the Montana Game Farm Reform Initiative, I-143. Since the ruling, however, a few game farm operators have petitioned the Court for a rehearing.

The original legal challenge in 2002 against the State of Montana contended that voter's passage and the enforcement by Montana Fish, Wildlife and Parks (FWP) of new regulations within the ballot initiative I-143 constituted a taking of game farm operator property causing businesses to fail and they wanted "just compensation". The Montana Supreme Court heard arguments over the lower court ruling in September of 2006 but just recently released its 4-3 vote denying the appeal.

Montana Wildlife Federation was a major player in I-143 and since its passage MWF has continued its support for the implementation of the laws by the State of Montana and FWP. MWF has intervened in each of eleven legal challenges brought by game farm operators attempting to overturn regulations adopted by the citizens of Montana and it has received favorable rulings in every case heard by the courts.

Historical Perspective

Prior to 1980 game farms were a novelty, limited both in numbers of operations and conflicts with public wildlife and hunters. Increases in the market for elk antlers for aphrodisiacs, urine, and meat drove prices for captive elk to levels that lured agriculture operators to consider what appeared to be a lucrative business opportunity. Some saw dollar signs and a way to compliment slow revenues to their agricultural operations. Some had a different set of principles regarding wildlife and the ethics of fair chase hunting.

By the early 1990s MWF identified significant issues with ingress and egress between captive animals and free-ranging native wildlife. Diseases such as tuberculosis and the genetic risks from the mixing of game farm animals and native wildlife could substantially impact the future of highly prized and cherished Montana big game.

Few laws or rules existed to govern game farm operations and owners vigorously resisted attempts to protect public wildlife. The decade of the 1990s was marked by continual legal battles between the conservation minded hunter community led by MWF and the game farm operators. Each legislative session was marked by heated emotional debates as proponents and opponents dueled over the need for regulations to control game farm operations. MWF was a proponent of oversight and we were successful in getting non-legislative rules adopted in response to incidences that documented their need. As more rules and regulations' were adopted, MWF became more comfortable with the oversight but still there remained concerns over genetic influences from escaped animals and the possibility of disease transmission whether it was from nose to nose contact through game farm fencing with free-ranging wildlife or captive animal escapes. Some game farm operators adapted and even championed rules and regulations as proof of industry integrity.

The story may have ended here with even more collaborative regulations except in the mid-1990s there developed a new activity in Montana that troubled fair chase hunters. Dubbed private hunting

opportunities with 100 percent success, clients paid to shoot captive game farm animals held within the confines of woven wire. Hunters immediately viewed the shooting of captive animals as a prostitution of the time honored and cultural tradition of fair chase hunting. Montanans became angry that this activity was being advertised and conducted in our state; this was not how we 'hunt' in Montana. Hunting is a learned skill that has a proud heritage in Montana, respected for the integral role it plays in sustaining wildlife through managing populations.

Adding to this insult was the fact that increasingly hunting license dollars were the primary source of funding for FWP to monitor and perform their game farm regulatory mandates. The hunting community expected their license fees to be spent on the management of wildlife and hunting opportunities - not paying for the regulation of a private business that commercialized and put public wildlife at risk and that was viewed as the antithesis of wildlife management.

After repeated failures in the legislature to institute statutory regulations the hunting community responded in 1999 by forming MACOW (Montanans Against the Commercialization of Wildlife) as a watchdog group to protect and insure the health and safety of free-ranging wildlife from the threats posed by game farming. The citizen group also engaged efforts to minimize the financial burden of game farms on FWP. The group selected Dave Stalling, Stan Frasier, and Gary Holmquist to lead the group. This leadership and many of the MACOW members were also MWF members and the two organizations worked closely to develop I-143 which became a citizen's ballot initiative and that was passed by Montana voters in the November 2000 general election.

Before submitting I-143 for qualification the language was reviewed by the Montana Attorney General and two independent law firms considered to be experts on 'takings law'. All gave assurance the initiative was not a "taking" and MACOW proceeded confidently.

MWF remains convinced that independent legal council and the voting citizens of Montana - were right. The opponents, however, have now been encouraged by three justices that offered dissenting votes and opinions on parts of the legal challenge and a few game farm operators have responded with a petitioned to the Supreme Court for a rehearing. Once again as Yogi Berra said, "*it ain't over til it's over*".

The regulations put in place by I-143 have been law for eight years. Prior to its passage FWP on average spent more than \$200,000/year of hunting license dollars to perform their oversight duties. In recent years the related expenditures have dropped under \$10,000 annually for a couple of reasons; I-143 prohibited the licensing of new game farms and the transfer of existing game farm licenses thus eliminating the bulk of the regulatory work.

As far as shooting animals for a fee on game farms and FWP associated expenditures to monitor activities, seventeen game farms conducted shooting operations in Montana in 2000. All have suspended their shooting operations except one game farm based upon the owners' interpretation of a perceived loophole in I-143. FWP has patiently pursued prosecution of the law in this circumstance and a recent legal settlement with that game farm will permanently end this activity in 2009. The shooting of captive game animals has been eliminated in Montana and therefore so too have the substantial expenditures by the department.

In addition to concerns with genetics and health, the possible escape of game farm animals can result in significant expense to Montana's wildlife agency as it locates and destroys or captures them in the wild. Montana game farms have diligently improved efforts to keep animals contained but in the past four years FWP has had to deal with escaped game farm animals from neighboring states. Idaho, Wyoming, Alberta and Saskatchewan have all documented game farm animal escape or egress with some animals crossing into Montana. Chronic wasting disease in Canadian game farms and now in the wild and escapes is a major concern for our state and FWP has developed a comprehensive disease monitoring plan.

Supreme Court Ruling

During the 2000 initiative campaign game farm operators alleged that I-143 was designed to close all game farms. This claim was made despite already failing markets for meat and antlers. This is an important point to the Supreme Court ruling.

In February 2000, 79 game farms were licensed in Montana. In February 2008, 47 remain in business. For statistical purposes the failure of game farm operations between 2000 and today, post I-143, is an average annual failure rate of about 4 percent. In the four years prior to the passage of I-143, the annual failure rate was about 10 percent. I-143 may have influenced the failure rate but the results show a decline that is less dramatic after the passage of I-143.

What has had the greatest impact on game farms was the discovery of Chronic Wasting Disease (CWD), the elk and deer equivalent of mad cow in livestock. The declining number of game farms in Montana is similar to decreasing numbers across the country due to concerns over CWD. States have passed new regulations restricting the intra-state transporting of game farm animals. Linkage of disease transmission from captive animals to free-ranging game, the human health risk, and more in-depth testing confirming CWD in far more game farms than anticipated, has triggered a national response that has resonated to the halls of Congress. Some states have depopulated entire herds of game farm animals, established new comprehensive testing protocols and stricter regulations. Attempting to control the disease, some states have destroyed hundreds of free-ranging deer and elk in proximity to infected game farms. Many game farms have simply closed their doors.

I-143 had no impact on game farm meat, urine or antler markets, the only markets available when most game farms began operations. If anything I-143 should have increased the value of game farm animals because the number of businesses in Montana was frozen which increases market control for the remaining businesses. Even the legal briefs for the Supreme Court deliberations recognized that "I-143 did not...eliminate all uses of alternative livestock as it still permitted Game Farm operators to own herds, harvest the animals for their meat or antlers, or sell them in out-of-state markets where fee-shooting was legal".

Has I-143 protected Montana from diseases such as CWD, cryptosporidium, and tuberculosis? Montana has had no occurrence of any of these diseases since adoption of I-143 however; it is all around us in neighboring states and provinces. Success is a credit to the compilation of these laws and rules driven by hunter conservationists combined with diligent enforcement by FWP.

Noteworthy is that all of the efforts, including the MACO group, have been driven by blue collar Montana residents, hunters and anglers with honest concerns and the money they raised came from Montana based organizations, sportsmen, sportswomen, wildlife enthusiasts and Montana conservationists. The claim of 'well funded out of state interests' advancing I-143 is a great falsehood, as MWF is still indebted for tens of thousands for continuing to defend against legal challenges. If you understand the significance of these efforts and you can make a financial contribution, please contact Craig Sharpe at MWF and make his day.

Where does Montana go from here?

Expect the number of game farm operations to continue their decline. The antler trade has substantially diminished due to the fears surrounding CWD and human health and it has been mostly replaced by pharmaceutical products. Markets for meat still exist but there remains a national fear factor concerning public health.

In Montana, some operations have been de-populated. Still some operations will continue based upon a market for meat and the motivation and experience of the owner. Both greater regulation and compliance has been good for Montana but I-143 has not single-handedly destroyed the business of game farming.

As we look back eight years we should be thankful to Stalling, Holmquist, and Frasier for their valued leadership and to the hundreds of volunteers, everyday citizens and donors who worked diligently to make the passage of I-143 possible. This was a victory for those who cherish free ranging wildlife, wild-open spaces, fair chase hunting and the challenge of the hunt - factors that make hunting in Montana special, part of our heritage and culture and worth protecting.