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Ref: DO#246-17

September 6, 2017

Environmental Quality Council
PO Box 201704
Helena, Montana 59620-1704

Dear Chairman Vincent and Council members:

This letter is in response to your June 30, 2017 letter relating to Fish, Wildlife & Parks' (FWP) proposed rule for dog training in upland game bird nesting areas, and the Environmental Quality Council's (EQC) objection to MAR Notice 12-473.

Since the EQC's objection, FWP has taken a hard look at the rulemaking proposal in question. FWP considered public comment, comments from EQC members, and legislative history of the statute in question. A summary of the public comments received for the previous rule language to which the EQC objected is included for your reference. Our review of legislative history found that the language in the enabling legislation was part of a larger legislative package. While FWP did not find amendments or testimony specific to the language in question here, our review revealed that this specific language was taken verbatim from FWP administrative rule that had been adopted in 1972. That language is also enclosed for your review.

FWP has proposed new amendments to the original rulemaking proposal to address concerns raised during the previous process. The amendments are meant to provide more clarity in language and to minimize impacts of dog training on game bird populations while not unduly limiting reasonable dog training activities. In recent years, the department has received both written and verbal complaints regarding dog training occurrences. The detrimental training that has been documented includes as many as 60 dogs at one time, as well as the use of horses. When this happens during the nesting and brood rearing season, it can result in negative impacts on bird populations and decreased opportunity for the hunting public. Speaking to the value of healthy game bird populations, other states and provinces have similarly implemented restrictions on some types of dog training. In addition to protecting this wild resource, these proposed amendments will help keep Montana from being detrimentally set apart as the easiest state in which to train inordinately large numbers of dogs.

The Fish and Wildlife Commission was also approached by bird hunters who were noticing a large decrease in the number of available birds in certain areas during the hunting season. The Commission in turn requested that the department act to curtail the impacts of large scale dog training during the nesting season.

MCA 87-4-915 (5)(a) provides that 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 one mile from any bird nesting or management area or game preserve. This law codified previously existing Fish, Wildlife and Parks administrative rule language verbatim, and indicates that permission from the director is needed to train dogs within a mile of bird nesting or management areas or game preserves. The language in the proposed rule provides for permission for these activities on a smaller scale during the nesting season and grants permission for larger scale activities outside of the nesting season. Granting this permission will provide clarity and limit administrative process for permission for the public as well as for enforcement purposes.

The currently proposed language will be out for public comment from September 8, 2017 through October 13, 2017. As a part of the process, FWP is holding public hearings in each of our seven regional headquarters as well as at our headquarters in Helena. Enclosed for your review is a copy of the new proposed rule notice, including further information about scheduled public hearings.

We will plan on attending the next EQC meeting regarding this issue. Please let me know if there is any further information we can provide.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Williams for". The signature is written in a cursive style.

Martha Williams
Director

Summary of Comments for MAR Notice No. 12-473

1. Dislike of Definition of "Bird Nesting Area"
 - a. **5** comments received specifically addressing the definition as vague or hard to understand.
2. Requesting a hearing or develop a working group of stakeholders to address the issue of dog training on wild birds.
 - a. **84** comments requesting a hearing or forming a working group.
 - b. *This exceeds the threshold for conducting a hearing.*
3. Charge for permits to training in defined areas.
 - a. **4** comments received suggesting that the department charge for the permits similar to what the Dakota have done.
4. Limit the number of dogs being trained.
 - a. **6** comments received regarding limiting the number of dogs a person can train in these areas. Some have suggested limiting to 4 some suggest no more than 10 dogs should be allowed.
5. Define and permit "commercial" or "professional" dog training.
 - a. **8** comments received suggesting that rules should be focused on these groups rather than amateurs.
6. Close dog training during critical nesting times.
 - a. **20** comments suggest limiting or prohibiting training from April 1 through August 1, or August 15 or July 15.
7. Prohibit dog training on FWP lands, Block Management Areas and other public lands.
 - a. **4** comments suggest protecting birds on public lands or private lands that are in cooperation with FWP.
8. Look at other impacts on birds other than dog training.
 - a. **2** comments suggest looking at the impacts of OHV use or varmint hunting.
9. General nonspecific opposition to the proposed rule.
 - a. **30** comments received suggesting opposition for the proposed rule.
10. General nonspecific support for the proposed rule.
 - a. **20** comments received suggesting support for the proposed rule.

**There were also 7 unintelligible comments received not pertaining to the rule.*

1st comment period

organization with permission to conduct the field trial must immediately replace it with a live bird which shall be released by the representative of the department. (History: Sec. 87-3-124 MCA; IMP, Sec. 87-3-124 MCA; Eff. 12/31/72.)

12.6.204 TRAINING WITHOUT PERMISSION (1) Dogs may be trained in open field at any time without permission of the director 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 area or game preserve. (History: Sec. 87-3-124 MCA; IMP, Sec. 87-3-124 MCA; Eff. 12/31/72.)

Sub-Chapter 3

Tagging

12.6.301 TAGGING OF CARCASSES OF GAME ANIMALS (1)

When tagging the carcass of a game animal, the tag must be attached in such a manner that the tag is clearly visible. Any person failing to comply with these rules is guilty of a misdemeanor and upon conviction shall be punished as provided for in section 87-1-102 MCA. (History: Sec. 87-1-201 MCA; IMP, Sec. 87-2-509 MCA; NEW, Eff. 6/4/74.)

Sub-Chapter 4

Time Zones

12.6.401 TIME ZONES (1) The following time zone descriptions and sunrise-sunset hour schedules are official times for the zones designated for the purpose of setting daily open and closed seasons. The time is mountain standard and during periods of daylight savings time add 1 hour (see following 4 pages).

(2) An abbreviated version of these tables may be printed on the big game maps and may be utilized by hunters during big game seasons. The complete tables will be available at all regional offices and at the Helena headquarters. (History: Sec. 87-1-304 MCA; IMP, Sec. 87-1-304 MCA; Eff. 12/31/72; AMD, 1981 MAR p. 251, Eff. 3/27/81.)

*Approved
3/86*

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to dog training) NOTICE OF PUBLIC HEARINGS
) AND EXTENSION OF COMMENT
) PERIOD ON PROPOSED
) ADOPTION

TO: All Concerned Persons

1. On May 12, 2017, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-473 pertaining to the proposed adoption of the above-stated rule at page 585 of the 2017 Montana Administrative Register, Issue Number 9.

2. The notice of proposed agency action is amended as follows because the department is considering alternative language from the original proposal and the required number of persons has requested a public hearing.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 5 Office, 2300 Lake Elmo Drive, Billings, Montana, to consider the proposed adoption of the above-stated rule.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 6 Office, 54078 U.S. Highway 2 West, Glasgow, Montana, to consider the proposed adoption of the above-stated rules.

On October 2, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 7 Office, 352 I-94 Business Loop, Miles City, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Road, Missoula, Montana, to consider the proposed adoption of the above-stated rule.

On October 10, 2017, at 6:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 3 Office, 1400 South 19th Avenue, Bozeman, Montana, to consider the proposed adoption of the above-stated rule.

3. Public comment was collected on the proposed rule for 29 days from May 12, 2017 to June 9, 2017. Based on public comment, the department is proposing an alternative to be considered in conjunction with the original proposed adoption. An extension of the comment period is necessary to address the alternative language. The rule as proposed provides as follows, new matter underlined, deleted matter interlined:

NEW RULE I PERMIT PERMISSION TO TRAIN DOGS IN UPLAND GAME BIRD NESTING AREAS (1) For purposes of this rule, the following definitions ~~apply~~ applies:

(a) "bird nesting area" refers to the nesting activities and habitat of upland game birds and migratory game birds. ~~means any area within the state which the targeted game bird(s) could make a reasonable attempt to successfully produce a nest;~~

(b) ~~"game preserve" means an area that is owned and managed by the state or federal natural agency for the purposes of game protection and propagation;~~

(c) ~~"management area" means any property managed by the state or federal natural agency for the purposes of maintaining wildlife habitat, wildlife propagation or public hunting access;~~

(d) ~~"open fields" means any area of natural surroundings where wildlife may naturally occur and may include bird nesting areas, management areas, or game preserves.~~

(2) A person, party, group, or business wishing to train dogs in open fields must apply for a permit by filing an application on a form provided by the department at the regional office in the region where the person will conduct such activity. under the provisions of 87-4-915(5)(a), MCA, has the permission of the director to train dogs within one mile of any bird nesting or management area or game preserve only if live game birds are not killed or captured during training, and if the person, party, group, or business is training:

(a) not more than four dogs per day; or

(b) more than four dogs per day between September 1 and March 31.

(3) Permits to train dogs in open fields expire September 1 of each year.

Permission is not granted for training more than four dogs per day per person, party, group, or business within one mile of any bird nesting or management area or game preserve between April 1 and August 31.

(4) Permit holders must follow the terms and conditions set forth in the permit. This rule does not preclude further site-specific management rules or conditions on public and private lands. Landowner permission must still be obtained for training activities.

(5) This rule does not apply to activities otherwise licensed or permitted by Fish, Wildlife and Parks, such as regulated hunting activities, permitted field trials and permits to train dogs with captive game birds.

REASON: This rule proposal is being amended in response to public comments to provide more clarity in language and to minimize impacts of dog training on game bird populations while not unduly limiting dog training activities in Montana.

The purpose of this rule is to limit disturbance and mortality of nesting birds from training large numbers of dogs without unduly restricting training of single or small numbers of dogs. In recent years, the department has received both written and verbal complaints regarding dog training occurrences. The dog training that has been documented includes as many as 60 dogs at one time as well as the use of horses. When this happens during the nesting and brood rearing season, it can result in negative impacts on bird populations and decreased opportunity for the hunting public. Speaking to the value of healthy game bird populations, other states and provinces have similarly implemented restrictions on some types of dog training. In addition to protecting this wild resource, this proposed rulemaking will help keep Montana from being detrimentally set apart as the easiest state in which to train large numbers of dogs.

The Fish and Wildlife Commission was also approached by bird hunters who were noticing a large decrease in the number of available birds in certain areas during the hunting season. The commission in turn requested that the department act to curtail the impacts of large scale dog training during the nesting season.

Section 87-4-915 (5)(a), MCA provides that 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 one mile from any bird nesting or management area or game preserve. This law codified previously existing department administrative rule language verbatim, and indicates that permission from the director is needed to train dogs within a mile of bird nesting or management areas or game preserves. The language in the proposed rule provides for permission for these activities on a smaller scale during the nesting season and grants permission for larger scale activities outside of the nesting season. Granting this permission will provide clarity and limit administrative process for permission for the public as well as for enforcement purposes.

4. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 22, 2017, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Enforcement Division, Attn: Mike Lee, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail FWPDogTraining@mt.gov, and must be received no later than October 13, 2017.

6. Kaedy Gangstad or another hearing officer appointed by the department has been designated to preside over and conduct this hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be made by completing the request form at any rules hearing held by the department.

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State August 28, 2017.