

HOUSE BILL NO. 321

INTRODUCED BY K. KERNS

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A BILL FOR AN ACT ENTITLED: "AN ACT NULLIFYING AND VOIDING THE FEDERAL ENDANGERED SPECIES ACT IN MONTANA; MODIFYING AND REPEALING STATE LAWS CONCERNING ENDANGERED SPECIES; PROVIDING PENALTIES; AMENDING SECTIONS 75-5-316, 77-1-804, 80-8-304, 80-8-306, 82-4-232, 82-4-335, 87-1-111, 87-1-201, 87-1-301, 87-1-621, 87-3-235, 87-3-236, 87-5-101, 87-5-102, 87-5-103, 87-5-108, 87-5-109, 87-5-112, AND 87-5-205, MCA; REPEALING SECTIONS 87-5-107 AND 87-5-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes and nothing more; and

WHEREAS, the 10th amendment to the United States Constitution defines the total scope of federal power as being that which has been delegated by the people of the several states to the federal government and all power not delegated to the federal government in the Constitution of the United States is reserved to the states respectively or to the people themselves; and

WHEREAS, the power that the federal government has assumed by enacting the federal Endangered Species Act, 16 U.S.C. 1531, et seq., interferes with the right of the people of the state of Montana to regulate plant and animal species and makes a mockery of James Madison's assurance in Federalist Papers No. 45 that the powers delegated to the federal government are few and defined while those of the states are numerous and indefinite; and

WHEREAS, agents of the federal government have flouted the United States Constitution and forsworn their oath to support the United States Constitution by enforcing the federal Endangered Species Act and these actions violate the limits of authority placed upon these federal agents by the United States Constitution and are dangerous to the liberties of the people of this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Legislative declaration and nullification -- enforcement -- penalties.

(1) The legislature declares that the federal Endangered Species Act, 16 U.S.C. 1531, et seq.:



- 1 (a) is not authorized by the United States constitution;
2 (b) violates the true meaning and intent of the United States constitution as set out by the constitution's
3 founders and those who ratified the constitution; and
4 (c) is invalid in this state and may not be recognized by this state and is considered to be null and void
5 and of no effect in this state.

6 (2) The legislature shall enact all laws necessary to prevent the implementation and enforcement of the
7 federal Endangered Species Act within the exterior boundaries of the state of Montana.

8 (3) (a) An official, agent, or employee of the United States government or an employee of a corporation
9 providing services to the United States government that enforces or attempts to enforce an act, order, law,
10 statute, rule, or regulation of the government of the United States in violation of this section is guilty of official
11 misconduct and is subject to the penalties provided in 45-7-401.

12 (b) A public officer or employee of the state of Montana that enforces or attempts to enforce an act,
13 order, law, statute, rule, or regulation of the government of the United States in violation of this section is guilty
14 of official misconduct and is subject to the penalties provided in 45-7-401.

15 (4) Any aggrieved party has a private cause of action against any person violating the provisions of this
16 section.

17

18 **Section 2.** Section 75-5-316, MCA, is amended to read:

19 **"75-5-316. Outstanding resource water classification -- rules -- criteria -- limitations -- procedure**
20 **-- definition.** (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules
21 regarding the classification of waters as outstanding resource waters.

22 (2) The department may not:

23 (a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

24 (b) allow a new or increased point source discharge that would result in a permanent change in the water
25 quality of an outstanding resource water.

26 (3) (a) A person may petition the board for rulemaking to classify state waters as outstanding resource
27 waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine
28 whether the petition contains sufficient credible information for the board to accept the petition.

29 (b) The board may reject a petition without further review if it determines that the petition does not
30 contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this

1 subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

2 (c) The board may not adopt a rule classifying state waters as outstanding resource waters until it
3 accepts a petition and makes a written finding containing the provisions enumerated in subsection (3)(d) that,
4 based on a preponderance of the evidence:

5 (i) the waters identified in the petition constitute an outstanding resource based on the criteria provided
6 in subsection (4);

7 (ii) the increased protection under the classification is necessary to protect the outstanding resource
8 identified under subsection (3)(a) because of a finding that the outstanding resource is at risk of having one or
9 more of the criteria provided in subsection (4) compromised as a result of pollution; and

10 (iii) classification as an outstanding resource water is necessary because of a finding that there is no
11 other effective process available that will achieve the necessary protection.

12 (d) The written finding provided for in subsection (3)(c) must:

13 (i) identify the criteria provided in subsection (4) that the board believes serve as justification for the
14 determination that the water is an outstanding resource;

15 (ii) specifically identify the criteria that are at risk and explain why those criteria are at risk; and

16 (iii) specifically explain why other available processes, including the requirements of 75-5-303, will not
17 achieve the necessary protection.

18 (4) The board shall consider the following criteria in determining whether certain state waters are
19 outstanding resource waters. However, the board may determine that compliance with one or more of these
20 criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall
21 consider:

22 (a) whether the waters have been designated as wild and scenic;

23 ~~(b) the presence of endangered or threatened species in the waters;~~

24 ~~(c)~~(b) the presence of an outstanding recreational fishery in the waters;

25 ~~(d)~~(c) whether the waters provide the only source of suitable water for a municipality or industry;

26 ~~(e)~~(d) whether the waters provide the only source of suitable water for domestic water supply; and

27 ~~(f)~~(e) other factors that indicate outstanding environmental or economic values not specifically mentioned
28 in this subsection (4).

29 (5) Before accepting a petition, the board shall:

30 (a) publish a notice and brief description of the petition in a daily newspaper of general circulation in the

1 area affected and make copies of the proposal available to the public. The cost of publication must be paid by
2 the petitioner.

3 (b) provide for a 30-day written public comment period regarding whether the petition contains sufficient
4 credible information, as provided in subsection (3)(b), prior to the hearing required in subsection (5)(c);

5 (c) hold a public hearing regarding the petition and its contents and allow further written and oral
6 testimony at the hearing;

7 (d) issue a proposed decision, including:

8 (i) the written finding provided for in subsection (3)(c); and

9 (ii) the board's acceptance or rejection of the petition;

10 (e) provide for a 30-day public comment period regarding the board's proposed decision; and

11 (f) issue a final decision on acceptance or rejection of the petition, which must include a response to
12 comments that were received by the board, and make copies of this decision available to the public.

13 (6) (a) After acceptance of a petition, the board shall direct the department to prepare an environmental
14 impact statement, as provided under Title 75, chapter 1, part 2, and this section.

15 (b) (i) The petitioner is responsible for all of the costs associated with gathering and compiling data and
16 information, and completing the environmental impact statement.

17 (ii) Before the department may initiate work on the environmental impact statement, the petitioner shall
18 pay the estimated cost of completing the environmental impact statement, as determined by the department.

19 (iii) Upon completion of the environmental impact statement, the petitioner shall pay the department any
20 costs that exceeded the estimated cost. If the cost of the environmental impact statement was less than the
21 estimated cost paid by the petitioner, the department shall reimburse the difference to the petitioner.

22 (iv) The board may not grant or deny a petition until full payment for the environmental impact statement
23 has been received by the department.

24 (7) The board shall consult with other relevant state agencies and county governments when reviewing
25 outstanding resource water classification petitions.

26 (8) (a) After completion of an environmental impact statement and consultation with state agencies and
27 local governments, the board may deny an accepted outstanding resource water classification petition if it finds
28 that:

29 (i) the requirements of subsection (3)(c) have not been met; or

30 (ii) based on information available to the board from the environmental impact statement or otherwise,

1 approving the outstanding resource waters classification petition would cause significant adverse environmental,
2 social, or economic impacts.

3 (b) If the board denies the petition, it shall identify its reasons for petition denial.

4 (c) If the board grants the petition, the board shall initiate rulemaking to classify the waters as outstanding
5 resource waters.

6 (9) A rule classifying state waters as outstanding resource waters under this section may be adopted
7 but is not effective until approved by the legislature.

8 (10) The board may not postpone or deny an application for an authorization to degrade state waters
9 under 75-5-303 based on pending:

10 (a) board action on an outstanding resource water classification petition regarding those waters; or

11 (b) legislative approval of board action designating those waters as outstanding resource waters.

12 (11) As used in this section, "petitioner" means an individual, corporation, partnership, firm, association,
13 or other private or public entity that petitions the board to adopt rules to classify waters as outstanding resource
14 waters."

15

16 **Section 3.** Section 77-1-804, MCA, is amended to read:

17 **"77-1-804. Rules for recreational use of state lands -- penalty.** (1) The board shall adopt rules
18 authorizing and governing the recreational use of state lands allowed under 77-1-203. The board shall use local
19 offices of the department to administer this program whenever practical.

20 (2) Rules adopted under this section must address the circumstances under which the board may close
21 legally accessible state lands to recreational use. Action by the board may be taken upon its own initiative or upon
22 petition by an individual, organization, corporation, or governmental agency. Closures may be of an emergency,
23 seasonal, temporary, or permanent nature. State lands may be closed by the board only after public notice and
24 opportunity for public hearing in the area of the proposed closure, except when the department is acting under
25 rules adopted by the board for an emergency closure. Closed lands must be posted by the lessee at customary
26 access points, with signs provided or authorized by the department.

27 (3) Closure rules adopted pursuant to subsection (2) may categorically close state lands whose use or
28 status is incompatible with recreational use. Categorical or blanket closures may be imposed on state lands due
29 to:

30 (a) cabin site and home site leases and licenses;

1 (b) the seasonal presence of growing crops; and

2 (c) active military, commercial, or mineral leases.

3 (4) The board shall adopt rules that provide an opportunity for any individual, organization, or
4 governmental agency to petition the board for purposes of excluding a specified portion of state land from a
5 categorical closure that has been imposed under subsection (3).

6 (5) Under rules adopted by the board, state lands may be closed on a case-by-case basis for certain
7 reasons, including but not limited to:

8 (a) damage attributable to recreational use that diminishes the income-generating potential of the state
9 lands;

10 (b) damage to surface improvements of the lessee;

11 (c) the presence of ~~threatened, endangered, or~~ sensitive species or plant communities;

12 (d) the presence of unique or special natural or cultural features;

13 (e) wildlife protection;

14 (f) noxious weed control; or

15 (g) the presence of buildings, structures, and facilities.

16 (6) Rules adopted under this section may impose restrictions upon general recreational activities,
17 including the discharge of weapons, camping, open fires, vehicle use, and any use that will interfere with the
18 presence of livestock. The board may also by rule restrict access on state lands in accordance with a block
19 management program administered by the department of fish, wildlife, and parks. Motorized vehicle use by
20 recreationists on state lands is restricted to federal, state, and dedicated county roads and to those roads
21 designated by the department to be open to motorized vehicle use.

22 (7) The board shall adopt rules providing for the issuance of a recreational special use license.
23 Commercial or concentrated recreational use, as defined in 77-1-101, is prohibited on state lands unless it occurs
24 under the provisions of a recreational special use license. The board may also adopt rules requiring a recreational
25 special use license for recreational use that is not commercial, concentrated, or within the definition of general
26 recreational use.

27 (8) For a violation of rules adopted by the board pursuant to this section, the department may assess
28 a civil penalty of up to \$1,000 for each day of violation. The board shall adopt rules providing for notice and
29 opportunity for hearing in accordance with Title 2, chapter 4, part 6. Civil penalties collected under this subsection
30 must be deposited as provided in 87-1-601(7)."

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2 **Section 4.** Section 80-8-304, MCA, is amended to read:

3 **"80-8-304. Investigation and enforcement authority.** (1) In enforcing this chapter, the department or
4 its authorized agents, upon reasonable cause, may enter upon private and public premises and property with a
5 warrant or consent of the inhabitant or owner to inspect or investigate at reasonable times:

6 (a) equipment used for applying pesticides;

7 (b) actual or reported adverse effects caused by pesticides in humans, crops, animals, land, or other
8 property;

9 (c) records on the selling or use of pesticides and the person's stock of pesticides;

10 (d) handling, use, application, storage, and disposal of pesticides by any person;

11 (e) pesticides being applied or to be applied and to sample the pesticides or agricultural commodities;

12 (f) the use and application of a pesticide;

13 (g) the environment alleged to have been exposed to pesticides and to collect and analyze environmental
14 samples;

15 (h) a person's compliance with pesticide worker protection standards and labeling, including handlers
16 and workers;

17 (i) a person's compliance with pesticide ground water and environmental protection agency endangered
18 ~~species~~ standards and labeling; or

19 (j) a person's compliance with licensing, labeling, permitting, and certification requirements.

20 (2) The department is authorized to investigate all incidents involving the application, sale, introduction,
21 or use of registered pesticides or compounds capable of acting in the manner of pesticides when the incidents
22 have a reasonable potential to adversely affect the public environment or persons.

23 (3) The investigation or inspection authority provided for in this section may be exercised over persons
24 not possessing a required license or permit."

25

26 **Section 5.** Section 80-8-306, MCA, is amended to read:

27 **"80-8-306. Penalties.** (1) A person convicted of violating any of the provisions of this chapter or the rules
28 issued under this chapter or who misrepresents, prevents, or attempts to prevent the department or its authorized
29 agent in performance of its duty in connection with the provisions of this chapter is guilty of a misdemeanor and
30 shall be fined not less than \$100 but not more than \$1,500.

1 (2) The department or its authorized representative may apply to the district court of the county where
2 a violation is about to occur or has occurred to grant a temporary or permanent injunction restraining any person
3 from violating or continuing to violate any of the provisions of this chapter or any rule promulgated under the
4 chapter notwithstanding the existence of other remedies of law. When a person makes pesticide applications in
5 more than one county on a commercial basis without a license or permit or operates in violation of a lawful written
6 order of the department in more than one county, the district court of Lewis and Clark County has concurrent
7 jurisdiction with the district court of another county where a violation has occurred or is about to occur and the
8 department may select and proceed in the court that is most appropriate under the circumstances. The injunction
9 is to be issued without bond.

10 (3) Nothing in this chapter requires the department or its authorized agent to report minor violations of
11 the chapter for prosecution or for the institution of seizure proceedings when it believes that the public interest
12 will be best served by other remedial action, by a suitable notice of warning in writing, or by a lawful written order.
13 This chapter does not apply to common carriers transporting shipments tendered to them by the general public.

14 (4) Any person who with intent to defraud uses or reveals information relative to formulas of products
15 acquired under the authority of 80-8-201 shall, upon conviction, be fined not more than \$500 or be imprisoned
16 for not more than 1 year, or both.

17 (5) (a) Any registrant, applicator, dealer, retailer, or other person who commits a major violation of this
18 chapter as defined in subsection (5)(e), in addition to other penalties provided in this chapter, may be assessed
19 a civil penalty by the department of not more than \$2,500 for each offense. However, farm applicators possessing
20 a permit may not be assessed a civil penalty over \$500 for the first offense. Assessment of a civil penalty may
21 be made in conjunction with any other department warning, order, or administrative action authorized by this
22 chapter.

23 (b) A civil penalty may not be assessed unless the person charged was given notice and opportunity for
24 a hearing and an appeal pursuant to the Montana Administrative Procedure Act.

25 (c) (i) If after investigation the department determines that a major violation of this chapter has
26 significantly harmed human life, welfare, or safety or affected agricultural commodities, livestock, or the
27 environment in a manner that cannot be appropriately addressed by the penalties assessed in subsection (5)(a),
28 the department may seek a civil penalty, not to exceed \$25,000 for each offense, by filing a complaint in district
29 court.

30 (ii) In addition to the civil penalty provided in subsection (5)(c)(i), a person who willfully commits a major

1 violation of this chapter that results in significant harm to human life, welfare, or safety or to agricultural
 2 commodities, livestock, or the environment is guilty of a felony and shall, upon conviction, be fined not more than
 3 \$50,000 or be imprisoned in the state prison for not more than 10 years, or both.

4 (d) In determining an appropriate penalty, the department shall consider the effect on the person's ability
 5 to continue in business, the gravity of the violation that occurred, the degree of care exercised by the offender,
 6 and whether significant harm resulted to human health, agricultural commodities, livestock, or the environment.

7 (e) A major violation of this chapter includes:

8 (i) misuse of a pesticide that results in proven exposure of humans, agricultural commodities, or livestock
 9 or results in proven harm to human health, agricultural commodities, livestock, or the environment. As used in
 10 this subsection (i), "misuse" means the use, handling, or release of a pesticide by a person in a manner
 11 inconsistent with the label or labeling or in violation of department pesticide application, storage, mixing, and
 12 loading rules or pesticide and container disposal rules.

13 (ii) selling of a restricted pesticide to a person not certified or authorized to purchase restricted pesticides;

14 (iii) use or sale of unregistered pesticides;

15 (iv) failure to maintain any individual pesticide application and sales records;

16 (v) using or selling pesticides without having obtained the required license or permit;

17 (vi) noncompliance with pesticide worker protection standards and labeling;

18 (vii) noncompliance with pesticide ground water ~~and environmental protection agency endangered~~
 19 ~~species~~ standards and labeling;

20 (viii) noncompliance with pesticide or pesticide container disposal, labeling, or handling requirements and
 21 standards; or

22 (ix) reoccurrence of any identical violation of this chapter within 2 years of the first violation.

23 (f) If the department is unable to collect the civil penalty or if a person fails to pay all or a portion of the
 24 civil penalty as determined by the department, the department may recover that amount by action in the
 25 appropriate district court."

26

27 **Section 6.** Section 82-4-232, MCA, is amended to read:

28 **"82-4-232. Area mining required -- bond -- alternative plan.** (1) (a) Area strip mining, a method of
 29 operation that does not produce a bench or fill bench, is required where strip mining is proposed. The area of land
 30 affected must be backfilled and graded to the approximate original contour of the land. However:

1 (i) consistent with the adjacent unmined landscape elements, the operator may propose and the
2 department may approve regraded topography gentler than premining topography in order to enhance the
3 postmining land use and develop a postmining landscape that will provide greater moisture retention, greater
4 stability, and reduced soil losses from runoff and erosion;

5 (ii) postmining slopes may not exceed the angle of repose or lesser slope as is necessary to achieve a
6 long-term static safety factor of 1.3 or greater and to prevent slides;

7 (iii) permanent impoundments may be approved if they are suitable for the postmining land use and
8 otherwise meet the requirements of this part, as provided by board rules; and

9 (iv) reclaimed topography must be suitable for the approved postmining land use.

10 (b) Spoil from the first cut is not required to be transported to the last cut if highwalls are eliminated, box
11 cut spoils are graded to blend in with the surrounding terrain, and the approximate original contour of the land
12 is achieved.

13 (c) When directed by the department, the operator shall construct in the final grading diversion ditches,
14 depressions, or terraces that will accumulate or control the water runoff.

15 (2) In addition to the backfilling and grading requirements, the operator's method of operation on steep
16 slopes may be regulated and controlled according to rules adopted by the board. These rules may require any
17 measure to accomplish the purpose of this part.

18 (3) For coal mining on prime farmlands, the board shall establish by rule specifications for soil removal,
19 storage, replacement, and reconstruction, and the operator must as a minimum be required to:

20 (a) (i) segregate the A horizon of the natural soil, except when it can be shown that other available soil
21 materials will create a final soil having a greater productive capacity; and

22 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
23 protection from wind and water erosion or contamination by other acid or toxic material;

24 (b) (i) segregate the B horizon of the natural soil, or underlying C horizon or other strata, or a combination
25 of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and
26 that can be shown to be equally or more favorable for plant growth than the B horizon in sufficient quantities to
27 create in the regraded final soil a root zone of comparable depth and quality to that that existed in the natural soil;
28 and

29 (ii) if not used immediately, stockpile this material separately from other spoil and provide needed
30 protection from wind and water erosion or contamination by acid or toxic material;

1 (c) replace and regrade the root zone material described in subsection (3)(b) with proper compaction
2 and uniform depth over the regraded spoil material; and

3 (d) redistribute and grade in a uniform manner the surface soil horizon described in subsection (3)(a).

4 (4) All available topsoil must be removed in a separate layer, guarded from erosion and pollution, and
5 kept in a condition so that it can sustain vegetation of at least the quality and variety it sustained prior to removal.
6 However, the operator shall accord substantially the same treatment to any subsurface deposit of material that
7 is capable, as determined by the department, of supporting surface vegetation virtually as well as the present
8 topsoil. After the operation has been backfilled and graded, the topsoil or the best available subsurface deposit
9 of material that is best able to support vegetation must be returned as the top layer.

10 (5) As determined by rules of the board, time limits must be established requiring backfilling, grading,
11 subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept
12 current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling must be completed before
13 necessary equipment is moved from the operation.

14 (6) (a) The permittee may file an application with the department for the release of all or part of a
15 performance bond. The application must contain a proposed public notice of the precise location of the land
16 affected, the number of acres for which bond release is sought, the permit and the date approved, the amount
17 of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work
18 performed, and a description of the results achieved as they relate to the permittee's approved reclamation plan.
19 In addition, as part of any bond release application, the permittee shall submit copies of letters that the permittee
20 has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water
21 treatment authorities or water companies in the locality of the operation, notifying them of the permittee's intention
22 to seek release from the bond.

23 (b) The department shall determine whether the application is administratively complete. An application
24 is administratively complete if it includes:

25 (i) the location and acreage of the land for which bond release is sought;

26 (ii) the amount of bond release sought;

27 (iii) a description of the completed reclamation, including the date of performance;

28 (iv) a discussion of how the results of the completed reclamation satisfy the requirements of the approved
29 reclamation plan; and

30 (v) information required by rules implementing this part.

1 (c) The department shall notify the applicant in writing of its determination no later than 60 days after
2 submittal of the application. If the department determines that the application is not administratively complete,
3 it shall specify in the notice those items that the application must address. After an application for bond release
4 has been determined to be administratively complete by the department, the permittee shall publish a public
5 notice that has been approved as to form and content by the department at least once a week for 4 successive
6 weeks in a newspaper of general circulation in the locality of the mining operation.

7 (d) Any person with a valid legal interest that might be adversely affected by the release of a bond or the
8 responsible officer or head of any federal, state, or local governmental agency that has jurisdiction by law or
9 special expertise with respect to any environmental, social, or economic impact involved in the operation or is
10 authorized to develop and enforce environmental standards with respect to the operation may file written
11 objections to the proposed release of bond to the department within 30 days after the last publication of the
12 notice. If written objections are filed and a hearing is requested, the department shall hold a public hearing in the
13 locality of the operation proposed for bond release or in Helena, at the option of the objector, within 30 days of
14 the request for hearing. The department shall inform the interested parties of the time and place of the hearing.
15 The date, time, and location of the public hearing must be advertised by the department in a newspaper of
16 general circulation in the locality for 2 consecutive weeks. Within 30 days after the hearing, the department shall
17 notify the permittee and the objector of its final decision.

18 (e) Without prejudice to the rights of the objector or the permittee or the responsibilities of the department
19 pursuant to this section, the department may establish an informal conference to resolve written objections.

20 (f) For the purpose of the hearing under subsection (6)(d), the department may administer oaths,
21 subpoena witnesses or written or printed materials, compel the attendance of witnesses or the production of
22 materials, and take evidence, including but not limited to conducting inspections of the land affected and other
23 operations carried on by the permittee in the general vicinity. A verbatim record of each public hearing required
24 by this section must be made, and a transcript must be made available on the motion of any party or by order of
25 the department.

26 (g) If the applicant significantly modifies the application after the application has been determined to be
27 administratively complete, the department shall conduct a new review, including an administrative completeness
28 determination. A significant modification includes but is not limited to:

29 (i) the notification of an additional property owner, local governmental body, planning agency, or sewage
30 and water treatment authority of the permittee's intention to seek a bond release;

1 (ii) a material increase in the acreage for which a bond release is sought or in the amount of bond release
2 sought; or

3 (iii) a material change in the reclamation for which a bond release is sought or the information used to
4 evaluate the results of that reclamation.

5 (h) The department shall, within 30 days of determining that the application is administratively complete
6 or as soon as weather permits, conduct an inspection and evaluation of the reclamation work involved. In the
7 evaluation, the department shall consider, among other things, the degree of difficulty in completing any remaining
8 reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or
9 future occurrence of the pollution, and the estimated cost of abating the pollution.

10 (i) The department shall review each administratively complete application to determine the acceptability
11 of the application. A complete application is acceptable if the application is in compliance with all of the applicable
12 requirements of this part, the rules adopted under this part, and the permit.

13 (j) (i) The department shall notify the applicant in writing regarding the acceptability of the application no
14 later than 60 days from the date of the inspection.

15 (ii) If the department determines that the application is not acceptable, it shall specify in the notice those
16 items that the application must address.

17 (iii) If the applicant revises the application in response to a notice of unacceptability, the department shall
18 review the revised application and notify the applicant in writing within 60 days of the date of receipt as to whether
19 the revised application is acceptable.

20 (iv) If the revision constitutes a significant modification, the department shall conduct a new review,
21 beginning with an administrative completeness determination.

22 (v) A significant modification includes but is not limited to:

23 (A) the notification of an additional property owner, local governmental body, planning agency, or sewage
24 and water treatment authority of the permittee's intention to seek a bond release;

25 (B) a material increase in the acreage for which a bond release is sought or the amount of bond release
26 sought; or

27 (C) a material change in the reclamation for which a bond release is sought or the information used to
28 evaluate the results of that reclamation.

29 (k) The department shall release the bond in whole or in part if it is satisfied the reclamation covered by
30 the bond or portion of the bond has been accomplished as required by this part according to the following

1 schedule:

2 (i) When the permittee completes the plugging, backfilling, regrading, and drainage control of a bonded
3 area in accordance with the approved reclamation plan, the department shall release 60% of the bond or
4 collateral for the applicable permit area.

5 (ii) After revegetation has been established on the regraded lands in accordance with the approved
6 reclamation plan, the department shall, for the period specified for operator responsibility of reestablishing
7 revegetation, retain that amount of bond for the revegetated area that would be sufficient for a third party to cover
8 the cost of reestablishing revegetation. Whenever a silt dam is to be retained as a permanent impoundment, the
9 portion of bond may be released under this subsection (6)(k)(ii) if provisions for sound future maintenance by the
10 operator or the landowner have been made with the department. Any part of the bond may not be released under
11 this subsection (6)(k)(ii):

12 (A) as long as the lands to which the release would be applicable are contributing suspended solids to
13 streamflow or runoff outside the permit area in excess of the requirements of 82-4-231(10)(k); or

14 (B) before soil productivity for prime farm lands to which the release would be applicable has returned
15 to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent
16 management practices, as determined from the soil survey.

17 (iii) When the permittee has successfully completed all prospecting, mining, and reclamation activities,
18 the department shall release the remaining portion of the bond, but not before the expiration of the period
19 specified for responsibility and not until all reclamation requirements of this part are fully met.

20 (l) If the department disapproves the application for release of the bond or a portion of the bond, it shall:

21 (i) provide to the permittee detailed written findings demonstrating that the reclamation covered by the
22 bond or a portion of the bond has not been accomplished as required by this part; and

23 (ii) recommend corrective actions necessary to secure the release and allowing opportunity for a public
24 hearing.

25 (m) When an application for total or partial bond release is filed with the department, it shall notify the
26 municipality or county in which a prospecting or mining operation is located by certified mail at least 30 days prior
27 to the release of all or a portion of the bond.

28 (7) All disturbed areas must be reclaimed in a timely manner to conditions that are capable of supporting
29 the land uses that they were capable of supporting prior to any mining or to higher or better uses as approved
30 pursuant to subsection (8).

1 (8) (a) An operator may propose a higher or better use as an alternative postmining land use. If the
2 landowner is not the operator, the operator shall submit written documentation of the concurrence of the
3 landowner or the land management agency with jurisdiction over the land. The department may approve the
4 proposed alternative postmining land use only if it meets all of the following criteria:

5 (i) There is a reasonable likelihood for achievement of the alternative land use.

6 (ii) The alternative land use does not present any actual or probable hazard to the public health or safety
7 or any threat of water diminution or pollution.

8 (iii) The alternative land use will not:

9 (A) be impractical or unreasonable;

10 (B) be inconsistent with applicable land use policies or plans;

11 (C) involve unreasonable delay in implementation; or

12 (D) cause or contribute to violation of federal, state, or local law.

13 (b) As used in this section, the term "landowner" includes a person who has sold the surface estate to
14 the operator with an option to repurchase the surface estate after mining and reclamation are complete.

15 (9) The reclamation plan must incorporate appropriate wildlife habitat enhancement features that are
16 integrated with cropland, grazing land, pastureland, land occasionally cut for hay, or other uses in order to
17 enhance habitat diversity, with emphasis on big game animals; and game birds; ~~and threatened and endangered~~
18 ~~species~~ that have been documented to live in the area of land affected, and to enhance wetlands and riparian
19 areas along rivers and streams and bordering ponds and lakes. Incorporation of wildlife habitat enhancement
20 features does not constitute a change in land use to fish and wildlife habitat and may not interfere with the
21 designated land use.

22 (10) Facilities existing prior to mining, including but not limited to public roads, utility lines, railroads, or
23 pipelines, may be replaced as part of the reclamation plan."
24

25 **Section 7.** Section 82-4-335, MCA, is amended to read:

26 **"82-4-335. Operating permit -- limitation -- fees.** (1) A person may not engage in mining, ore
27 processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide
28 ore-processing reagents or other metal leaching solvents or reagents, or disturb land in anticipation of those
29 activities in the state without first obtaining an operating permit from the department. Except as provided in
30 subsection (2), a separate operating permit is required for each complex.

1 (2) (a) A person who engages in the mining of rock products or a landowner who allows another person
2 to engage in the mining of rock products from the landowner's land may obtain an operating permit for multiple
3 sites if each of the multiple sites does not:

4 (i) operate within 100 feet of surface water or in ground water or impact any wetland, surface water, or
5 ground water;

6 (ii) have any water impounding structures other than for storm water control;

7 (iii) have the potential to produce acid, toxic, or otherwise pollutive solutions; or

8 ~~(iv) adversely impact a member of or the critical habitat of a member of a wildlife species that is listed as~~
9 ~~threatened or endangered under the Endangered Species Act of 1973; or~~
10 ~~(iv)~~ (iv) impact significant historic or archaeological features.

11 (b) A landowner who is a permittee and who allows another person to mine on the landowner's land
12 remains responsible for compliance with this part, the rules adopted pursuant to this part, and the permit for all
13 mining activities conducted on sites permitted pursuant to this subsection (2) with the landowner's permission.
14 The performance bond required under this part is and must be conditioned upon compliance with this part, the
15 rules adopted pursuant to this part, and the permit of the landowner and any person who mines with the
16 landowner's consent.

17 (3) A small miner who intends to use a cyanide ore-processing reagent or other metal leaching solvents
18 or reagents shall obtain an operating permit for that part of the small miner's operation where the cyanide
19 ore-processing reagent or other metal leaching solvents or reagents will be used or disposed of.

20 (4) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee
21 of \$500. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an
22 additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal
23 operating expenses of the department whenever those expenses are reasonably necessary to provide for timely
24 and adequate review of the application, including any environmental review conducted under Title 75, chapter
25 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines
26 that an additional fee is necessary and the additional fee will exceed \$5,000, the department shall notify the
27 applicant that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The
28 department shall provide the applicant an opportunity to review the department's estimated expenses. The
29 applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

30 (5) The person shall submit an application on a form provided by the department, which must contain

1 the following information and any other pertinent data required by rule:

2 (a) the name and address of the operator and, if a corporation or other business entity, the name and
3 address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and
4 its resident agent for service of process, if required by law;

5 (b) the minerals expected to be mined;

6 (c) a proposed reclamation plan;

7 (d) the expected starting date of operations;

8 (e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed,
9 the topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately
10 adjacent to the area, and the location of proposed access roads to be built;

11 (f) the names and addresses of the owners of record and any purchasers under contracts for deed of
12 the surface of the land within the permit area and the owners of record and any purchasers under contracts for
13 deed of all surface area within one-half mile of any part of the permit area, provided that the department is not
14 required to verify this information;

15 (g) the names and addresses of the present owners of record and any purchasers under contracts for
16 deed of all minerals in the land within the permit area, provided that the department is not required to verify this
17 information;

18 (h) the source of the applicant's legal right to mine the mineral on the land affected by the permit,
19 provided that the department is not required to verify this information;

20 (i) the types of access roads to be built and manner of reclamation of road sites on abandonment;

21 (j) a plan that will provide, within limits of normal operating procedures of the industry, for completion of
22 the operation;

23 (k) ground water and surface water hydrologic data gathered from a sufficient number of sources and
24 length of time to characterize the hydrologic regime;

25 (l) a plan detailing the design, operation, and monitoring of impounding structures, including but not
26 limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

27 (m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable
28 materials and remedial action plans to be used to control and mitigate discharges to surface or ground water;

29 (n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for
30 expansion of the tailings impoundment or waste site; and

1 (o) an assessment of the potential for the postmining use of mine-related facilities for other industrial
2 purposes, including evidence of consultation with the county commission of the county or counties where the
3 mine or mine-related facilities will be located.

4 (6) Except as provided in subsection (8), the permit provided for in subsection (1) for a large-scale
5 mineral development, as defined in 90-6-302, must be conditioned to provide that activities under the permit may
6 not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written
7 guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule
8 with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply
9 with that commitment within the time scheduled, the department, upon receipt of written notice from the hard-rock
10 mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact
11 board that the permittee is in compliance.

12 (7) When the department determines that a permittee has become or will become a large-scale mineral
13 developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months
14 of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a
15 waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an
16 impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does
17 not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee
18 has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter
19 6, parts 3 and 4, the department shall suspend the permit until the permittee files the required proof or until the
20 hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review
21 and implementation requirements.

22 (8) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing
23 when the aggregate samples are less than 10,000 tons.

24 (9) A person may not be issued an operating permit if:

25 (a) that person's failure, or the failure of any firm or business association of which that person was a
26 principal or controlling member, to comply with the provisions of this part, the rules adopted under this part, or
27 a permit or license issued under this part has resulted in either the receipt of bond proceeds by the department
28 or the completion of reclamation by the person's surety or by the department, unless that person meets the
29 conditions described in 82-4-360;

30 (b) that person has not paid a penalty for which the department has obtained a judgment pursuant to

1 82-4-361;

2 (c) that person has failed to post a reclamation bond required by 82-4-305; or

3 (d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the
4 department has completed the abatement and the person has reimbursed the department for the cost of
5 abatement.

6 (10) A person may not be issued a permit under this part unless, at the time of submission of a bond, the
7 person provides the current information required in subsection (5)(a) and:

8 (a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of
9 this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

10 (ii) presents a certification by the administering agency that the violation is in the process of being
11 corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

12 (b) if the person is a partnership, corporation, or other business association, provides the certification
13 required by subsection (10)(a)(i) or (10)(a)(ii), as applicable, for any partners, officers, directors, owners of 10%
14 or more of any class of voting stock, and business association members."

15

16 **Section 8.** Section 87-1-111, MCA, is amended to read:

17 **"87-1-111. Restitution for illegal killing or possession of certain wildlife.** (1) Except as provided in
18 87-1-115 and in addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a
19 charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall
20 reimburse the state for each bird, mammal, or fish according to the following schedule:

21 (a) bighorn sheep ~~and endangered species~~, \$2,000;

22 (b) elk, caribou, bald eagle, black bear, wolf, and moose, \$1,000;

23 (c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by
24 commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission
25 regulation, \$500;

26 (d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not
27 included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, \$300;

28 (e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), \$100;

29 (f) game bird (except swan), \$25;

30 (g) game fish, \$10.

1 (2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that
2 some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection
3 (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of
4 restitution under this section."

5

6 **Section 9.** Section 87-1-201, MCA, is amended to read:

7 **"87-1-201. Powers and duties.** (1) The department shall supervise all the wildlife, fish, game, game and
8 nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary
9 programs that encourage hunting access on private lands and that promote harmonious relations between
10 landowners and the hunting public. The department possesses all powers necessary to fulfill the duties prescribed
11 by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and
12 the rules adopted by the department.

13 (2) The department shall enforce all the laws of the state regarding the protection, preservation,
14 management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

15 (3) The department has the exclusive power to spend for the protection, preservation, management, and
16 propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired
17 for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or
18 received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from
19 fines or damages collected for violations of the fish and game laws, or from appropriations or received by the
20 department from any other sources is under the control of the department and is available for appropriation to
21 the department.

22 (4) The department may discharge any appointee or employee of the department for cause at any time.

23 (5) The department may dispose of all property owned by the state used for the protection, preservation,
24 management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no
25 further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited
26 to the fish and game account in the state special revenue fund.

27 (6) The department may not issue permits to carry firearms within this state to anyone except regularly
28 appointed officers or wardens.

29 (7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations
30 not inconsistent with the provisions of Title 87, chapter 2, that in its judgment will accomplish the purpose of

1 chapter 2.

2 (8) The department is authorized to promulgate rules relative to tagging, possession, or transportation
3 of bear within or outside of the state.

4 (9) (a) The department shall implement programs that:

5 ~~—— (i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under
6 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;~~

7 ~~—— (ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under
8 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the
9 maintenance or recovery of those species;~~

10 ~~(iii)~~(i) manage elk, deer, and antelope populations based on habitat estimates determined as provided
11 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
12 provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve
13 harvest and population objectives, request that land management agencies open public lands and public roads
14 to public access during the big game hunting season.

15 ~~(iv)~~(ii) address fire mitigation, pine beetle infestation, and wildlife habitat enhancement giving priority to
16 forested lands in excess of 50 contiguous acres in any state park, fishing access site, or wildlife management
17 area under the department's jurisdiction.

18 ~~—— (b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential
19 candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery
20 of those species with the social and economic impacts of species maintenance or recovery.~~

21 ~~(e)~~(b) Any management plan developed by the department pursuant to this subsection (9) is subject to
22 the requirements of Title 75, chapter 1, part 1.

23 ~~—— (d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a
24 privately held listed species, a sensitive species, or a species that is a potential candidate for listing.~~

25 (10) The department shall publish an annual game count, estimating to the department's best ability the
26 numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative
27 regions of the state. In preparing the publication, the department may incorporate field observations, hunter
28 reporting statistics, or any other suitable method of determining game numbers. The publication must include an
29 explanation of the basis used in determining the game count."
30

1 **Section 10.** Section 87-1-301, MCA, is amended to read:

2 **"87-1-301. Powers of commission.** (1) The commission:

3 (a) shall set the policies for the protection, preservation, management, and propagation of the wildlife,
4 fish, game, furbearers, waterfowl, and nongame species,~~and endangered species~~ of the state and for the
5 fulfillment of all other responsibilities of the department as provided by law;

6 (b) shall establish the hunting, fishing, and trapping rules of the department;

7 (c) shall establish the rules of the department governing the use of lands owned or controlled by the
8 department and waters under the jurisdiction of the department;

9 (d) must have the power within the department to establish wildlife refuges and bird and game preserves;

10 (e) shall approve all acquisitions or transfers by the department of interests in land or water, except as
11 provided in 87-1-209(4);

12 (f) shall review and approve the budget of the department prior to its transmittal to the budget office;

13 (g) shall review and approve construction projects that have an estimated cost of more than \$1,000 but
14 less than \$5,000; and

15 (h) shall manage elk, deer, and antelope populations based on habitat estimates determined as provided
16 in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as
17 provided in 87-1-323. In developing or implementing an elk management plan, the commission shall consider
18 landowner tolerance when deciding whether to restrict elk hunting on surrounding public land in a particular
19 hunting district. As used in this subsection (1)(h), "landowner tolerance" means the written or documented verbal
20 opinion of an affected landowner regarding the impact upon the landowner's property within the particular hunting
21 district where a restriction on elk hunting on public property is proposed.

22 (2) The commission may adopt rules regarding the use and type of archery equipment that may be
23 employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in
24 archery equipment change.

25 (3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons,
26 conditions, programs, or other provisions that the commission considers appropriate to promote or enhance
27 hunting by Montana's youth and persons with disabilities.

28 (4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

29 (i) separate deer licenses from nonresident elk combination licenses;

30 (ii) set the fees for the separated deer combination licenses and the elk combination licenses without the

1 deer tag;

2 (iii) condition the use of the deer licenses; and

3 (iv) limit the number of licenses sold.

4 (b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and
5 appropriate to regulate the harvest by nonresident big game combination license holders:

6 (i) for the biologically sound management of big game populations of elk, deer, and antelope;

7 (ii) to control the impacts of those elk, deer, and antelope populations on uses of private property; and

8 (iii) to ensure that elk, deer, and antelope populations are at a sustainable level as provided in 87-1-321
9 through 87-1-325.

10 (5) The commission may adopt rules establishing license preference systems to distribute hunting
11 licenses and permits:

12 (a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant
13 who has been unsuccessful for a shorter period of time; and

14 (b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying
15 landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by
16 the commission.

17 (6) (a) The commission may adopt rules to:

18 (i) limit the number of nonresident mountain lion hunters in designated hunting districts; and

19 (ii) determine the conditions under which nonresidents may hunt mountain lion in designated hunting
20 districts.

21 (b) The commission shall consider, but is not limited to consideration of, the following factors:

22 (i) harvest of lions by resident and nonresident hunters;

23 (ii) history of quota overruns;

24 (iii) composition, including age and sex, of the lion harvest;

25 (iv) historical outfitter use;

26 (v) conflicts among hunter groups;

27 (vi) availability of public and private lands; and

28 (vii) whether restrictions on nonresident hunters are more appropriate than restrictions on all hunters."
29

30 **Section 11.** Section 87-1-621, MCA, is amended to read:

1 **"87-1-621. (Temporary) Forest management account.** (1) There is a special revenue account called
2 the forest management account to the credit of the department of fish, wildlife, and parks.

3 (2) The forest management account consists of money deposited into the account from forest
4 management projects undertaken pursuant to ~~87-1-201(9)(a)(iv)~~ 87-1-201(9)(a)(ii) and from any other source.
5 Any interest earned by the account must be deposited into the account.

6 (3) Except as otherwise directed by state or federal law, funds from the forest management account are
7 statutorily appropriated, as provided in 17-7-502, to the department and must be used by the department to
8 implement forest management projects that may result pursuant to the provisions of ~~87-1-201(9)(a)(iv)~~
9 87-1-201(9)(a)(ii). (Terminates June 30, 2013--sec. 8, Ch. 330, L. 2009.)

10 **87-1-621. (Effective July 1, 2013) Forest management account.** (1) There is a special revenue
11 account called the forest management account to the credit of the department of fish, wildlife, and parks.

12 (2) The forest management account consists of money deposited into the account from forest
13 management projects undertaken pursuant to ~~87-1-201(9)(a)(iv)~~ 87-1-201(9)(a)(ii) and from any other source.
14 Any interest earned by the account must be deposited into the account.

15 (3) Except as otherwise directed by state or federal law, funds from the forest management account must
16 be used by the department to implement forest management projects that may result pursuant to the provisions
17 of ~~87-1-201(9)(a)(iv)~~ 87-1-201(9)(a)(ii)."

18

19 **Section 12.** Section 87-3-235, MCA, is amended to read:

20 **"87-3-235. (Temporary) Fort Peck multispecies fish hatchery established.** (1) There is a
21 multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water
22 game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish
23 populations. Administration of the hatchery must be by the department, consistent with the department's authority
24 provided for in 87-3-201.

25 (2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water
26 species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers.
27 It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric
28 power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

29 (3) Propagation of warm water species, including but not limited to largemouth bass (*Micropterus*
30 *salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), sauger (*Sander canadensis*),

1 black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*),
2 yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish
3 (*Polyodon spathula*), tiger muskellunge, other warm water species classified as species of special concern,
4 ~~threatened, or endangered~~, and bait fish, including cisco (*Coregonus artedii*), must be given priority over the
5 propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall
6 maximize the production of warm water species at the hatchery. The propagation of cold water species may not
7 displace or reduce the propagation of warm water species at the hatchery. The department may not produce
8 more than 750,000 cold water fish at the hatchery each year.

9 (4) Costs for hatchery operation, maintenance, and personnel are to be funded with revenue in the warm
10 water game fish accounts established in 87-3-236, revenue in the general license account, or any federal funding
11 available to the department.

12 **87-3-235. (Effective March 1, 2012) Fort Peck multispecies fish hatchery established.** (1) There is
13 a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water
14 game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish
15 populations. Administration of the hatchery must be by the department, consistent with the department's authority
16 provided for in 87-3-201.

17 (2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water
18 species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers.
19 It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric
20 power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

21 (3) Propagation of warm water species, including but not limited to largemouth bass (*Micropterus*
22 *salmoides*), smallmouth bass (*Micropterus dolomieu*), walleye (*Sander vitreus*), sauger (*Sander canadensis*),
23 black crappie (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*),
24 yellow perch (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish
25 (*Polyodon spathula*), tiger muskellunge, other warm water species classified as species of special concern,
26 ~~threatened, or endangered~~, and bait fish, including cisco (*Coregonus artedii*), must be given priority over the
27 propagation of any cold water species at the hatchery. To the greatest extent possible, the department shall
28 maximize the production of warm water species at the hatchery. The propagation of cold water species may not
29 displace or reduce the propagation of warm water species at the hatchery. The department may not produce
30 more than 750,000 cold water fish at the hatchery each year.

1 (4) Costs for hatchery operation, maintenance, and personnel are to be funded with revenue in the
2 general license account or any federal funding available to the department."

3

4 **Section 13.** Section 87-3-236, MCA, is amended to read:

5 **"87-3-236. (Temporary) Warm water game fish surcharge and stamp -- warm water game fish**
6 **defined -- accounts established -- dedication of revenue to Fort Peck multispecies fish hatchery.** (1) A
7 person who is required to be licensed in order to fish in Montana and who desires to fish in waters listed pursuant
8 to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, Class B-5, or Class A-8 fishing license,
9 pay a warm water game fish surcharge of \$5. The surcharge is in addition to the license fee established for each
10 class of license and entitles the holder to fish in the waters listed pursuant to subsection (9) as authorized by the
11 department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the
12 fishing license.

13 (2) A warm water game fish stamp is valid for the license year in which it is purchased.

14 (3) Revenue from the warm water game fish surcharge must be placed in the account created in
15 subsection (5) and may be used only for the purposes set out in subsection (7).

16 (4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera
17 Stizostedion, Esox, Micropterus, and Lota and includes largemouth bass (*Micropterus salmoides*), smallmouth
18 bass (*Micropterus dolomieu*), walleye (*Stizostedion vitreum*), sauger (*Stizostedion canadense*), black crappie
19 (*Pomoxis nigromaculatus*), white crappie (*Pomoxis annularis*), channel catfish (*Ictalurus punctatus*), yellow perch
20 (*Perca flavescens*), northern pike (*Esox lucius*), pallid sturgeon (*Scaphirhynchus albus*), paddlefish (*Polyodon*
21 *spathula*), other warm water species classified as species of special concern, ~~threatened, or endangered~~, chinook
22 salmon (*Oncorhynchus tshawytscha*), and tiger muskellunge.

23 (5) There is an account into which must be deposited:

24 (a) all proceeds from the warm water game fish surcharge established in subsection (1); and

25 (b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from
26 any source intended to be used for the Fort Peck multispecies fish hatchery.

27 (6) The department shall administer the account within the state special revenue fund established in
28 17-2-102.

29 (7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by
30 the department for the operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery

1 established in 87-3-235, which may include the costs incurred in eradicating illegally introduced warm water
 2 species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

3 (8) The department may not use any nonfederal funds for the hatchery authorized in 87-3-235 other than
 4 those in the account provided for in subsection (5). There is an account in the federal special revenue fund into
 5 which must be deposited all federal money received for purposes of the Fort Peck multispecies fish hatchery and
 6 from which the department may use funds for the hatchery authorized in 87-3-235.

7 (9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish
 8 hatchery will be planted. All waters listed in the Montana fishing regulations that require a warm water stamp and
 9 waters planted or waters that will be planted with fish from the Fort Peck multispecies fish hatchery must be
 10 permanently included on the list. The waters designated in the list are the only waters for which a warm water
 11 game fish stamp is required. (Repealed effective March 1, 2012--secs. 3, 4(2), Ch. 431, L. 2009.)"

12

13 **Section 14.** Section 87-5-101, MCA, is amended to read:

14 "**87-5-101. Short title.** This part shall be known and may be cited as "The Nongame ~~and Endangered~~
 15 ~~Species Conservation Act~~"."

16

17 **Section 15.** Section 87-5-102, MCA, is amended to read:

18 "**87-5-102. Definitions.** As used in this part, the following definitions apply:

19 (1) "Account" means the nongame wildlife account established in 87-5-121.

20 (2) "Commercial purposes" means the collection, harvest, possession, or transportation of a species or
 21 subspecies of nongame wildlife from the wild with the intent to barter, offer for sale, ship or transport for eventual
 22 sale, or sell the animal or any part of the animal.

23 (3) "Ecosystem" means a system of living organisms and their environment, each influencing the
 24 existence of the other and both necessary for the maintenance of life.

25 ~~———— (4) "Endangered species" means a species or subspecies of wildlife that is actively threatened with~~
 26 ~~extinction due to any of the following factors:~~

27 ~~———— (a) the destruction, drastic modification, or severe curtailment of its habitat;~~

28 ~~———— (b) its overutilization for scientific, commercial, or sporting purposes;~~

29 ~~———— (c) the effect on it of disease, pollution, or predation;~~

30 ~~———— (d) other natural or artificial factors affecting its prospects of survival or recruitment within the state; or~~

1 ~~_____ (e) any combination of the foregoing factors.~~

2 ~~(5)~~(4) "Management" means the collection and application of biological information for the purposes of
3 conserving populations of wildlife consistent with other uses of land and habitat. The term includes the entire
4 range of activities that constitute a modern scientific resource program, including but not limited to research,
5 census, law enforcement, habitat improvement, control, and education. The term also includes the periodic
6 protection of species or populations as well as regulated taking.

7 ~~(6)~~(5) "Nongame wildlife" means a wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or
8 other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by
9 statute or regulation of this state as predatory in nature are not classified as nongame wildlife for purposes of this
10 part.

11 ~~(7)~~(6) "Person" means an individual, firm, corporation, association, or partnership.

12 ~~(8)~~(7) "Take" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

13 ~~(9)~~(8) "Wildlife" means a wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, or other wild
14 animal or any part, product, egg, or offspring or the dead body or parts of the animal."
15

16 **Section 16.** Section 87-5-103, MCA, is amended to read:

17 **"87-5-103. Legislative intent, findings, and policy.** (1) The legislature, mindful of its constitutional
18 obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted The Nongame ~~and~~
19 ~~Endangered Species~~ Conservation Act. It is the legislature's intent that the requirements of this part provide
20 adequate remedies for the protection of the environmental life support system from degradation and provide
21 adequate remedies to prevent unreasonable depletion and degradation of natural resources.

22 (2) The legislature finds and declares ~~all of the following:~~

23 ~~_____ (a) that it is the policy of this state to manage certain nongame wildlife for human enjoyment, for scientific~~
24 ~~purposes, and to ensure their perpetuation as members of ecosystems;~~

25 ~~_____ (b) that species or subspecies of wildlife indigenous to this state that may be found to be endangered~~
26 ~~within the state should be protected in order to maintain and, to the extent possible, enhance their numbers;~~

27 ~~_____ (c) that the state should assist in the protection of species or subspecies of wildlife that are considered~~
28 ~~to be endangered elsewhere by prohibiting the taking, possession, transportation, exportation, processing, sale~~
29 ~~or offer for sale, or shipment within this state of species or subspecies of wildlife unless those actions will assist~~
30 ~~in preserving or propagating the species or subspecies."~~

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Section 17. Section 87-5-108, MCA, is amended to read:

"87-5-108. Establishment of programs. (1) The director shall establish programs, including acquisition of land or aquatic habitat, that are considered necessary for management of nongame ~~and endangered~~ wildlife. The department shall establish policies that are necessary to carry out the purpose of 87-5-109 and this section.

(2) In carrying out programs authorized by this section, the department may enter into agreements with federal agencies, political subdivisions of the state, or with private persons for administration and management of any area established under 87-5-109 and this section or used for management of nongame ~~or endangered~~ wildlife.

(3) The governor shall review other programs administered by the governor and, to the extent practicable, use those programs in furtherance of the purposes of 87-5-109 and this section. The governor shall also encourage other state and federal agencies to use their authorities in furtherance of the purposes of 87-5-109 and this section."

Section 18. Section 87-5-109, MCA, is amended to read:

"87-5-109. Taking of species for educational, scientific, or other purposes. (1) The director may permit the taking, possession, transportation, exportation, or shipment of ~~species or subspecies of wildlife which appear on the state list of endangered species, on the United States' list of endangered native fish and wildlife, as amended and accepted in accordance with 87-5-107(5), or on the United States' list of endangered foreign fish and wildlife, as such list may be modified hereafter,~~ nongame wildlife for scientific, zoological, or educational purposes, for propagation in captivity of ~~such~~ that wildlife, or for other special purposes.

(2) ~~Upon good cause shown and where necessary to alleviate damage to property or to protect human health, endangered species may be removed, captured, or destroyed but only pursuant to permit issued by the director and, where possible, by or under the supervision of an agent of the department. Endangered species may be removed, captured, or destroyed without permit by any person in emergency situations involving an immediate threat to human life. Provisions for removal, capture, or destruction of nongame wildlife for the purposes set forth above shall be set forth~~ in subsection (1) must be provided for in regulations issued by the department pursuant to 87-5-105."

Section 19. Section 87-5-112, MCA, is amended to read:

1 **"87-5-112. Construction.** This part may not be construed to apply retroactively or to prohibit importation
 2 into the state of wildlife that are lawfully imported into the United States or lawfully taken or removed from another
 3 state or to prohibit entry into the state or possession, transportation, exportation, processing, sale or offer for sale,
 4 or shipment of any wildlife ~~whose species or subspecies is determined to be threatened with statewide extinction~~
 5 in this state but not in the state where originally taken, if the person engaging therein demonstrates by substantial
 6 evidence that the wildlife was lawfully taken or removed from the state. ~~However, this section may not be~~
 7 ~~construed to permit the possession, transportation, exportation, processing, sale or offer for sale, or shipment~~
 8 ~~within this state of wildlife on the United States' list of endangered native fish and wildlife, as amended and~~
 9 ~~accepted in accordance with 87-5-107(5), except as permitted in the provision by 87-5-107(3) and (4) and~~
 10 ~~87-5-109(1)."~~

11
 12 **Section 20.** Section 87-5-205, MCA, is amended to read:

13 **"87-5-205. Restrictions on species allowed for falconry.** (1) Bald eagles; and any raptors listed
 14 pursuant to 50 CFR, part 17, ~~and any species that has been listed pursuant to 87-5-107~~ may not be captured in
 15 this state for the sport of falconry.

16 (2) Species of raptors that are native to North America may be brought into Montana for the purpose of
 17 falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal
 18 government. Those raptors may be possessed, subject to this part. A person bringing a raptor into this state must
 19 be able to show proof of the area of origin."

20
 21 NEW SECTION. **Section 21. Repealer.** The following sections of the Montana Code Annotated are
 22 repealed:

23 87-5-107. List of endangered species.
 24 87-5-131. Process for delisting of gray wolf -- management following delisting.

25
 26 NEW SECTION. **Section 22. Codification instruction.** [Section 1] is intended to be codified as an
 27 integral part of Title 2, chapter 1, and the provisions of Title 2, chapter 1, apply to [section 1].

28
 29 NEW SECTION. **Section 23. Severability.** If a part of [this act] is invalid, all valid parts that are
 30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. **Section 24. Effective date.** [This act] is effective on passage and approval.

4

- END -