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Take of Wildlife on Private Property – New Mexico

Position Paper

Damage caused to private property by free ranging wildlife is a controversial subject that has been debated in the United States since the ratification of private property rights in the U.S. Constitution. Protected wildlife species are frequently responsible for damage to private property and threats to human life. The New Mexico Department of Game and Fish has a statutory obligation to manage state-trust wildlife while private landowners routinely manage their lands in benefit to wildlife, but have no such statutory obligation. Recognizing the rights of landowners to protect their private property, New Mexico has enacted legislation to protect private property from unmitigated wildlife damage.

History – The bill that resulted in the current statute (17-2-7.2 NMSA 1978) was introduced and ultimately passed by Senator Tim Jennings in 1997. The law, known as the “Jennings Law”, outlined the statutory right of landowners to kill wildlife that damage their private property. A related bill in 2001 also established a ‘big game depredation damage fund’ to “correct damage to federal, state or private land caused by big game and to prevent such damage in the future”. The two laws were passed on the premise that wildlife are owned by the State and therefore, wildlife that eat crops or do other damage to private property are, in effect, taking private property. Any take of private property for a public use (e.g., the public wildlife resource eating private crops) without just compensation is a violation of a property owner’s constitutional rights under the 5th Amendment to the U.S. Constitution and Article II, Section 20 of the State of New Mexico Constitution.

Adversaries of the Jennings Law routinely claim it allows landowners to extort payment from the Department in the form of transferable big game licenses (Elk Private Land Use System and Antelope Private Land Use System authorizations) or game-proof fencing (see <http://www.nmwild.org/2009/news/wildlife-depredation/>). Similarly, adversaries complain that unregulated take of the public’s wildlife resource is a violation of the tenets of the North American model of wildlife conservation (see <http://www.rmef.org/Conservation/HuntingIsConservation/NorthAmericanWildlifeConservationModel.aspx> and <http://joomla.wildlife.org/documents/positionstatements/41-NAModel%20Position%20Statementfinal.pdf>) in which wildlife are held in trust by individual states and sustainably managed for benefit of the public at large. Such management is implemented through regulations developed and adopted by state wildlife agencies that were granted authority over wildlife through their state legislative body or state constitution. As a general rule across the country, private landowners must apply for a permit (usually a ‘depredation permit’) of various iterations that would enable them to kill state-protected wildlife species that are damaging private property. Some states,

however, have elected to handle such problems by legislatively enabling landowners to kill offending wildlife without the need of a permit.

Economic Damage – Wildlife cause a significant amount of economic damage to private property, including crops, in the United States. Unfortunately, quantification of such damage is difficult as most studies to date have focused on single species or a limited geographic area or both. In response to the need for address of problem wildlife, animal damage control, both private sector and governmental, is a multibillion dollar annual industry that is growing as the human population increasingly expands into wildlife habitat. Such growth will only continue to exacerbate the need for feasible and less burdensome regulatory mechanisms by which private property owners are able to effectively deal with nuisance wildlife.

Arguments abound regarding landowners' take of the public's wildlife resource and the potential negative impact of such take on regulated hunting and associated revenues. In fact, however, the wildlife killed in New Mexico by landowners who use the Jennings Law to handle depredation problems by killing animals is negligible both in quantity and economic value. According to the Department, from 2010 to 2014, *total* landowner killings pursuant to 17-2-7.2 NMSA 1978 were 2 pronghorn, 5 mountain lions, 23 elk, and 125 bears. In other words, landowners who exercise their ability to kill depredating wildlife have no impact on sustainable management of wildlife populations or hunting license allocation.

The position of The Lineberry Policy Center for Natural Resource Management with respect to landowners' take or killing of wildlife that are doing damage to their private property is:

1. The future of wildlife depends on stewardship that recognizes the growing human population and the necessary role of people in wildlife and habitat conservation. Such conservation mandates the need to manage wildlife populations in balance with people such that they are available for sustained use and enjoyment for present and future generations.
2. We promote the position that people are solely responsible for promulgating and enforcing laws and developing management programs essential to sustaining wildlife populations. Further, wildlife laws and management policies should enhance the values and benefits of wildlife resources, while minimizing liabilities associated with wildlife populations, species, and habitats.
3. People originally settled the arid Southwest in areas that provided ample water and natural resources to survive. Such areas were and are vitally important to the continued persistence of people who make a living off the land and are equally important to the long-term welfare and persistence of local wildlife populations.
4. People have lived with wildlife in the arid Southwest for millennia and as such, have learned to coexist with wildlife while simultaneously developing the land and natural resources for beneficial human use. Substantial water development across private property, state lease, and federal lands by private property owners has led to increased wildlife carrying capacities where no naturally occurring water existed pre-settlement.
5. Reasonable regulatory mechanisms are essential in providing relief to private property owners who suffer damage to their private property from state-trust wildlife species.

6. The current New Mexico law that allows landowners to take or kill protected wildlife that presents an immediate threat to human life or an immediate threat of damage to property, including crops, is a reasonable working solution to the issue of wildlife depredation that recognizes the rights of private property owners as ratified under the U.S. and State of New Mexico Constitutions.
7. The State Legislature should continue to affirm the rights of private property owners with respect to protecting private property from wildlife damage through reasonable regulatory mechanisms including continued allowance of take or killing of offending animals.