

BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES OF THE STATE OF MONTANA

<p>(Justice v. Fielder)</p> <p>If Reported on Website it will be listed as "J v F" as Ethics Complaints have confidentiality unless Waived</p>	<p>No. COPP 2014-ETH-006</p> <p>Ethics Complaint Not Accepted, but Rejected On Basis of Lack of Jurisdiction</p>
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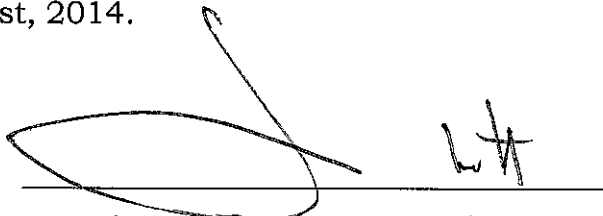
Christopher Justice, a resident of Thompson Falls, Montana, prepared and sent to the Commissioner an ethics claim posed as a complaint against a private individual, a Mr. Paul Fielder. The ethics complaint is not accepted for filing, but is hereby rejected and returned to Mr. Justice. The reasons for the rejection are set out below.

The COPP does have authority to consider complaints alleging certain breaches of ethical standards. In particular the Commissioner oversees Montana's ethical requirements that apply to public officers and public employees (§2-2-105 MCA). There are, however, no such standards applicable to the acts of a private individual, such as Mr. Fielder. While the complaint does allege interaction between Mr. Fielder and state employees, the alleged ethical breaches are described as those of Mr. Fielder.

WEBSITE STATUS

If listed at all, this Matter will be listed on the website as *J v. F, COPP-2014-ETH-006*. The description of action taken will be “complaint rejected for filing and returned on the basis of lack of jurisdiction.” The Commissioner will protect the privacy requirements of an ethics complaint. This Decision will not be available for ordinary public review, but will be retained in the Commissioner’s records for appropriate access and review.

DATED this 7th day of August, 2014.

A handwritten signature in black ink, consisting of a large, stylized loop followed by the initials 'JRM', positioned above a horizontal line.

Jonathan R. Motl
Commissioner of Political Practices
Of the State of Montana
P. O. Box 202401
1205 8th Avenue
Helena, MT 59620
Phone: (406)-444-4622

Commissioner of Political Practices
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COMMISSIONER OF
POLITICAL PRACTICES

HAND DELIVERED

CERTIFIED MAIL

SIGNED/NOTARIZED

Ethics

Complaint Form (10/09)

Type or print in ink all information on this form except for verification signature

Person bringing complaint (Complainant):

Complete Name Christopher Justice

Complete Mailing Address P.O. Box 8884, Missoula, MT 59807

Phone Numbers: Work 406-274-1069 Home 406-274-1069

Person or organization against whom complaint is brought (Respondent):

Complete Name Paul Fielder

Complete Mailing Address P.O. Box 2558, Thompson Falls, MT 59873

Phone Numbers: Work 406-827-7777 Home 406-827-7777

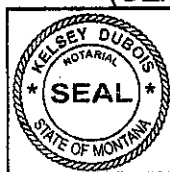
**Please complete the second page of this form
and describe in detail the facts of the alleged violation.**

Verification by oath or affirmation

State of Montana, County of Missoula

I, Christopher Justice, being duly sworn, state that the information in this Complaint is complete, true, and correct, to the best of my knowledge and belief.

(SEAL)



KELSEY DUBOIS
NOTARY PUBLIC for the
State of Montana
Residing at Huson, Montana
My Commission Expires
July 31, 2017

Signature of Complainant

Subscribed and sworn to before me this 5th day of
August, 2014.

Notary Public

My Commission Expires: July 31, 2017

Statement of facts:

Describe in detail the alleged violation(s), including pertinent dates, and cite the statute or statutes you believe have been violated. Please attach copies of documentary evidence to support the facts alleged in your statement.

If the space provided below is insufficient, you may attach additional pages as necessary.

Please see the attached "District 1 Report" by Paul Fielder, Montana Trappers Association District 1 Director and Montana Trappers Association's Liaison with Montana Fish, Wildlife and Parks. In this report, Mr. Fielder describes (highlighted in yellow) how he and MTA president Toby Walrath spend many hours "crafting language for the proposed public lands trap-ban ballot initiative so it will not be totally 1-sided against us." He goes on to describe meeting with "4 top level Wildlife Division administrators," as well as other officials responsible for reviewing Initiative 167.

During the course of the review, language was subtracted and also introduced in the initiative ("In addition, the state would incur financial expenses for state employees to conduct trapping of nuisance and conflict animals") that undermined the intent of the initiative to such an extent the board of Footloose Montana voted to not go forward with the initiative in the 2014 election cycle. The introduction of "trapping of nuisance and conflict animals" opens the door to trapping for any animal judged by anyone to be a nuisance. Also, the bulk of the language in the initiative's Findings was removed that we felt was crucial to the public's understanding of the limits of the initiative. For instance, the statement that hunting and fishing will not be affected by this initiative and are protected rights under the Montana Constitution was deleted. Also removed were Rights of Private Landowners Will Be Protected; Trapping Violates Hunting Ethics; Trapping Causes the Opposite of a Quick, Efficient Kill; Trapping Causes Wanton Waste; Trapping Commercializes Wildlife; Trapping is Costly to Montana; High Country Beaver Trapping Drains Our Water Supply; Wildlife is Montana's Heritage; Trapping Undermines Wildlife Management.

Footloose Montana board member Connie Poten, contacted Jeff Hagener, Director of Fish, Wildlife and Parks, after the review process and was told that he could speak about general rules but could not discuss anything pertinent to the initiative while it was active. Yet Mr. Fielder claims to have worked closely together with four top level FWP officials against the initiative during the review process. On the final day of the comment period, Brian Miller, representing Footloose Montana, submitted a comment rebutting language changes. However, his comments were not acknowledged by the Assistant Attorney General because the AG decided arbitrarily to closed the comment period before the deadline.

Statutes violated: MCA 13-35-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

MCA 13-35-204. Official misconduct.

Complaint must be:

- **signed**
- **notarized**
- **delivered in person or by certified mail.**

Fielder sinks initiative

<http://www.trapperpredatorcaller.com/article-index/montana-trappers-association-november-2013-report>

Below is an excerpt from the Trapper and Predator Caller Nov. 2013 report from MTA. It shows the extent of the inside access between the MTA , attorney general's office, and the FWP.

DISTRICT 1 REPORT

Since the spring 2013 Board meeting we have had an MTA Trapper Education Certification class. The class was held in Kalispell in August. We now have 6 certified MTA instructors that I know of in Region 1. The following day we conducted an MTA Trapper Education Class, also in Kalispell. Although only 11 students attended the class (including 3 women and 2 youngsters) they thanked us for a good class in which they learned much. The new MTA Trapper Education Manual is a great teaching guide to reference often while instructing the class.

The bobcat quota was increased from 250 to 275 (10%) for Region 1. That was a direct result of discussion at our Region 1 trapper's spring meeting and follow-up testimony at MFW&P Commission meetings. An increase in the Region 1 otter quota will be considered at our 2014 spring meeting.

At the spring MTA Board meeting, President Tom Barnes assigned me (Paul Fielder) the position of MTA Liaison with MTFW&P. I consider those duties the same as my duties as District 1 Director because I'm still represent trappers the best that I can. This title just gives a more sway with MFW&P.

As part of that duty, I attended the July MFW&P Commission meeting to testify on wolf harvest quotas, trap set-back regulations, and other trapping issues. I've gotten to know the new MFW&P Commissioner, Gary Wolfe of Missoula (finally a Commissioner from the west side of the Divide) and feel he will be responsive to trapper's issues. I've met with MFW&P biologists and enforcement personnel in Kalispell and Helena to discuss how the expanded trapping and snaring special regulations to protect lynx will be interpreted (e.g., what is and isn't a "non-relaxing (lethal) snare" and does a deer stop in the snare make it a "relaxing (non-lethal)" snare? What

snare locks will MFW&P Enforcement interpret as relaxing and non-relaxing? Trappers have a lot of equipment that may need to be modified before the season starts in order to remain legal.

An Animal Rights Group (never give them any other name recognition) has filed another petition to ban ALL trapping on public lands in Montana. I worked closely with Toby Walrath (and comments from other Board members) for many hours in crafting language for the proposed public lands trap-ban ballot initiative so it will not be totally 1-sided against us. I went to Helena and met with 4 top level Wildlife Division administrators, the Assistant Attorney General responsible for the text of the initiative, and the fiscal note writer for the initiative in the Office of Budget and Financial Planning. I was able to discuss the ballot initiative with them, how I felt it would affect Montana, how we could best influence the ballot initiative, hand delivered MTA comments to the initiative along with supporting documents, and followed that up by sending e-mails to the AG and OB&FP offices with electronic copies of what I hand delivered (to ensure a paper trail). Then, after they extended the deadline so comments could be made on the revised fiscal note, Toby and I re-wrote and revised our comments and submitted them again. This issue has taken up many hours already, and it is just the beginning – FOR ALL OF US IF WE WANT TO KEEP TRAPPING, because they'll work harder to keep us from trapping.

I'll continue to work on the expanded snare regulation interpretation by MFW&P and trap-ban initiative. MFW&P invited Toby Walrath and I to be part of a "Trapping Working Group", with a first meeting scheduled for October 1st. We'll see how that goes. I (and Toby) are on our Region's MFW&P Citizen Advisory Councils. We're building a better relationship with MFW&P and the new western region Commissioner. We have some good legislative support behind us that is opening doors for us and getting us seats at the tables when we request them. As the saying goes, "If you're not at the table, you're on the menu." We're at the table! — **Paul C Fielder – MTA District 1 Director & MTA Liaison with MFW&P**

BE IT ENACTED BY THE PEOPLE OF THE STATE OF MONTANA
AN INITIATIVE CALLED TRAP-FREE MONTANA PUBLIC LANDS PROHIBITING
TRAPPING OF ANIMALS ON PUBLIC LAND WITHIN THE STATE OF MONTANA
EXCEPT FOR STUDY OR THE PROTECTION OF PROPERTY, HEALTH OR
SAFETY AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the people of the state of Montana:

NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be
cited as the "Montana Trap-Free Public Lands Act."

NEW SECTION. Section 2. Findings. The people of the state of Montana
find as follows:

(1) Rights of Private Landowners Will Be Protected: Trapping on private
property (approximately 65% of Montana's land base) is unaffected by
this initiative. This initiative pertains to the approximate 35% of land in
Montana designated as public land.

(2) Traps Make Public Lands Unsafe: While an unattended fishing rod is
illegal, tens of thousands of baited, concealed traps on public land
endanger adults, children, and pets. Over 55 family pets were reported
caught in traps in Montana (2012-2013 season) and a woman suffered
a heart attack attempting to release her dog. Montanans should not
have to compromise peace of mind and child and pet safety when using
public land.

(3) Trapping Violates Hunting Ethics: The first rule of hunting is “Be Sure of Your Target,” but unattended traps indiscriminately catch, maim, and kill unintended victims from pets to protected species, such as eagles and Canada lynx.

(3.1) **Trapping Is Not Fair Chase:** Trapping does not follow the time-honored principles of “Fair Chase.” Animals are lured with bait and trappers are not present when their quarry is caught.

(3.2) **Trapping Causes the Opposite of a Quick, Efficient Kill:** Legally, trappers can allow animals to linger in traps indefinitely, where they can suffer slow, agonizing deaths, break teeth and bones, and suffer dislocations, dehydration, hypothermia, and panic. “Jellyhead” is the term trappers use for an animal strangled in a snare so long that thick, bloody lymph fluid swells the head. “Wring-off” is their term for an animal twisting or chewing off a paw or appendage to escape. Trappers kill still-living, trapped animals by bludgeoning, stomping on them, drowning, shooting, strangulation, or injection of poisonous chemicals.

(3.3) **Trapping Causes Wanton Waste:** For every furbearer killed, many more non-targeted wild and domestic animals are injured, killed and discarded; this waste is in violation of hunting ethics. Legal year-round trapping also indirectly kills untold numbers of orphaned young.

(3.4) Trapping Commercializes Wildlife: While the commercialization of wildlife has been outlawed for over a century, it survives in the form of recreational trapping. Hunters and anglers are prohibited from capitalizing on their quarry, but trappers profit from killing publicly owned wild animals and selling their skins.

(4) Traps Are Cruel and Cause Pain and Suffering. Animals caught in traps suffer fear, anxiety, and physical pain. Injuries caused by traps range from lacerations to dislocated joints and broken bones, even amputation of limbs. The most commonly used trap, the steel-jaw leg-hold trap, is condemned as inhumane by national and international veterinary associations.

(5) Trapping Is Costly to Montana: Wildlife watching brought 400 million dollars into Montana in 2011 (U.S. Fish and Wildlife Service; U.S. Census Bureau), making it one of Montana's largest industries. While less than 0.5% of Montana's citizens trap (fewer than 5000 people), trapping depletes rare species, wastes wildlife with unintended captures, and has a negative impact on Montana tourism.

(6) Trapping is Marginally Regulated and the Regulations Are Not Enforceable: While hunting and fishing are strictly regulated, trapping is not. A \$29 license allows trappers to set unlimited numbers of traps without mandatory trap-check intervals (a

mandatory 48-hour interval exists for wolves only). Many wildlife species are trapped year-round without any regulations or licensing requirements, and regulatory monitoring of tens of thousands of traps concealed across public lands is impossible. Of 15 fur-bearing species only four have quota limits--otter, bobcat, swift fox, and fisher. The rest can be killed in unlimited numbers, including beaver, muskrat, mink, marten, weasel, fox, coyote, skunk, raccoon, and badger. Wolverine trapping is currently suspended pending proposed threatened species status under the Endangered Species Act. However, traps are indiscriminate; any creature can become a victim. Quota limits are frequently exceeded and state management records for some years are nonexistent.

High Country Beaver Trapping Drains our Water Supply.

Replenishing aquifers is crucial to Montana's agriculture and communities. Trapping beavers in upstream, publicly owned forests and drainages reduces water retention and stream flow critical for irrigation, drinking water, wildlife, and fish habitat. Beaver-created ponds and riparian habitat are key to the success of healthy watersheds and species ranging from moose to songbirds, as well as the creation of natural firebreaks and overall healthy watersheds. In places where beaver dams are not wanted, effective, non-lethal management alternatives exist.

(8) Wildlife is Montana's Heritage. Even though our rich wildlife heritage is under increasing pressure, Montana is still a refuge for species disappearing from the lower 48—the grizzly, fisher, wolverine, lynx, and others. Trapping—no longer necessary for survival—has been replaced by wildlife watching as an essential source of state income and employment. As former trapper and noted bear biologist Chuck Jonkel has observed, “The days of trapping are over. Now it’s time to protect the animals.”

(9) Trapping Undermines Wildlife Management: Trapping is market-driven; fur prices dictate participant numbers. Trapping provides no reliable scientific data. According to Fish, Wildlife & Parks, about 35% of trappers return voluntary surveys. This is anecdotal data which is unreliable as hard science. Few records are kept of non-targeted trapped animals, including endangered species (when reported at all). A lactating female killed in a trap results in starved offspring whose numbers are unknown and uncounted. Trapping is managed solely for recreation, not for wildlife management or disease control.

(10) Hunting and fishing, protected as rights by Montana's constitution, are not affected by this initiative.

NEW SECTION. Section 3. (1) It is unlawful for a person to trap or attempt to trap the following animals on public lands, including public lands leased to private parties:

(a) any animals defined by 87-2-101 as “fur-bearing animals,” “game animals,” “migratory game birds,” “upland game birds,” “predatory animals,” and those wild mammals and birds defined as “non-game wildlife” as well as large predators defined by 87-1-217(2)(b).

(2) This section does not:

(a) limit trapping allowed under 87-2-806, 87-2-807 or 87-5-204;

(b) limit the traditional public health and safety activity of the department’s employees, including trapping, conducted by the department’s employees or employees of any other unit of state or local government.

(3) The department or other unit of government must use its own employees and may not contract with or use private individuals to accomplish the trapping activities on public land allowed under [subsection 2]. An employee conducting trapping must first consider and, where possible, attempt to live trap the animal before using other means of trapping to remove the animal.

(4) There may be no commercial use of any animal or any part of an animal trapped on public land under [subsection 2]. The department or other unit of government, after carrying out trapping activities on public land allowed under [subsection 2], must document any animal trapped and document the:

a) disposal of the entire animal trapped, including the fur; or

b) use of the animal carcass for beneficial public purposes.

NEW SECTION. Section 4. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87 apply to [sections 1 through 3].

NEW SECTION. Section 5. {standard} This act is effective upon approval by the electorate.

NEW SECTION. Section 6. Submission to electorate. {standard} This act shall be submitted to the qualified electors of Montana at the general election to be held in November 2014 by printing on the ballot the following:

Ballot Statement (135 words)

This initiative prohibits trapping by private individuals of fur-bearing animals, game animals, migratory game birds, upland game birds, predatory animals, and certain non-game wildlife by any means on any public lands within the state of Montana, except as allowed for study purposes or for the actions of government in protecting the safety, health or property of citizens.

Yes I vote to prohibit trapping of most animals by private individuals on any public lands within the state of Montana.

PETITION TO PLACE INITIATIVE NO. 167 ON THE ELECTION BALLOT

Subject to applicable laws and deadlines, if 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is 24,175, this initiative will appear on the next general election ballot. If a majority of voters vote for this initiative at that election, it will become law.

We, the undersigned Montana voters, propose that the secretary of state place the following initiative on the November 4, 2014, general election ballot:

Statement of Purpose and Implication:

I-167 makes unlawful the trapping of fur-bearing animals, game animals, migratory game birds, upland game birds, large predators, predatory animals, and certain non-game wildlife by any means on any public lands within Montana, including public lands leased to private parties, subject to limited exceptions. I-167 allows trapping for scientific purposes, migratory game bird propagation, and falconry, and also allows trapping by state and local officials to protect public health and safety. However, the commercial use of any animal or bird trapped on public land for any allowable purpose is prohibited.

Fiscal Statement:

I-167 will result in the loss of approximately \$65,040 in trapping license revenue to the state. In addition, the state would incur financial expenses for state employees to conduct trapping of nuisance and conflict animals. These costs cannot be reasonably determined.

- YES on Initiative I-167
- NO on Initiative I-167

Voters are urged to read the complete text of the initiative, which appears on the reverse side of this sheet. A signature on this petition is only to put the initiative on the ballot and does not necessarily mean the signer agrees with the initiative.

WARNING

A person who purposefully signs a name other than the person's own to this petition, who signs more than once for the same issue at one election, or who signs when not a legally registered Montana voter is subject to a \$500 fine, 6 months in jail, or both.

Each person is required to sign the person's name and list the person's address or telephone number in substantially the same manner as on the person's voter registration card or the signature will not be counted.

Signature	Date	Residence Address <u>or</u> Post-Office Address <u>or</u> Home Telephone	Printed Last Name and First and Middle Initials	For County Election Office Use	
				Leg Rep. Dist. #	Ofc Use Only
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Initiative after state Review

-NOTE that language has been removed in the FINDINGS - especially #10 in original.

COUNTY: _____

IMPORTANT INSTRUCTIONS TO PETITION SIGNATURE GATHERERS: (1) please collect voters' signatures from only one county per sheet, ask what county of residence before signing; (2) only the signatures of registered voters qualify, don't need to know legislative district; (3) check for legibility and that signers place information in the correct column; never leave petition unattended; (4) sign, get notarized and attach an affidavit of signature gatherer to the petitions (up to 25 petition sheets, from the same county, can be attached to one affidavit), count the number of signatures, and hand in original petition to county election office; (5) send to: MTPL, P.O. Box 8384, Missoula, MT 59807 a copy of signed petitions and the total number of signatures handed in. **FOOTLOOSE FOR MONTANA TRAP-FREE PUBLIC LANDS**

THE COMPLETE TEXT OF INITIATIVE NO. 167 (I-167)

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

NEW SECTION. Section 1. Short title. [Sections 1 through 4] may be cited as the "Montana Trap-Free Public Lands Act."

NEW SECTION. Section 2. Preamble. The people of the state of Montana find as follows:

- (1) That approximately 35% of land in Montana is designated as public land;
- (2) That all Montanans have the right to enjoy public lands and should not have to compromise peace of mind and the safety of themselves, their children, and their pets when using public lands in Montana;
- (3) That recreational and commercial trapping on public lands makes public lands unsafe and interferes with the enjoyment of public lands;
- (4) That tourism and wildlife viewing are important parts of Montana's economy. In 2011, wildlife watching brought over \$400 million dollars into the economy of Montana;
- (5) That trapping, by contrast involves less than .5% of Montana's population and is not a significant contribution to Montana's economy;
- (6) That trapping in Montana has few regulations and cannot be sufficiently monitored, depletes rare species, wastes wildlife with unintended captures, and has a negative impact on Montana tourism;
- (7) That trapping on public lands is not consistent with Montana's tradition of fair chase hunting and ethics;
- (8) That trapping is cruel, outdated, and inhumane. Indiscriminate trapping inflicts unnecessary pain, is costly to pet owners and wildlife, and is ineffective for wildlife management or disease control.

NEW SECTION. Section 3. (1) It is unlawful for a person to trap or attempt to trap the following animals on public lands within the state of Montana, including public lands leased to private parties:

(a) any animals defined by 87-2-101 as "fur-bearing animals," "game animals," "migratory game birds," "upland game birds," "predatory animals," and those wild mammals and birds defined as "non-game wildlife" as well as large predators defined by 87-1-217(2)(b).

(2) This section does not:

- (a) limit trapping allowed under 87-2-806, 87-2-807 or 87-5-204;
- (b) limit the traditional public health and safety activity of the department's employees, including trapping, conducted by the department's employees or employees of any other unit of state or local government.

(3) The department or other unit of government must use its own employees and may not contract with or use private persons to accomplish the trapping activities on state land allowed under [subsection 2]. An employee conducting trapping must first consider and, where possible, attempt to live trap the animal before using other means of trapping to remove the animal.

(4) There may be no commercial use of any animal or any part of an animal trapped on public land under [subsection 2]. The department or other unit of government, after carrying out trapping activities on public land allowed under [subsection 2], must document any animal trapped and document the disposal of the entire animal trapped, including the fur, or use of the animal carcass for beneficial public purposes.

(5) "Public lands" as used in this act includes state-owned or state leased land, lands administered by the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, the state parks board and any county or municipality, but does not include any lands under the jurisdictions of Indian tribes within the state of Montana.

(6) Any trapping license issued by the department shall be in compliance with [this act].

NEW SECTION. Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 5. Codification instruction. (1) [Sections 1 through 4] are intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87 apply to [sections 1 through 4].

NEW SECTION. Section 6. Effective date. This act is effective upon approval by the electorate.



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note For Initiative

Bill #

Title: Trapping Initiative

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
Expenditures:	unknown	unknown	unknown	unknown
Revenue:				
State Special Revenue	\$0	(\$65,040)	(\$65,040)	(\$65,040)
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: This initiative prohibits trapping by private individuals on any public lands. There will be expenditure impacts as a result of the initiative. Impacts would be related to expenses for state employees to conduct trapping of nuisance and conflict animals. In addition, the state would incur financial and other impacts due to the loss of the ability to trap and transport animals for population management purposes. These costs cannot be reasonably determined. Revenue impacts are estimated to be a loss of approximately \$65,040 annually from the sale of trapping licenses.

FISCAL ANALYSIS

Assumptions:

Expenditure Impacts

1. The department currently works with private contractors to remove nuisance animals from state lands. In addition, federal employees trap and transport nuisance and conflict animals in national parks. The Department of Fish, Wildlife and Parks, under the initiative, would be responsible for this work using department employees. The fiscal impact of this work could be sizeable, but cannot be determined.
2. The department and federal agencies currently trap animals and relocate them for population management purposes. This practice would not be allowed under the initiative. The financial and other impacts that may result are unknown.

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
TOTAL Expenditures	\$0	\$0	\$0	\$0
<u>Funding of Expenditures:</u>				
TOTAL Funding of Exp.	\$0	\$0	\$0	\$0
<u>Revenues:</u>				
State Special Revenue (02)	\$0	(\$65,040)	(\$65,040)	(\$65,040)
TOTAL Revenues	\$0	(\$65,040)	(\$65,040)	(\$65,040)
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
State Special Revenue (02)	\$0	(\$65,040)	(\$65,040)	(\$65,040)

Effect on County or Other Local Revenues or Expenditures:

1. The financial impact to Local Governments for water diversions, dikes, ditches, and other infrastructure caused by nuisance that could no longer be trapped is unknown but could be significant.

_____	_____	_____	_____
<i>Sponsor's Initials</i>	<i>Date</i>	<i>Budget Director's Initials</i>	<i>Date</i>

John M. Morrison
Frederick F. Sherwood
David K. W. Wilson, Jr.
Linda M. Deola

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August 30, 2013

Jon Bennion
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Helena, MT 59620-1401
JonBennion@mt.gov

This letter, which was not considered by the A.G.'s office, points out the main changes made by FWP + the Assistant Attorney General. Ken MacDonald, wildlife Director at FWP, was in charge of changes.

Re: Proposed Statutory Initiative to Prohibit Trapping on Public Lands

Dear Mr. Bennion,

On behalf of Footloose Montana, I submit the following comments on Attorney General's ballot statement for the Proposed Statutory Initiative to Prohibit Trapping on Public Lands.

First, we respectfully request that the Attorney General's Office re-insert the language in the initial Statement of Purpose and Implication ("Statement") that addressed the issues regarding the continued allowance of trapping on privately-owned lands and the fact that this initiative does not affect the right of individuals to hunt and fish on public lands. The inclusion of sentences addressing these issues is very important to ensure that this ballot measure is not misleading and that its scope is clear to the voting public. As you know, there are a number of areas in the Montana Code Annotated that refer to regulations regarding "hunting, fishing, and trapping", and the voting public will easily confuse these issues and believe that the trapping restrictions affect hunting and fishing as well. As you know, these are entirely separate issues and should be treated as such. Section 13-27-312(4), MCA, states that the ballot statements "must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the issue." To ensure that the Statement is impartial and true, and is not prejudiced one way or the other, it is very important that the voting public understand that this initiative has no impact on hunting and fishing rights.

Also, we believe that in order to comply with Section 13-27-312(4), MCA, the Statement must expressly inform the voters that trapping on private lands is not affected by this initiative. The Statement does indicate that it would prohibit trapping on public lands leased to private parties,

and it will cause confusion in the minds of the voters if the Statement fails to also expressly clarify this initiative does not affect any trapping on “private lands”.

Accordingly, we request that the Attorney General’s office use the following Statement (the included sentences are bolded).

STATEMENT OF PURPOSE AND IMPLICATION

[Initiative number] makes unlawful the trapping of fur-bearing animals, game animals, migratory game birds, upland game birds, large predators, predatory animals, and certain non-game wildlife by any means on any public lands within Montana, subject to limited exceptions. [Initiative number] allows trapping for scientific purposes, migratory game bird propagation, and falconry, and also allows trapping by state and local officials to protect public health and safety. However, the commercial use of any animal or bird trapped on public land for any allowable purpose is prohibited. **[Initiative number] allows private persons to continue trapping on privately-owned lands within the state of Montana. [Initiative number] does not affect the constitutional rights of individuals to hunt and fish in Montana.**

Along these lines, we respectfully request that the Attorney General’s Office remove from the Statement the declaration regarding the projected fiscal impact of this initiative. We understand that pursuant to Section 13-27-312(3), MCA, the Attorney General’s Office may prepare a fiscal note and accompanying fiscal statement to be used on the petition and the ballot, but it is our position that the fiscal note that has been prepared fails to adequately account for all the impacts of this initiative and is misleading to the voters.

The fiscal note only accounts for the loss in trapping license fees to the State, however, it fails to account for the fact that state employees will no longer have to process these applications and monitor trapping in Montana. The fiscal note contains no analysis of this, even though it is not an assumption but rather a fact. The failure to have any positive gain to the state by virtue of a reduction in employee manhours (as well as payments into vacation time, sick leave, retirement contributions, and contributions to Social Security and other withholding) counted into the fiscal note renders its figure misleading.

We note that the fiscal note states that there are “no studies” demonstrating how many trappers trap on public lands, and assumes that trappers will be less likely to trap on private lands. But it would be conjecture to state that all licensing revenue will be lost due to this initiative if it passes, since a large percentage of trappers may continue to trap on private lands. At a minimum, there is no basis upon which to conclude that all licensing revenue will be lost. Given the fact that the fiscal note relies on a number of untested assumptions in this regard, the \$65,040 fiscal impact is guesswork, not a reasonable attempt at accurate economic forecasting.

Further, in item number 1, the fiscal analysis states that the State of Montana would henceforth be responsible for federal trapping duties carried out on federal lands. However, this assumption cannot be taken as true. The State of Montana would actually have no legal authority to prevent federal trappers from trapping on federal land. If the federal government issues such licenses or engages in those activities, this initiative could have no legal effect on that conduct by virtue of the Supremacy Clause.

Along the same lines, trapping and relocation for population management purposes would not be affected by this initiative as Section 3(2)(b) specifically exempts the traditional public health and safety activity of the State's employees. Such population management conducted by the State for non-commercial purposes would fall into this exemption.

Lastly, the fiscal analysis makes a number of unproven or untrue assumptions, or draws conclusions based on an incomplete consideration of the operation of this initiative, but fails to give any consideration of the positive economic impact that this initiative would generate on Montana's tourism industry.

On the website of the Montana Department of Fish, Wildlife, and Parks, it states:

[N]ature-related tourism and recreation are growing trends nationally, regionally, and within the State of Montana. Comparatively, a higher percent of Montana residents participate in nature related recreation and in particular, hunting, fishing and wildlife viewing. Non-resident travel is also closely linked to wildlife and fish - **wildlife viewing is in the top 2 reasons for travel to the state in all "Travel Countries" within the State.** Expenditures for travel/tourism in the State are greatest around Glacier and Yellowstone National Parks, but throughout the west and central front, non-resident expenditures are significant. The 9.8 million visitors to Montana represent 10 times Montana's resident population and result in 43,300 jobs for an economic impact of \$2.75 billion. Hunting, fishing and viewing are primary activities for residents and non-resident visitors whether looking at visitation on National Forests or in the various travel counties. Hunters, anglers and wildlife viewers had a total economic effect of over \$680 million in 2001. This resulted in 9,800 jobs.

<http://fwp.mt.gov/doingBusiness/reference/montanaChallenge/reports/tourism.html>(last accessed August 29, 2013) (emphasis added).

Wildlife viewing is a significant component to Montana's economy, and creates job, which in turn creates tax revenue. However, trapping reduces the diversity and numbers of wildlife in Montana. Some of the ways in which this occurs includes the following:

- Lost mountain wetlands from unregulated beaver trapping. A beaver pond increases biodiversity by 5 times compared to a free running creek. Pre-fur trade beaver populations were 10 times present populations. The lost beaver ponds after the first wave of trapping in Montana caused creeks to cut down through aquifers, draining them.
- Lost ground water recharge from mountain beaver ponds resulting in low stream flows late in the summer season. 60,000 miles of creeks are in the mountains of Western Montana. Current research indicates the monetary value of this lost water is in the billions of dollars.
- Lost winter browse for elk, deer and moose from willows created in

wetlands around beaver ponds.

- The loss of the extensive beaver ponds and associated wetlands along the 60,000 miles of mountain creeks in Western Montana deprive fire fighters of natural fire barriers, safe havens, and local sources of water for pumps and helicopters. Forest fires devastate wildlife and their smoke drives tourists away.
- Poorly regulated Montana trapping helps keep wolverine, lynx, fisher, and many other animals at near extinct levels.

If there is a fiscal impact statement attached to this initiative, it must measure all quantifiable economic impacts, not just a few based on flawed assumptions. It would be misleading to represent to the voting public the \$ 65,040 as a quantifiable economic impact given the fact that the scope of the fiscal note is extremely limited, uses untested assumptions, and fails to account for the positive impacts that this initiative would have on tourism and the greater economy.

Accordingly, we request that the Attorney General withdraw the fiscal statement. However, if the Attorney General won't withdraw the statement completely, we request that in the interests of ensuring that the note, and the language on the ballot initiative, is not misleading, he revise the note with additional analysis, to wit:

1. Revise the "loss of state revenue" impact, to include the reduced personnel hours (and associated benefit costs to the state) that state employees will no longer have to spend processing and overseeing trapping in Montana;
2. Remove fiscal assumption No. 1, since it is legally untenable;
3. Revise downward the "loss of state revenue" impact to include a more reasonable number of decrease in licenses since there are "no studies" upon which the State can conclude that there will be a 100% loss of license revenue;
4. Recognize the substantial and positive impact that wildlife viewing has on the Montana economy, and provide an estimate of the total tax revenue likely generated by wildlife viewing in Montana;
5. Recognize that if this initiative passes and leads to an increase in the diversity of wildlife population in Montana, it could likely lead to an increase in tax revenue for the state and the creation of jobs; and
6. To conclude, based on a more complete fiscal analysis, that while there will likely be an economic impact on the loss of licensing revenue, other factors may result in this initiative being either revenue neutral, or leading to the creation of revenue through increased economic activity and jobs in Montana.

Thank you for taking time to read our comments. We thank the Attorney General's Office for ensuring that this initiative is presented to the voters in a fair and impartial and does not contain any language that would be misleading to the voting public.

Sincerely,

Brian J. Miller, for Footloose Montana