



**Information related to HB 2295 relating to Deer Hunting  
To  
The House Committee on Agriculture and Natural Resources**

**By Christopher J. Tymeson  
Chief Legal Counsel  
Kansas Department of Wildlife and Parks**

**March 15, 2011**

In relation to the Sub-Committee on HB 2295, there was a request to provide additional information related to possible proposals for the 2012 seasons. The Department has started discussions generally with constituent groups and the KDWP Commission on the following items:

1. A two day mid-October antlerless-only firearms season.
2. An any deer firearms season for youth around the holiday break from school.
3. An expansion of the archery deer season beginning September 1 and continuing through January 31 statewide.

In addition, the Sub-Committee requested information on depredation permits and the program. We did not mention yesterday but wanted to ensure that we were intending to convene an internal working group to look at possible revisions, if necessary.

And finally, information was requested regarding possible diversion with mandatory fees related to feeding the hungry programs. Attached is a letter from the USFWS regarding the same issue from 2009 which the Department provided to this Committee previously.



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE Mountain-Prairie Region

INTERNAL USE ONLY  
FWS/R6

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Lakewood, Colorado 80228-1807

March 6, 2009

Mike Hayden, Secretary  
Kansas Department of Wildlife and Parks  
1020 S. W. Kansas, Suite 200  
Topeka, Kansas 66612

Dear Secretary Hayden:

This letter is in response to your request for our review comments regarding Kansas House Bill 2362 (HB 2362) *AN ACT concerning deer; relating to procedures for the taking thereof; concerning certain fees charged by the secretary of wildlife and parks; relating to the feed the hungry fund; amending K.S. A. 2008 Supp. 32-988, 32-995 and 79-3606 and repealing the existing sections*, that has been introduced during the 2009 Legislative session.

In our opinion, should provisions of HB 2362 be implemented, it would be considered by us as the expenditure of license fees and would constitute a diversion of license fees for a purpose other than the administration of the state fish and wildlife agency in violation of the provisions of 50 CFR 80.4, *Diversion of License Fees*.

50 CFR 80.4 states:

- (a) Revenues from license fees paid by hunters and fishermen shall not be diverted to purposes other than administration of the State fish and wildlife agency.
- (b) For purposes of this rule, administration of the State fish and wildlife agency include only those functions required to manage the fish and wildlife-oriented resources of the State for which the agency has authority under State law.
- (c) A diversion of license fee revenues occurs when any portion of license revenues is used for any purpose other than the administration of the State fish and wildlife agency.
- (d) If a diversion of license revenues occurs, the State becomes ineligible to participate under the pertinent Act from the date the diversion is declared by the Director until:
  - (1) Adequate legislative prohibitions are in place to prevent diversion of license revenue, and
  - (2) All license revenues or assets acquired with license revenues are restored, or an amount equal to license revenue diverted or current market value of assets diverted (whichever is greater) is returned and properly available for use for the administration of the State fish and wildlife agency.

Mike Hayden, Secretary

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If the Kansas Department of Wildlife and Parks (KDWP) were required to make deposits into the State Treasury, "to the credit of the deer management account" within the feed the hungry fund as proposed in Section 3(f), the expenditure would be a diversion of license fees as defined in 50 CFR 80.4(a)(b). The reason is that "feeding the hungry" is not a legal mandate required to manage the fish and wildlife oriented resources of the State for which the agency has authority under State law.

Furthermore, while donated deer meat may benefit the feed the hungry program, deer population management is a separate and unrelated issue. We do not regard payment of deer meat processing fees alone as a wildlife management practice regardless of how the meat will be used. We only view it as an acceptable management tool when the payment of processing fees is employed as a necessary incentive to hunters to increase the harvest of deer to accomplish deer management objectives of the state fish and wildlife agency. Our understanding is that deer population management goals and objectives in the State are being met and do not require additional hunter harvest. Therefore, payment of license fees paid by non-resident deer hunters in Kansas to the feed the hungry fund as specified by HB 2362 would be treated by us as a diversion of license fees, rendering KDWP ineligible to further participate in the benefits of the Wildlife and Sport Fish Restoration Programs until the diverted funds were returned in accordance with 50 CFR 80.4(d)(1&2).

As you know, the KDWP has received an apportionment of \$11,653,417 from the Wildlife and Sport Fish Restoration Programs in 2009.

Thank you for the opportunity to comment on HB 2362. Please keep us informed of the progress of this proposed legislation and any changes that may be proposed. Please contact me at any time for further assistance at (303) 236-4411.

Sincerely,



David McGillivray  
Chief, Division of Wildlife  
and Sport Fish Restoration

cc: Carl Magnuson, FA Coordinator