EDITORIAL

THE KING'S DEER

By Dr. James C. Kroll

In case you have been over in Iraq, fighting for freedom, you have missed a major brouhaha over at least three bills introduced in the 2005 Texas legislative session. These are Senate Bill (S.B.) 1766, 1765 and 1504. The most contentious of these are S.B. 1765 (relating to the management of deer on private property) and S.B. 1766 (assigning deer management to the Department of Agriculture).

The first bill directs the Texas Parks and Wildlife Department (TPWD) to issue a comprehensive high-fence management permit to landowners. Among the most contentious items are allowing landowners with breeder permits to release and recapture deer purchased under this permit, and movement of deer from one property to another permitted property without any other permit.

The second bill moves authority over privately owned and fenced deer to the Texas Department of Agriculture. Both unleashed a firestorm from state and university biologists, as well as the Texas Wildlife Association.

So, what is this all about, and what are the issues and facts?

This story goes way back—in fact, to the so-called "Old Country." There, authority over game animals was vested in the landed gentry. The story you will read in outdoor magazines is the mean old rich guys hogged the deer and gleefully cut off the hands (if they were lucky) of any starving serf daring to take one of the King's Deer. That certainly did happen, but as with many stories it is much more complicated.

After several thousand years of over-hunting, big game animals had become dangerously depleted. Landowners under the Feudal System, in an effort to conserve game, took control and strictly regulated killing. It was so important to these early conservationists that there is even a patron saint (St. Hubertus) devoted to game management.

When the first settlers came to North America, they encountered flora and fauna, not unlike that found by cavemen in Europe. Since the continent was far away from the King's eye, and mostly uncontrollable, these early pioneers took what they wanted, any time they wanted it. We all have heard about the devastation that ensued.

By the turn of the 20th century, we were down to somewhere between 300,000 and 500,000 whitetails. Space does not permit me to go into the many other species suffering equally to the philosophy that game belonged to everyone.

No one can doubt it was the private landowner and private organizations that took control of the situation. Here in Texas, our records show private landowners not only protected the last remaining deer, but also allowed deer to be captured and released on other private properties.

One such person was Captain Ray, who fenced a portion of the famous Boggy Slough area along the Neches River of East Texas. Captain Ray and his "game wardens" kept poachers and dog hunters out of the area to protect the deer. He was responsible for preserving what we believe to be the last remnant of the Kansas race of whitetails in our state.

Scientific wildlife management did not come along until the 1930s when Aldo Leopold and others re-invented it here in the U.S. It revolved around science-based management, re-stocking and protection from over-harvest. Leopold literally became a deity among the growing number of professional wildlife managers.

What developed from this movement often has been referred to as "The North American Wildlife Model (NAWM)," which is much touted as an international model to follow. It is based on common ownership of game by the people.

Under this new system, the nobility of Europe was replaced by a new "King:" the state or federal agency or commission. (Ironically, commissions are often made up of large landowners, some owning tens of thousands of acres.) And, just as in Europe, it served its purpose. Someone had to regulate the taking of game, at least until populations were restored. Correctly stated, this early movement did restore wildlife to the American landscape.

Working in partnership with the same landowners who earlier had protected the game, these new professionals studied and established management principles to produce game as a crop. In fact, Leopold often referred to game as an agricultural crop.

Today, wildlife management has become a pseudo-religious movement among followers who proudly point to the success of the NAWM. Yet, this is the 21st century and things have changed dramatically.

Private landowners have continued to pioneer game management, and have been wiling to spend their time and fortunes to protect and enhance game. In Texas, 95 percent of the land is in private ownership, leaving only the national forests and grasslands, and wildlife management areas to absolute state control.

At the same time, land is becoming dangerously fragmented. You know this. Our East Texas study showed in only 34 years, average forest size reduced from about 400 acres to less than 20!

The family farm or ranch is the most endangered species. Folks just cannot make a living from traditional agriculture. That is why they have turned to new sources of revenue such as deer hunting. I am here to tell you, the whitetail has done more to slow fragmentation in this state than any law or regulation.

We clearly are in a deer management boom throughout the country, and you are part of it. Hunting in North America is a $1.35 trillion industry—and deer hunting has the lion's share. It is a clean and environmentally sound business that saves

land from development. So, what's the problem?

Today, we have a situation in which 1) most of the land is privately owned; 2) deer populations have reached all-time highs, even starting to crash in some regions; 3) deer hunting and deer breeding are giving new economic life to small landowners; 4) fencing has become a common practice; 5) deer hunting regulations throughout the range are antiquated and no longer control the herd; 6) hunters are tired of low-quality hunting for immature, half-starved animals; 7) landowners are willing to spend money and effort to protect undeveloped land; and 8) the small landowner is being left out of the game.

It is time to make the next step in the long evolution of American game management: to explore new ways to provide hunting recreation to future generations.

Justifiably feeling left behind (and perhaps even irrelevant), many professionals cling to Leopold's 1930s words and use them to challenge this movement. Unfortunately, he did provide advice for the future, yet many seem to conveniently overlook it. They search through his words for support of their positions like religious extremists do the Bible or Koran.

Yet, Leopold had great faith in the private landowner. Those opposed to intensive deer management use this often-quoted remark: "The recreational value of a head of game is inverse to the artificiality of its origin, and hence in a broad way to the intensiveness of the system of game management which produced it."

Yet, the bulk of his writings focus on his belief the future will change the way we looked at game management in the 20th century. He felt increasing human population densities, higher values placed on land and changing societal needs would greatly influence future thought.

So, who does own the game? Biologists point to court decisions confirming the rights of states to regulate the taking of wild animals. Erroneously, this is interpreted to mean either the "state" or "the people" own the wildlife.

In reality, the courts have ruled wildlife, by their nature, belong to no one, even the state. But, states do have the right to control how, when and by whom these resources are "reduced to possession."

In many states, deer ownership is controlled by the state's agriculture department, rather than department of natural resources. Agriculture departments commonly deal with animal diseases and are best suited to do so with deer.

Shooting preserves for pheasants, quail and mallards are allowed in most states. Pete Squibb found more than 95 percent of state agencies permit private ownership of live animals in some way. Some states allowing private ownership of wild animal species include Massachusetts, New Hampshire, Louisiana, Indiana, Wisconsin, Michigan, Ohio, Pennsylvania and Texas.

Fish are also in private ownership in most states. Rainbow trout, catfish, bass, bluegills, walleye and other fishes can be owned, farmed and used by private individuals. This does not include several species of amphibians and reptiles. Are you confused?

To add to the confusion, a 1994 Texas Appeals Court decision involving a case where an individual had killed a deer in a housing development came to this conclusion:

"...courts could recognize the current reality in Texas that deer, and many other terrestrial game animals and fish, are held in private, game-proof preserves, parks or lakes and ponds by landowners who have entirely reduced these creatures to their domain and have acquired ownership in them in a proprietary sense. While wildlife management has presented very difficult political issues for our legislature to balance, it should be clear that once high fences were allowed, much of the responsibility for preserving and increasing our wildlife has fallen to the owners of these fenced preserves. With that responsibility should also come the rights, duties and liabilities of ownership." (State v. Bartee, 894 S.W. 2nd 34)

The justice went on to say if the day were to come in which a case was presented to the court to confirm private ownership, the court would rule in favor of ownership. In fact, I got the impression he was "telegraphing" the message for someone to make such a claim. To my knowledge, no one has, to date.

I am positive those who so religiously oppose private ownership of game will have a "hey-day" with the above discussion. "Kroll is for privatization," will be the cry. Actually, I think both public and private ownership are possible. The day is here in which we have to look at new ways to manage wildlife, especially deer.

The old ways no longer work. Deer have reached pest status. Many states are already trying new ideas, such as giving ownership of deer to housing developments and communities where deer are a nuisance. Our own TPWD has taken, in my opinion, admirable steps toward giving private landowners more and more say over their deer.

Yet, TPWD must walk the fence between total private ownership on the one hand and a socialistic system that guarantees everyone access to any land, public or private, on the other. I don't envy them. However, there are realistic compromises.

Deer management is a continuum, ranging from open land where hunters are free to harvest deer deemed "legal" by TPWD to intensively managed, private preserves. Along this continuum are a host of management options.

There is a place for publicly hunted wildlife management areas where the goal is quality rather than numbers. There is a place for the state to purchase hunting rights or even package hunts for a lottery program.

As long as all interests and economic levels are served, I firmly believe the public will support such a system. In fact, a study conducted not long ago on public opinions indicated almost half the respondents already think landowners "own" the wildlife on their land.

The irrefutable fact is wildlife management in the 21st century will become increasingly complex, requiring new ways of viewing old problems. Further, hunting as a recreational experience will place a greater burden on the private landowner as recreational conflicts increase on public lands and state and federal budgets become leaner.

Finally, government's role will be to provide incentives to landowners to stay on their land. Giving the private landowner more control, if not outright ownership of game, is one such way. To do so, though, requires a change in attitude from regulatory to facilitation.