



“SERVING THE HUNTER WHO TRAVELS”

“Hunting provides the principal incentive and revenue for conservation. Hence it is a force for conservation.”

Special To The Hunting Report
World Conservation Force Bulletin

by **John J. Jackson, III**

DATELINE: NEW MEXICO
News... News... News
Court: Non-Residents Are Protected By Constitution

Conservation Force has won the *Terk* case in New Mexico. The Federal Court held that a state must have a legitimate objective or rational basis to discriminate against non-residents in the allocation of hunting licenses. When the objective of the unequal allocation of licenses to non-residents was to create a preference for residents, it was discrimination prohibited by the “Equal Protection Clause” of the US Constitution. When the purpose or intent of the unequal license allocation is discrimination itself, it is not legitimate. There must be acceptable reasons to treat non-residents unequally under the police powers of the state to withstand scrutiny under the Constitution. Although the *Terk* case was first rendered 20 years ago, the authorities in New Mexico and other states have felt it was effectively reversed by a US Supreme Court

decision rendered shortly after it, the *Baldwin* case. The *Baldwin* decision had held that under the Privileges and Immunities Clause of the US Constitution, equality in access to recreation of hunting “is not basic to the maintenance or well-being of the Union,” therefore non-residents were not af-



forded protection against unequal treatment. That is why the Attorney General of New Mexico recently argued that states can discriminate as they will without restraint. He cited many cases from Alaska to Texas but we argued that *Terk* was based on a different clause of the Constitution and won on that basis. The *Terk* court’s

new interpretation of its 20-year-old decision gives the case new life and meaning that it has never had. It’s wake-up time for state agencies and legislatures. Perhaps for the first time, *Terk* is protecting your rights as a hunter. The presumption all these years that it was overruled by the *Baldwin* case was incorrect. The new *Terk* court states that the original *Terk* decision was based upon the Equal Protection Clause, not the Privilege and Immunities Clause of the US Constitution in issue in *Baldwin*. The Equal Protection Clause does afford non-residents protection! The new decision establishes a federal legal precedent affording some Constitutional protection to non-residents to be treated as equals in the license allocation process with residents. It is also more difficult for states to justify eliminating non-residents than it is to justify charging higher fees to them. Conservation Force undertook this case because of its importance and the possibility that, if handled correctly, it could be given a new meaning and effect that it has not had over the past 20 years. Others thought it was a lost

cause and would not step up to the plate to help. Had we not accepted the responsibility to handle the case, the case may have been lost by default, for the Attorney General's arguments were well researched and convincing. It appears to be the only standing case in favor of non-residents in the US. Had it been lost, one direct consequence is, New Mexico could have excluded all non-resident sheep hunters. This would have been particularly repugnant since the Foundation for North American Wild Sheep (FNAWS), an organization with nationwide membership, has provided hundreds of thousands of dollars for sheep restoration projects in that state. Had it been lost, there may not have been any remaining hope of protection for non-residents in US courts. In New Mexico and other states, non-resident license fees and funding from national sportsmen's conservation organizations provide very important operating revenue and incentives for wildlife conservation. Conservation Force is reviewing other discriminatory practices in Arizona, Colorado, Wyoming and other states for possible legal action. Unfortunately there has been little financial support received for the pivotal *Terk* case itself and its possible appeal, much less to undertake other cases. Please send a contribution. We would like to thank David Terk for his efforts more than 20 years ago and for calling to our attention this recent attempt to overturn the misunderstood original decision. Non-resident hunters, wildlife conservationists and state wildlife agencies that are bombarded by residents who wish to be preferred over non-residents all owe David Terk a debt of gratitude.

SPECIAL REPORT

News Analysis

**More On Discrimination
Against Non-Residents**

Conservation Force receives a lot of complaints from non-resident hunters about being charged discriminatory fees and even being excluded by state authorities from hunting on federal lands. There

are hundreds of millions of acres of National Wildlife Refuges (92 million acres), Bureau of Land Management (270 million acres), National Forests (171 million acres) and other public lands that non-residents can't hunt on or that they must pay 10 times more than residents to hunt on. Two million hunters hunt out of their state (1.4 million are big game hunters) as non-residents each year and many of them hunt on federal lands. 44 percent of all big game hunting days are spent on public land according to the 1996 *National Survey of Fishing, Hunting and Wildlife Associated Recreation*, Table 27. That is a large number of hunters being favored or disfavored. In the *Terk* case and many others cited by the New Mexico State Attorney General, the right of non-resident hunters to hunt on federal lands has



been directly put in issue. In all cases the courts have held that Congress has the right to dictate that non-residents be treated equally on federal lands, but has instead chosen to grant the states general determination over such matters. This is a sensitive issue because states are considered to be in the best position to manage resources within their boundaries and indeed they generally are. Congress or the Executive Branch of our government (President and administrative agencies) have to choose to exercise their power and authority over federal lands before the courts can enforce it. Until then, the national government is in effect consenting to the unequal treatment of non-residents on federal lands. The states justify the higher fees they charge non-residents on the state's expenses for airports, highways, po-

JOHN J. JACKSON, III
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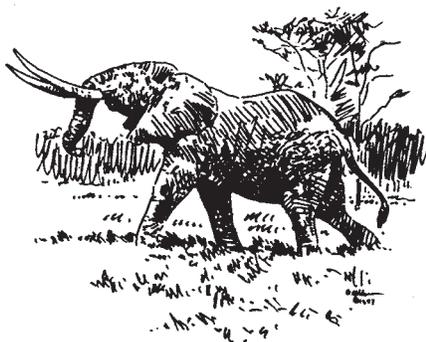
lice and fire protection, hospitals, and other costs of the state that residents must bear which non-residents don't pay but enjoy the benefit of when they hunt within the state. States also argue that a lot of state land acquisition is with general treasury funds, not from license fees. If non-resident visitors to the Lincoln Memorial, the National Archives or to Yellowstone National Park were charged more than residents there would be a stink. But unlike public hunting land, those national properties are administered by the federal government instead of delegated to the states. If ski lifts on national lands charged non-residents more than residents for lift tickets, that too would be offensive. Those are generally operated by private for-profit businesses that have a lease condition that their operation not charge discriminatorily. If Congress or the Administration wants to protect non-resident hunters and fishermen on national lands, it certainly can do so. Up to this time, it has done the opposite according to the courts.

DATELINE: ETHIOPIA

**News... News... News
Elephant Trophy Imports
Finally Authorized**

Conservation Force has had another success in the past few weeks. The US Fish and Wildlife Service (USFWS) has authorized the import of elephant trophies from Ethiopia for the first time since the African Elephant was listed on Appendix I of CITES in 1990. Conservation Force attorneys had filed a Request for Reconsideration of the permit denials with extensive documentation and argument. This was done pro bono as a public service. The trophy import permits were for three hunts taken in 1990. The authorization only applies to those, though we were hoping for a broader determination. Unfortunately, the USFWS chose to grant the permits for reasons that do not apply directly to elephant hunting today in Ethiopia rather than the other arguments that

were made by Conservation Force attorneys. Nevertheless the outlook is promising that permits may be issued in the future. The Office of Scientific Authority (OSA) has already approved a current test permit processed by Conservation Force and the Office of Management Authority (OMA) has indicated a willingness to work with and support the Ethiopian authorities and stakeholders to overcome the impasse that has existed for eight years. Conservation Force has also established an Ethiopian Task Force expressly to



work through the elephant trophy import problem and to rebuild the safari-dependent conservation base in Ethiopia. The USFWS has indicated a willingness to work together, the Ethiopian Professional Hunters Association has promised its in-country cooperation and the Ethiopian authorities reportedly desire to expand their elephant hunting program to help sustain their elephant. Conservation Force needs your contribution towards the costs of this Task Force if we are to continue to be successful. Thus far Conservation Force has had to underwrite the costs of this worthwhile effort itself. Of course, no individual hunter can bear that kind of cost himself either. We must all pull together.

DATELINE: MEXICO

**News Analysis
Baja Sheep Auctions
Play Important Role**

An unexpected event is occurring that should help tip the scales against the proposal to

list the desert sheep in Baja, Mexico as endangered. An auction package has coincidentally been put together to sell three Northern Baja desert sheep hunts for over half a million dollars expressly for the purpose of conserving them. Though the purpose of the auction is to provide conservation revenue, it unwittingly proves that sport hunting is monumentally important as a sheep conservation tool. The endangered listing of those thousands of sheep that the USFWS has proposed would eliminate such funding and the related conservation sheep incentives and stakeholders. Such mistakes have been made before: Witness the Argali listing. One of the hunts has already been auctioned at Safari Club International (SCI) for the sum of \$140,000. The other two are to be auctioned at the FNAWS Convention and are expected to be sold for over \$200,000 each. These are to be the first three sheep sport hunted on license in Northern Baja Mexico in 10 years. Most conservation efforts for this sheep have arisen from sport hunting interests, FNAWS in particular, working towards renewed sport hunting. A special thanks is due to Pete Cimellaro, a sportsman and Past President of FNAWS, who has devoted a good part of his adult life to the conservation of that sheep population. Sportsmen are the foremost conservationists in the world.

SPECIAL REPORT

**News Analysis
Big Game Hunting
Just Keeps Growing**

The summaries of the 1996 *National Survey of Fishing, Hunting and Wildlife Associated Recreation* all fail to adequately point out that big game hunting in the US continues to grow at a substantial rate. Although the total number of hunters has been constant for some time, the big game category continues to climb, survey after survey. After more than tripling in a quarter century, it grew another five percent from 1990 to 1995. Over the past five years the net

increase in the number of big game hunters has been nearly 10,000 per month (600,000 in 60 months). There were 10.7 million licensed big game hunters over the age of 16 in 1991 and 11.3 million in 1996 (Tables 6 and 7 and Summary Page 32). Those hunters are more likely to hunt outside of their state than other hunters, 1.4 million of them. They spend more time in the field than any other group, an average of 14 days, including more than wildlife watchers and fishermen. Moreover, the amount of time big game hunters are spending in the woods has increased 20 percent in the past five years. What is the significance of this? It is unheralded growth and participation with no equal in history, yet few know it. It should be guiding public policy and perhaps it finally is, witness the Congressional Sportsmen’s Caucus, Refuge Reform Act, etc. It is a total refutation of the animal extremist claims that hunting is a dying sport. To the contrary, big game hunters exist and are growing in record numbers as they have been throughout this entire century. There are more big game hunters than any time in history. It has not topped off yet, much less become unpopular and insignificant! It means you are participating in big game hunting when more people than anytime in the history of the world think it is worthwhile and are doing it too. Don’t hang your head, go hunting. It also means that schemes and policies aimed at reducing big game hunting strike at more than the core of our conservation system. It strikes at the biggest share of it and at a significant part of our lives.

Briefly Noted

Canadian Gun Legislation: The Quebec Tourism Agency has issued a press release on the new firearms regulations in Canada. Most of the non-resident regulations have been postponed until January 1, 2001 so for now it is business as usual. For more information, call the Canadian Firearms Centre at 800-731-4000. You may also want to access their website on the Internet at <http://Canada.justice.gc.ca>.

Polar Bear Areas To Be Added: The USFWS has completed review of two

additional polar bear areas for trophy import. It has published a proposal in the Federal Register that permits be issued for the Lancaster Sound and Norwegian Bay areas. Lancaster Sound includes Resolute and Arctic Bay. Comments were accepted through March 4, 1998, and now a final rule will be adopted. A few things should be noted. You can’t import those bears

yet unless your bear was taken before April 30, 1994 which bears have already been “grandfathered” by a special Act. The USFWS has not denied any areas, it has just “deferred” the decision on the areas not yet approved such as Foxie Basin, Davis Strait, Baffin Bay (between Baffin Island and Greenland), Kane Basin and Queen Elizabeth Islands.

Bison Hunting Opened: After a long running battle with anti-hunting organizations, the USFWS has opened up bison hunting in the National Elk Refuge in Wyoming. The purpose is expressly to manage the size of the herd. The USFWS pointed out that the anti-hunters were the only non-governmental organizations that filed comments. This is the first Refuge ruling since the Refuge Reform Act protecting hunting was passed.

Concern Over Changes In OSA: The Office of Scientific Authority (OSA) renders advice and makes determinations on US import of trophies of listed species and related matters. It has undergone a major turnover in leading personnel. It is the USFWS office that has been the stopping point for elephant, leopard, argali, crocodile and other trophy requests throughout this decade. Its Chief, Charles Dane, retired in early January. Despite our many disagreements I grew to like and will miss him. He had been Chief of OSA since 1985 and through six of the 10 CITES Conferences. Another career OSA officer, Dr. Ron Nowak, has also retired. He had 33 years of government service. He was very much responsible for the listing of the argali, the most numerous sheep in the world, over the objection of the range nations. He is also credited with having vociferously supported the listing of all elephants as endangered including those in Zimbabwe, Botswana and Namibia that have just been taken off of Appendix I. The new Acting Chief of OSA is Susan Lieberman. Before her employment in the USFWS, she was a leading biologist with the anti-hunting United States Humane Society! Within the USFWS she has been lead person on all the super-restrictive bird bills, various turtle listing proposals and alleged world bear crisis.

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*IGF was created by Weatherby Award Winner H.I.H Prince Abdorreza of Iran 20 years ago. Initially called The International Foundation for the Conservation of Game, IGF was already promoting sustainable use of wildlife and conservation of biodiversity 15 years before the UN Rio Conference, which brought these matter to widespread public attention. The foundation has agreed to sponsor Conservation Force Bulletin in order to help international hunters keep abreast of hunting-related wildlife news. Conservation Force’s John J. Jackson, III is a member of the board of IGF and Bertrand des Clers, its director, is a member of the Board of Directors of Conservation force.



International Foundation for
the Conservation of Wildlife

February 20, 1998

To: Jim Young, Print N Mail
From: Elaina Panozzo, Oxpecker Enterprises
Re: March 1998 Conservation Force Bulletin

Jim,

Attached is the file for the March 1998 Conservation Force Bulletin, to be inserted in the March 1998 issue of The Hunting Report. Print run is 4,200 (4,040 circulation plus 160 overs). Please complete Production Record as discussed.

Elaina