

July 22, 1997

The Honorable Pete T. Cenarrusa  
Secretary of State  
**HAND DELIVERED**

Re: Certificate of Review  
Initiative Regarding Regulation of Black Bear Hunting

Dear Mr. Cenarrusa:

A proposed initiative petition was filed with your office on June 30, 1997. Pursuant to Idaho Code § 34-1809, this office has reviewed the petition and has prepared the following advisory comments. It must be stressed that, given the strict statutory timeframe in which this office must respond and the complexity of the legal issues raised in this petition, our review can only isolate areas of concern and cannot provide in-depth analysis of each issue that may present problems. Further, under the review statute, the Attorney General's recommendations are "advisory only," and the petitioners are free to "accept or reject them in whole or in part."

### **BALLOT TITLE**

Following the filing of the proposed initiative, our office will prepare short and long ballot titles. The ballot titles should impartially and succinctly state the purpose of the measure without being argumentative and without creating prejudice for or against the measure. While our office prepares the titles, if petitioners would like to propose language with these standards in mind, we recommend that they do so and their proposed language will be considered.

### **MATTERS OF SUBSTANTIVE IMPORT**

The proposed initiative is very similar to an initiative (Proposition Two) that was defeated by the voters in the November 5, 1996, general election.

#### **Section 1(1)**

Section 1(1) of the proposed initiative prohibits the use of bait to take a bear at any time during the calendar year. This proposal is identical to the prohibition on the use of bait that was contained in Proposition Two. The term "take" is defined by Idaho Code § 36-202(h) to mean "hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do." The definition of "take" is intended to be all inclusive.

However, the term “hunting” has a separate definition which specifically excludes “stalking, attracting, searching for, or lying in wait for any wildlife” by an unarmed person to watch or photograph wildlife. Idaho Code § 36-202(i). With the exception to the term “hunting” and the inclusion of “hunt” in the definition of “take,” there is a potential for unarmed hound hunters to stalk and search for bears to watch or photograph. The terms “stalking” and “searching for” are not defined. However, Idaho Code § 36-1101(b)(6) prohibits the use of dogs to pursue, track, or harass any big game animal except as allowed by commission rule. Therefore, unarmed hound hunters with cameras could not pursue or track bears if the proposed initiative were adopted. The sponsors may want to draft additional initiative language to address this potential “loophole.”

### **Section 1(2)**

Section 1(2) of the proposed initiative would prohibit the use of dogs to take a black bear from May 1 through August 31. This proposal is a change from Proposition Two’s attempt to prohibit the use of dogs during the entire calendar year. There are 23 spring seasons which would be changed by the dog use prohibition. In addition, the proposed initiative would prohibit the current black bear dog training seasons under IDAPA 13.01.08588 (which already prohibits the killing of any bear). There are twenty distinct dog training seasons. All are within the prohibited dates of May 1 to August 31. Based on the Declaration of Intent, it is not clear that the sponsors intend to prohibit black bear dog training seasons that would not result in the killing of any bears. The sponsors should clarify whether it is the intent of the proposed initiative to eliminate these dog training seasons.

### **Section 1(3)**

Section 1(3) of the proposed initiative identifies the persons who are exempted from the proposed law. While employees of the Idaho Department of Fish and Game are exempted, agents are not. In actual practice, when the Department of Fish and Game is required to capture or kill a bear, it usually seeks the assistance of a private hound hunter. That is because the Department of Fish and Game does not keep hunting hounds. The use of hunting hounds is the most efficient way to track and either capture or eliminate problem bears. Section 1(3) should be redrafted to include agents of the Idaho Department of Fish and Game.

### **Section 1(4)**

Section 1(4) of the proposed initiative defines the term “bait.”

### **Section 1(5)**

Section 1(5) of the proposed initiative contains a penalty provision. The penalties proposed in the initiative are far more severe than the current fish and game code for similar offenses. In addition, the penalty provision would not be included in chapter 14 of title 36, Idaho Code, with all other fish and game violations. Over the past six years, the Department of Fish and Game has attempted to centralize all penalty provisions in chapter 14 of title 36, Idaho Code. If the proposed initiative is approved by the voters, the sponsors should rewrite section 1(5) so it is codified in chapter 14 of title 36, Idaho Code.

### **Section 1(6)**

Section 1(6) of the proposed initiative contains a severability clause.

I HEREBY CERTIFY that the enclosed measure has been reviewed for form, style and matters of substantive import and that the recommendations set forth above have been communicated to petitioner Lynn Fritchman by deposit in the U.S. Mail of a copy of this certificate of review.

Sincerely,

ALAN G. LANCE  
Attorney General