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PERSPECTIVES ON THE SALE OF HUNTING ACCESS RIGHTS TO PRIVATE LANDS IN MINNESOTA

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[Hunting] is a difficult subject to deal with honestly. It is easy for the humanitarian to moralize against it; and any fool on its side can gush about its glorious breezy pleasures and the virtues it nourishes. But neither the moralizings nor the gushings are supported by facts: indeed they are mostly violently contradicted by them.

- George Bernard Shaw, 1915

We sportsmen are on the carpet. Many other groups are watching us, some with interest, others with something nearing exasperation. I am afraid the farmers, without whom we can do nothing, are among these. Our present position is a defensive one. Our critics are no more reasonable than we are, but they tend to have the public ear. Our whole situation demands a positive program; an offensive strategy. Shouting outworn formulas only makes matters worse.

- Aldo Leopold, 1930

PERSPECTIVES ON THE SALE OF HUNTING ACCESS RIGHTS TO PRIVATE LANDS IN MINNESOTA

Steven J. Taff[1]

I. Introduction

Although wild animals are technically "common property" under most state laws (including Minnesota's), their management on private lands is largely left to the property owner. As in many other aspects of American resource management, private persons are relied upon to carry out public interests. Many policy instruments have been developed to effect this: taxes, subsidies, education, and regulation, among others. Is fee hunting another useful policy tool along these lines, or is it strictly a private transaction over which the public ought to have no concern?

The subject of fee hunting has received far more attention elsewhere than in Minnesota. This may be due to the relative scarcity of public lands in other parts of the country, a lack of promotion by Minnesota fish and wildlife interests, a lack of knowledge on the part of landowners about the practice of selling access rights, or a

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lower demand for increased hunting access on the part of Minnesota hunters. Whatever the case, fee hunting as a property arrangement has remained a rather quiet activity for several years. Nevertheless, the subject is perceived to be a potentially controversial public issue, the sources of which controversy are worth exploring now because of their potentially divisive nature in the future.

"Fee hunting" can have different meanings for different people, sometimes leading to inadvertent and potentially avoidable hostilities (see Schutt). Here we take it in a fairly broad sense: the transfer of a valuable consideration (money, personal services, a written waiver of liability) from the hunter in exchange for access rights to private property (which may be limited in scope or time) to hunt wildlife. Fee hunting can thus range from a simple handshake to the purchase of long-term exclusive access rights to extensive land parcels.

We do not include here arrangements under which the State buys access rights for expansion of public hunting opportunities. Nor do we include situations in which hunters must pay to gain access to public lands (International Association of Game, Fish, and Conservation Commissioners). Finally, we do not examine shooting preserves which raise game for subsequent release. These are all treated separately under state game laws.

The management of publicly-owned wildlife on private lands has centered around hunting regulations, which control animal population levels, and incentives for

habitat development, which increases animal numbers and hunting quality. Hunters and taxpayers have traditionally supported these two functions through licenses and taxes, and hunters themselves have directly paid for such ancillary costs as travel and equipment purchases. The imposition of a specific fee for access, while perhaps not onerous to most hunters compared to all these other expenditures, is a very real departure from this traditional hunter spending pattern.

Except in cases where landowners provide improved habitat, a newly-imposed access fee entitles the hunter to no new service or product. In this sense, it is unlike other fee-based recreational activities on private lands such as guide services, groomed ski trails, etc. These services were not provided before, so their onset is not illogically coupled with a fee. Hunting fees are different; they represent the required purchase of a right that was heretofore assumed free.

In this report, fee hunting will be placed in the context of a wide variety of societal concerns that ultimately influence the ways in which we allocate resources and decision authority in this state. In particular, fee hunting is a property rights issue: Who has what rights to land, to wildlife, to public subsidy? We will also touch on the relationship of fee hunting to the broader issues of public investment strategies, the privatization of previously public goods and services, the anti-hunting movement, gun control, rural development, and environmental protection. While this might seem to be stretching things a bit--how could fee hunting interrelate with all these--we will see that the basic property rights issues under examination here have broad implications.

If one wishes to learn more about how fee hunting systems work, particularly from the landowner's perspective, the best single source is Grafton et al. This compilation of papers from a conference sponsored by West Virginia University is an excellent overview and provides as well several examples of fee hunting schemes that are viewed (by the authors, at least) as successful. Most of the book's illustrations are drawn from experiences in eastern and southeastern states.

A companion document for Minnesota is not available, nor is it probably needed at present. Instead Minnesota policymakers need to first decide whether or not a public presence in fee hunting is desirable social policy. Indeed, it is argued later that the truly important set of questions center around the issue of a public presence in hunting itself, not just in fee hunting. At what stage should government agencies intervene? For what purpose? Is fee hunting to be an economic development tool or a wildlife habitat enhancement tool? Can it be both? Who gains from each?

This report is organized under six headings. First we consider several arguments advanced in favor of fee hunting systems, followed immediately by arguments arrayed against such property arrangements. Next, several legal aspects of fee hunting are examined, particularly questions of property rights and public access. The fourth part summarizes what we know about the fee hunting market, paying special attention to demand and supply components. The report concludes with discussions of what the author thinks are some of the important underlying public issues and of some possible roles for the Minnesota Extension Service.

II: Arguments in favor of fee hunting

Fee hunting, say its advocates, has three principal virtues, corresponding to three significant interest groups. It is said to increase landowner income, to increase hunting access on private lands, and to increase wildlife habitat investment and thereby decrease necessary public investment. It is thus good for landowners, good for hunters, and good for the public. Let's consider each in succession.

Income: A hunting access fee clearly gives rural landowners an alternative source of income--if it is of sufficient magnitude to outweigh any increased costs necessary to provide the service. Fee income has two components: are there hunters willing to pay for access to a given piece of land, and how much are they willing to pay? There is scattered evidence from other states that such income could be significant. Jordan and Workman, for example, reported that net income from Utah big game fee hunting ranged from $14,000 to $160,000. Few observers, however, expect contract payments of this magnitude in Minnesota.

The mere presence of a contract, whether or not money is involved, is said to better protect landowner interests as well. The arrangement gives owners more control over hunter access by specifying who can hunt where and when. Hunters who have access rights are also said to have an incentive to do their own policing on the parcel, to keep non-paying hunters out, thereby affording greater security to the landowner and reducing hunting pressure on that parcel.

A well-written access contract, aspects of which are discussed in more detail in a later section, is said to protect the owner from most liability exposure. This may be

less true, however, in Minnesota and other states with so-called recreational use statues, which waive much landowner liability for recreationist (including hunting) claims provided no fee is charged. Many contracts, recognizing that waivers are not always legally secure, call for the purchase of insurance by the hunter, thereby reducing what would otherwise be a landowner expense.

Access: Hunters are said to gain from fee hunting arrangements principally because it gives them secure and certain access to known territory, which makes for a better hunting experience.

> On public lands, you can compete with increasing numbers of insufficiently trained hunters and run the risk of being harried by increasing numbers of insufficiently educated anti-hunters who have just as much constitutional right to be in the public woods with their horns and human hair-balls as you do. Or you can buy or lease and post your private Shangri La. (Reiger, p. 15).

Of course, it's not the fee per se that makes this heightened experience possible. Rather, its the contracted control over access to private land that entitles the hunter to a "private Shangri-La."

The expected benefits of fee hunting systems presume, of course, the continued demand of hunters for what is perceived to be a set of better hunting opportunities. In particular, the guarantee of a place to hunt--with or without associated habitat improvements (see below)--must be worth more to the hunter than the cost of the fee. Advocates hold that it very often is, and anyway, if it isn't, landowners will adjust the fee downward until it is worth it. If there is no effective demand, there will be no contracts written. If there is sufficient demand, if hunters are

willing to pay for access to private lands, why not let the landowners capture some of that willingness to pay? Like any market solution, a fee hunting "equilibrium" might carry with it certain unintended consequences that might call for public intervention in what would otherwise be a strictly private transaction. We examine some of these possible disadvantages in part III.

Habitat: It appears to be a widely held view among wildlife managers that fee hunting is the best hope for habitat development on private lands. Shelton (p. 113) puts it this way:

> Landowners cannot be expected to make investments for wildlife enhancement if they cannot reasonably expect to harvest the benefits, either through personal enjoyment, enjoyment of friends, or income gained from recreational enterprises.

This argument has its origin in the writings of Aldo Leopold. While Shelton, for example, notes that landowners might improve habitat for personal enjoyment, the purer sense of the Leopold argument is that only if landowners are financially compensated will they change management habits.[2]

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[2]Even a noted anti-hunter acknowledged that game management designed to increase hunting opportunities can improve the lot of the game:

> I think we must own that there is no objection [to being killed by hunters] from the point of view of the animals. On the contrary, it is quite easy to show that there is a positive advantage to them in the organization of killing as sport.... I am so conscious of this that in another place I have suggested that children should be hunted or shot during certain months of the year, as they would then be fed and preserved by [hunters] as generously and carefully as pheasants now are. (Shaw, p. xviii).

Left untested, it would seem, is Leopold's basic assertion that financial rewards are the only means to influence landowner behavior. And, even if so, which is the preferable financial transfer mechanism: direct hunter to landowner payments, or public subsidies, or non-cash subsidies, or what?

It is instructive to examine both what Leopold said and the context in which he said it. When his ideas were developed and expounded in print in the early 1930s, the perceived problem was an absolute dearth of game brought about, he said, by the prevailing view that wildlife was nature's bounty, there to be harvested. Leopold's solution (p. 210):

> We must replace this concept with a new one: that hunting is the harvesting of a man-made crop, which would soon cease to exist if somebody somewhere had not, intentionally or unintentionally, come to nature's aid in its production.

It was to increase wildlife, then, not to increase hunting opportunities, that most of Leopold's private lands recommendations were turned. Hunting was to be a management tool for controlling game populations, to be sure, but fee hunting (or subsidized habitat development) was first and foremost a program to encourage landowners to practice scientific wildlife management, itself in large part codified by Leopold himself.

> Only the landlord can practice management efficiently, because he is the only person who resides on the land and has complete authority over it. (1930, p. 286)

In effect, Leopold was arguing that only by working with (and compensating) farmers can enough game be produced on non-marginal lands. (Marginal farm and

wilderness lands, he felt, could be purchased by the public, but on good farm lands, the principal habitat for certain game species in some parts of the country, "compensation to the landowner in some form or the other is the only workable system for producing game" (p. 284).)

Many argue that Leopold's ideas are pertinent to today's situation. Indeed, the Wildlife Management Institute as recently as 1973 was still reprinting his 1930 American Game Policy document. But are things really the same? The dearth of most game species seems to be a thing of the past, with the possible exceptions of pheasants in certain farmed regions and certain migratory water-fowl species (which Leopold said probably could not and should not be managed through private lands incentives anyway). In Minnesota, at least, there now exist extensive public hunting areas used by hundreds of thousands of hunters. (Whether or not hunting on public lands is in some way jeopardized by fee hunting is explored in another section.)

The conditions faced by Leopold in 1930--vanishing wildlife and scarce public hunting land in settled areas--do not hold today, in Minnesota at least, thanks in large part to the significant public and private investment in game management over the intervening years. Consequently, one might challenge the contention that fee hunting (or any other incentive program for game management on private lands) is any longer a useful prescription. However, fee hunting might still be a useful policy tool with which to address <u>current</u> wildlife management problems such as the declining opportunity to hunt on private lands, if that is perceived to be a problem of public consequence.

More private provision of wildlife habitat and hunting access is also said to relieve public agencies of the obligation of providing these services on public lands. This could reduce the costs of public habitat management programs, or it could enable the agencies to manage public lands for species other than those increasingly provided on private lands. If fee hunting caught on in Minnesota, for example, the state might be able to shift management activity away from deer and, to a lesser extent, pheasants. Management responsibility for those game species highly desired by hunters would be shifted to private landowners.

III: Arguments against fee hunting

Opponents of fee hunting can be separated into those who argue against fee hunting itself and those who argue only against any public agency promotion of the concept. We consider the fundamentals of each argument below. The central tenet of those who oppose fee hunting itself is that most of the just-cited arguments in favor of the idea are simply wrong. Fee hunting does indeed promise additional income to the landowner, but at significant non-financial cost to the hunter, to wildlife, and to society as a whole.

One concern is that fee hunting will drive what is now thought of as a sport of the masses into one that is only for the rich. Geist (p. 16) is probably the most apocalyptic:

> Paid hunting imposes a self-defeating deterrent fee that in the long run reduces the public's interest in wildlife, hands wildlife to a wealthy minority for their exclusive use, and at a high cost to the public, including violence and loss of civil liberties.

Demonstrations of big fees obtained by Texas landowners for hunting access can be interpreted by hunters as negative aspects of the system. Who, after all, will be willing or able to pay those big fees? If it is only the rich, then hunting is in trouble, because the rich, having plenty of hunting opportunity on private land, won't be as likely to lobby for continued hunting opportunities on public land.

Lund (p. 62) notes that hunting licenses, too, were once viewed as onerous additions to the hunter's burden:

> At their inception late in the nineteenth century these licenses fees were an unprecedented tax, and political resistance to the policy was avoided by the expedient of licensing only nonresidents of the jurisdiction, one class that would not register its displeasure at the polls. With surprising dispatch, however, once the licensing principle was established, it was extended to include residents.

Do these license fees reduce hunting activity, as access fees are said to do? Again, Lund:

> Even where licenses are freely available for sale, the process of licensing diminishes wildlife taking to some degree simply by reducing unplanned wildlife taking. Furthermore, while fees for resident licenses are relatively small, costs per license, or the aggregate costs for different types of licenses for fish and game, may be sufficiently high to exclude those with limited funds or with only casual interest in wildlife taking. The far greater fees that characterize nonresident licensing are sufficiently high to diminish wildlife taking.

If hunting license fees reduce access, goes the argument, so will the (usually larger) hunting access fees being talked about by proponents. Implicit in this class argument is the notion that hunting is in some sense an inalienable right afforded to members of society or a basic human need that should not be left unmet. Society

should intervene--or at least not promote--the exclusion of hunters on the basis of income. Another interpretation, perhaps less extreme, is that egalitarian hunting (open to both rich and poor) is a societal good either of the public good sort (provision is costless at the margin and the benefits are positive) or of a merit good (hunting is good for participants).

Even if fees don't completely drive off poor hunters, any increase in the cost of hunting will reduce aggregate participation rates (as measured, perhaps, by hunter-days), because hunting demand is said to be fairly elastic. There is very little empirical evidence on this matter, one way or another, however. Adams et al. did show that participation rates for pheasants in Oregon were quite sensitive to the level of the fee.

> At the revenue maximizing flat fee levels, over three-fourths of the lowest income group is eliminated from participation... A related, longer term policy issue for wildlife managers may involve general hunter participation, as under all schemes the number of pheasant hunters is reduced.

Note that this study was survey-based valuation research, not observations of actual hunter behavior.

The political implications of a reduction in the number of people hunting are potentially significant. If fewer people hunt, there will inevitably be less political pressure on the state to provide hunting opportunities on public land, to subsidize habitat development on private land, or even (at the extreme) to protect citizens' "right" to hunt in the first place.

A variant of this lessened demand story is that more fee hunting--supposing its adherents are correct--will lead to more privately funded habitat development by

participating landowners. Better habitat on private lands may lessen the wildlife management need (as opposed to the political need) to develop habitat on public lands. A logical is a reduction in the need for the state to be involved in game habitat management at all. It could content itself simply with enforcing game laws. The level of habitat development would be determined by the matching of hunter demand and private habitat access. Either way, goes the argument, hunters lose hunting opportunities.

Nor does every hunter or wildlife management professional accept the contention that fee hunting provides the proper signals to landowners. For example, in a study of actual fee hunting operations, Wiggers and Rootes (p. 528) cast doubt on the notion that fees encourage private habitat investments:

> Unfortunately, it is the collective opinion of the wildlife agencies that lease hunting, for the most part, has not encouraged habitat management nor improved the hunting opportunities on private lands for the average sportsman. Presently, its most frequent benefit seems to be compensation to the landowner for the privilege to hunt on his property.

Similarly, Jordan and Workman reported that less than a quarter of the landowners charging fees "improved wildlife habitat or demonstrated an active interest in the wildlife on their property." (p. 485) Consequently, "policymakers should be wary of advocating fee hunting as a means of enhancing benefits for wildlife on private land." (p. 486)

Some wildlife professionals are concerned that landowners will be tempted to stock exotic (nonnative) species, reasoning that hunters will pay more to bag a

wildebeest than a whitetail. Even if owners focus on native species, however, some wildlife managers worry that the habitat will be managed overwhelmingly for game species, to the detriment of other animals. (Habitat misbalancing is not an accusation unique to private owners, of course. Many environmentalists and adjacent farmers contend that wildlife management on public lands is distorted in the direction of game species--especially deer--because managers need to keep hunters, the ultimate source of their jobs and income, happy.)

Another market signal that opponents of fee hunting worry about is that sent to those landowners who continue to not charge for hunting. These owners may reason that since plenty of hunting opportunities on well-managed nearby private lands are now available because of the institution of fee hunting, there is no need to provide any hunting access, free or otherwise, to their own lands. The hunting opportunity triad of public lands, private fee lands, and private free lands is thereby reduced to just the first two.

Opponents also point out that not all financial flows in fee hunting accrue positively to the landowner. Minnesota law clearly distinguishes between those recreational lands for which an access fee is charged and those for which access if free. Only on non-charge lands does the State waive much of the liability that might otherwise face the provider of recreational activity. (We discuss this statute in more detail in the next section.) The onset of liability is not costless to the landowner. It must be either ignored--in which case the owner faces the non-zero risk of substantial damage payments if a hunter is hurt or causes hurt--or pay for necessary liability

insurance, which is a recurring expense for as long as the owner charges for access.

A final argument against fee hunting is that the imposition of fees reduces the quality (in a non-monetary sense) of The Hunt itself. Hunters who have to pay for access will begin to associate the paying of fees with the need (or the "right") to kill game, in order to make the trip "worth it." Diminished in importance are the traditional non-bag indicators of success: camaraderie, wilderness skills, physical challenge, etc. As a result, the argument continues, the quality of the hunting experience is diminished, to the detriment of participants. (Usually unspoken is the worry that the linking of hunting and killing--as opposed to the linking of hunting and an outdoor experience, with killing occasionally but not inevitably a component of satisfaction--could increasingly be perceived by the nonhunting public as a recreational activity not deserving of the public subsidy it now receives.)

Even more telling is the chain of events that is said to cascade from this increasing focus by hunters on the kill. Few habitats, even intensively managed lands, can produce enough wild game to satisfy continued demand of fee paying hunters for a high bag rate. Rather than losing dissatisfied customers, the landowner has a strong incentive to pen-raise animals and release them on hunters' arrival. The hunting experience treasured by many is thoroughly destroyed in this scenario, where fee-charging lands become, in effect, shooting preserves. Geist contends that this "commoditization" of game through fees threatens the very structure of North American wildlife conservation: the "allocation of the material benefits of wildlife by law, not by the market place, birthright, landownership, or social position" (p. 16).

IV: Legal dimensions

While there are many arguments of varying degrees of persuasion against fee hunting as a concept or a management tool, it remains a fact the fee hunting is perfectly legal in Minnesota. In this section we examine a few of the legal dimensions, particularly the assignment of access rights and of liability.

The tension between private property rights and public hunting access rights has persisted since the early days of the Republic. What exactly is it that a landowner sells under a fee hunting arrangement? Since Minnesota wildlife belongs to the state, "in its sovereign capacity for the benefit of all the people of the state" (Minn. Stats. 97A.025), a landowner cannot strictly be said to sell rights to harvest game. Jackson correctly notes, however, that commoditization of wildlife is nonetheless inherent in any kill, whether or not the hunt is associated with a fee. While most states, like Minnesota, make wildlife the property of the state, this common property is privatized with the kill.

> When you have it in your creel or bag, it's yours.... The 'lucky' hunter converts a capital item to non-durable goods. At the same time, title to the game is transferred from the state to the private individual. (p. 5)

(Interestingly, Minnesota law may acknowledge this privatization in a sense: "A person may not acquire a property right in wild animals, or destroy them, unless authorized under the game and fish laws..." (Minn. Stats. 97A.025, emphasis added).)

Does the purchase of a hunting license entitle the buyer to hunting access? Technically, no. It essentially permits the holder to have in possession killed animals of a particular species during a specified time of the year. (It also permits the holders

to "be hunting;" e.g., carry a loaded firearm in the open, during certain times of the year.) The license is not properly even a right to hunt; rather, it is the right to kill certain animals at certain times in certain areas. It does not guarantee either access to game or access to hunting grounds. As noted above, the legal effect of the hunting license is to permit the holder to privatize (through the kill) what was formerly the common property of the people of Minnesota.

Trespass: Early American game law presupposed free taking. Since "the people" owned the game, no one could be prevented from killing it, whether for food or sporting purposes. Free access to game led in many peoples' minds to free access to the lands that held the game:

> Ardent champions of free taking agreed that a common right to enter enclosed land to hunt or fish should be protected by the United States constitution. This effort failed.... Unwilling to mount so blatant an assault on property rights, other American lawmakers achieved the same goal through more subtle means: a presumption that landowners welcome hunters and fisherman to their unenclosed lands. (Lund, p. 25)

This presumption took the legal form in many states that most private land, unless specifically posted, is open for hunting. In Minnesota, however, agricultural land, at least, is presumed closed without permission of the owner--whether or not the property is posted (Minn. Stats. 97B.001). For other rural land uses, it would appear that land is presumed open unless posted. Despite his law, however, it has generally been accepted that farmers, if asked, grant hunting access. If owners want no hunting, they are customarily expected to post their land.

State trespassing laws and fee hunting as an economic activity are not

independent, either in impact or in legal evolution. Lund (p. 72) notes that some states (including Minnesota, as noted earlier) have facilitated fee hunting's profitability by "abrogating the presumption that lands not expressly posted were open to free entry.... Further assistance to fee hunting has been provided by the doctrine that the right to take wildlife may be sold in gross apart from title to the land itself."

Liability: What about landowner liability for damages caused to or by hunters? The Minnesota Legislature has attempted to encourage landowners not to post their lands by enacting (as have other states) a recreational use statute that spells out liability exposure in some detail. The stated purpose of the law is "to encourage and promote the use of privately owned lands and waters by the public for beneficial recreational purposes" (Minn. Stats. 87.01). Hunting is clearly defined a recreational purpose, and access fees such as those we are considering here presumably fall under the definition of a "charge"--any price "asked or charged for services, entertainment, recreational use..." (Minn. Stats. 87.021, Subd.5).

The essential purpose of the recreational use statute is to remove liability from any landowner who "either directly or indirectly invites or permits without charge any person to use the land for recreational purposes" (Minn. Stats. 87.0221). The distinction between charged and noncharged recreation is made even clearer later in the statute, where an owner's liability is specifically <u>not</u> limited for "injury suffered in any case where the owner charges the person or persons who enter or go on the land for the recreational use thereof" (Minn. Stats. 87.025).

Because not all landowner liability exposure is covered by the recreational use

statute, owners considering charging hunters for access may decide to purchase liability insurance, the cost of which might cancel most or all of the financial returns. Of course, if the hunter agrees to cover the costs of liability insurance (as many long-term leases are said to provide for), then this cost to the landowner is avoided.

Compensation: It is traditional in American law that the removal, by the state's police power, of a property right whose exercise led to public damages, is not compensable. The state does not have to pay a paper mill, for example, to stop discharging effluent into a river. The exercise of hunter's traditional "right" of free access (limited only by necessary game law restrictions), however, generally did not lead to public damages. (Access can sometimes leads to private damages, of course, from the predations of slob hunters.)

If the state more overtly promotes fee hunting, can a case be made that hunters have lost a right for which they should be reimbursed? Courts would probably look first at the hunter's alternatives. Are there still other private properties on which free access is still the rule? Are there public hunting lands within equivalent access? Does the fee remove the right, or simply restrict it by being more costly?

We can get some insight into this by examining legal cases in which landowners have sought some proprietary claim over wildlife on their properties. At least with respect to situations in which the owners were newly made subject to game laws, the courts have generally ruled against compensation.

> In finding the aggrieved parties without remedy, courts have characterized the activity of wildlife taking as a privilege rather than a right, and therefore have concluded that past policies that have extended the privilege provide no basis upon which its withdrawal may be attacked. (Lund, p. 38).

V: Economic dimensions

Given that fee hunting is legal in Minnesota, is it necessarily profitable? The answer lies of course in the confluence of supply and demand. Are there enough hunters willing to pay access fees sufficient to profitably cover the private costs of providing that access?

Demand: The base population on which to draw demand data is that of purchased hunting licenses (Haroldson). These numbers fluctuate considerably from year to year. The 1988-89 totals were 286,000 for small game (up 11% from 1985), around 90,000 for waterfowl (down 30%), 100,000 for pheasants (up 18%), and 408,000 for deer (gun) (essentially unchanged). The state's department of natural resources does not estimate how many actual hunters these individual license sales represent. Many buy several licenses, and some only one. A rough estimate would be 500,000 hunters, not all of whom will be Minnesota residents. That's roughly one hunter for every 80 acres of private farm and forest land in the state.

According to a 1985 survey (USFWS) 41% of Minnesota hunters hunt only on private lands, and another 41% hunt both public and private lands. These, particularly those in the first category, might be viewed as a potential market for the sale of hunting access rights if such purchases were the only way to secure access. They might also be viewed as a sizeable group that, should access fees be felt too onerous, would either shift their hunting attention to public lands or reduce their hunting activity. Either case poses significant problems to public management agencies. If hunters shift to public land, pressure on existing habitat might seriously erode hunting quality

on public lands. If they cease hunting, they stop buying licenses, and game and fish funds, which have come to rely almost exclusively upon licenses and fees for revenues (Minnesota Office of the Legislative Auditor), could be depleted.

This would seem to argue for wildlife agencies becoming knowledgeable about the demand elasticity for fee hunting, especially before the agencies go too far in promoting the activity as a way of increasing habitat quality without public expenditures. The actions of Minnesota hunters faced with access fees is currently unknown, but it is not unknowable, given appropriate research expenditures.

Price: The market price of access rights in Minnesota is anything but well established. There appears to be little research data upon which to draw conclusions. Anecdotal evidence suggests a range of from $10/day/hunter for pheasants to several thousand dollars for a season-long lease to prime goose blinds.

There are two procedures that might be used to increase our knowledge about fee hunting market prices. One is to do a market survey, asking hunters and farmers what they actually are paying. This runs the risk of underestimation, because landowners might want to downplay their potential tax exposure. A second technique is to conduct a contingent valuation survey and ask hunters what they are willing to pay and/or ask landowners what they are willing to accept. This approach, unless carefully handled, runs the risk of overestimating, because respondents might have no particular incentive not to lie.

Valuation techniques are fairly well established in the economics literature, but are not within the scope this paper. Nor have they been conducted to a great extent

elsewhere, perhaps because price information is deemed nonrelevant, or perhaps because analysts have not delved very deeply into the subject. In one recent study, Baltezore et al. found that North Dakota hunters paid on average less than $1.00 per year for hunting access. (This average included all hunters, not just those who actually paid a fee.) Adams et al., using a contingent valuation study to determine hunters' willingness to pay for a pheasant stocking program on private lands in Oregon, found that such a program would increase the money-measured well-being of hunters more than it would cost the state. However, only an individually discriminating pricing scheme (one that charged each hunter his or her individual willingness to pay) would be able to exact sufficient revenues to support the program.

A Montana study (Lacey et al.) surveyed landowners with existing fee access programs. The majority reported fee income to be only a very few small portion (less than 5%) of total income. Nearly all carried their own liability insurance, and about one-fourth had arranged written contracts.

Uhlig, in a survey of Minnesota waterfowl hunting leases in 1961 found that lease price was principally a function of how far the hunters traveled ("outsiders" from the Twin Cities paid the most) and how much the farmer knew about the market. More "informed" farmers charged--and received--more for their leases.

Contracts: Two types of variables influence the ultimate fee charged for hunting access: site characteristics and contract features. Only some elements of each are under the landowner's control. For example, such site features as geographic location (price is not necessarily inversely proportional to distance),

landscape, and terrain are pretty much given for a particular owner. The owner presumably can, however, influence game availability and (to an extent) game type by suitable habitat manipulations.

Several features might be prominent in access contracts as a class, but not all will likely be spelled out in any given contract.

1. Written/Unwritten. Many access contracts have been and likely will continue to be verbal agreements between landowner and hunter. The traditional "knock-first" agreement is a contract, even though it may never be spelled out on paper. Many landowners pride themselves on this form of agreement and value the long-term friendships that have arisen therefrom.

2. Charged/Uncharged. As discussed elsewhere, Minnesota law makes a clear distinction in liability assignment, depending upon whether or not an access fee is charged. Contracts might be quite formal, even written, without a fee being required.

3. Duration. Three major categories of contract duration are daily ("permits"), seasonal ("leases"), and multi-year or perpetual ("easements"). There is not always a clearcut distinction between them.

4. Species. While the bulk of access rights sales is probably for a single species (or single license, like small game) access, some have been written to permit a hunter access to a particular property during any or all legal hunting seasons.

5. Exclusivity. Some contracts guarantee that the purchaser will have exclusive hunting use of the property during the contract period. Others guarantee only that a limited number of hunters will have access at any given time.

6. Enforcement. Some contracts guarantee that the landowner will actively keep non-contracted hunters off the property. Others assign the enforcement authority (obligation) to the contracting hunter.

7. Liability. While Minnesota law diminishes the liability exposure of landowners who permit hunting access with no charge, some landowners may purchase liability insurance as well. Those owners charging a fee may purchase insurance of their own (thereby either reducing their own profits or increasing the access price), or they might require the contracting hunters to purchase the insurance themselves.

8. Ancillary services. Not all hunting fees are for access alone. Landowners might provide lodging, meals, transportation, guide service, or game processing.

9. Transferability. An important feature of hunting access contracts, often overlooked, is whether or not the access rights can be transferred to another party without consent of the landowner. If they can, we should be able to find some evidence of a "secondary market" for access rights. What happens, as well, if the land itself is sold after a long-term hunting access contract is negotiated? Are the access rights carried with the land title, or does the hunter have to renegotiate with the new owner?

There is no reason to expect that access fees will settle to a single price in the market. There are simply too many points of contract differentiation for a single-price/single-commodity market to develop. This variability will continue to lead to uncertainty in the investment decisions of both landowners and hunters.

Marketing: In a nascent industry like fee hunting, the two parties to the potential contracts may have difficulty locating each other. At least three methods to

arrange contact suggest themselves. One is for landowners to advertise the availability of access rights through newspapers, hunting magazines, yard signs, and the like. A second is for hunters to similarly advertize their interests in purchasing rights or to directly approach landowners prior to the hunting season. A third is for some third party--either a public body or a for-profit enterprise--to broker a series of contracts, either as agents of the landowners, of the hunters, or both. At least one such brokerage firm is known to be operating in Minnesota at present.

Taxes: Both the landowner and the fee-paying hunter will be concerned about the tax implications of the transaction. The owner faces two significant tax obligations: income taxes on the fee itself and property taxes from any resulting changes in land value.

How state and federal revenue agencies treat the access fees paid to a landowner by hunters depends in part upon whether or not the owner is considered an "operating farmer." If so, the fee would probably be considered earned income, so the farmer would probably have to pay self-employment tax on top of income tax. If the landowner is not considered an operating farmer, the fee would probably be treated more like a rental payment, and the owner would not have to pay self-employment tax. All else equal, then, a non-farmer landowner could have lower income tax exposure on the proceeds of hunting access sales. (All else is rarely equal, of course. Non-farmer owners may be in a higher tax bracket, for example.)

In certain circumstances, the sale of hunting access rights might be considered a service, and so subject to the Minnesota sales tax. This is particularly the case if

guide services, for example, are provided along with the access rights.

The tax code can also provide incentives to the participating hunter.

> "Tax laws have been generous in allowing the fees paid to social, sporting, or athletic clubs to be treated as entertainment facility expense if such expenses have approximate relationship to the taxpayer's business and can be reasonably expected to benefit the business." (Shelton, p. 225)

Fees paid for hunting access in concert with business activities might be deductible as well, if suitably documented.

In Minnesota, property is assessed for tax purposes at its market value. Lacking a large number of comparable sales with which to conduct a market study, assessors frequently look to the income generated from the property. Income might take the form of crop or timber sales, cash rents, or income from other sources--like hunting access fees. If fee revenues become a significant source of landowner income (and if they are reported as such) then the property tax assessment might rise as well.

An upward movement of property taxes might not affect two types of property in Minnesota. Land on which there is a "conservation easement" is "entitled to reduced valuation" (Minn. Stats. 273.117), regardless it would seem of the land's continued recreation income potential. Similarly, many wetlands not covered under the Protected Waters Inventory (as well as those under the recently enacted wetlands bill) are supposed to remain free of property taxation (Minn. Stats. 272.02). In neither case is the right to hunt transferred from the property owner, so any income from such properties is, theoretically, not to be reflected in property valuations for tax purposes.

Whether or not hunting fee income is reflected in property tax assessments, it will eventually be reflected in the land market, assuming that the income is known to the market. The higher the annual fee revenues and the more stable they are over time (itself a function of habitat quality and hunter satisfaction, both at least partially under the control of the landowner), the higher the potential price of the land on the market.

The extent to which hunting access fees already influence land markets is easier to gauge in theory than in practice. What analysts need is just what assessors need: a set of comparable properties (similar terrain, land cover, etc.) that vary in fee incomes. Statistical techniques such as regression analysis can be used to make clearer the relationship between hunting fees and land values. Through the use of a technique called hedonic value analysis, the influence of fees upon land values could be further elucidated.

VI. Political dimensions

For the state to become actively involved in the fee hunting discussion, either a clear public benefit or clear public danger ought to be articulated. If fees can be shown to offer desirable direct or indirect outcomes that outweigh their demonstrated costs (both on an aggregate statewide basis), then they might be encouraged. If, on the other hand, the direct and indirect consequences can be shown to be on net negative, then the state might use its power to prevent or redirect any movement toward fee hunting. The evidence marshalled in this document provides mixed

evidence for either outcome. While there is no compelling (in the view of the author) argument that fee hunting is an unmitigated bad, there is likewise little support for the argument that fee hunting is necessarily good, from either the economic development or the wildlife management viewpoints.

A number of broader policy issues cloud the debate. As Kellert notes, even hunting itself is sometimes not the issue:

> Two major causes for lack of empathetic understanding between hunters and anti-hunters are basic differences in philosophical outlook and socio-cultural background. If one considers views for and against hunting in detail, such lofty subjects become relevant as the role of violence in modern society, the place of the gun in human existence, the endangerment of wildlife and natural habitat in modern times, the legitimacy of continued human exploitation of the natural world, the meaning of death, utopian visions of human existence, and other proud issues. (p. 3)

Some of these broader issues congeal into three questions of rights and obligations: the citizen's purported right to hunt, the constitutionally protected right to bear arms, and the obligation of the public to provide hunting opportunities.

The right to hunt. This issue remains on the back burner in Minnesota, although it occasionally receives public airing. While there is clearly no constitutional basis for claims of such a right (Whisker; Lund) there remains the fact that hunting has gone unchallenged throughout most of the course of the American republic. If the "right" is ever widely and successfully challenged (it already is severely limited by game laws), the spread of fee hunting may slow down. If hunting is additionally restricted only on public lands, however, then pressure on private lands and demand for fee hunting contractual arrangements might significantly increase.

The right to bear arms. Few discussions about the legal basis of hunting end without some mention of the constitutional right to bear arms. Of course, this right is no more unimpeded than are many others, what with concealment and registration laws, but many hunting groups strongly and actively support the efforts of such pro-gun organizations as the National Rifle Association in its efforts to combat further restrictions on hunting arms. If ever there were to be a significant reduction in the legal ability of Americans to keep and use firearms, the nature of hunting would obviously change, even if hunting itself was not challenged. Bow hunting, trapping, and other non-firearm hunting techniques are not directly influenced by gun control laws (or the lack of them), except to the extent that they currently compete for hunting access with gun hunters. If all gun hunters turned to non-firearms hunting, pressures for fee hunting would not diminish (for those species that can be hunted successfully without firearms). However, if a significant number of hunters simply gave up the activity, the demand for fee hunting (and the prices charged) might drop considerably.

The state's provision of hunting opportunities. One might justify the presence of the government in the provision of some recreation services on private property (like hunting) and not in others (like bowling) on two broad grounds: tradition and economic. By the former, I mean the institutional momentum observed in many government programs. What was once perhaps justifiable for political, economic, or legal reasons might no longer apply under changing societal conditions--yet it persists.

An economic justification for the continued state role in hunting as a recreational activity runs as follows. Some elements of "the hunt" are said to be public goods or to

exhibit significant externalities, both positive and negative. Such "market imperfections", it has been argued, can lead to an underprovision of hunting opportunities by markets alone, because owners have traditionally been unable to (or unwilling to) charge for any private investment in wildlife habitat. Fee hunting systems could be one alternative to the strictly public backfilling of this perceived underprovision by markets.

Another plausible justification of public investment for hunting on private lands is that the resulting increase in activity has significant public benefits over and above Shaw's "breezy pleasures" afforded the individual hunters. More investment in game habitat might increase the numbers of non-game species, as well, or perhaps increase the ability of the land to filter environmental toxics. These benefits, which clearly cannot be charged for by the owner under current property rights assignments, need therefore be subsidized by public investment.

If these rationales were to be declared invalid or insufficient, the state might take it upon itself to significantly alter Minnesota's present high level of hunting promotion and game habitat development. As public interests change over time, will there remain a politically effective demand for public provision of this particular set of recreation services?

VII. Where does the Extension Service fit in?

Two MES program objectives bear directly on the fee hunting issue. One is that of economic development, the encouragement of landowners and businesspeople

to expand employment opportunities through better use of natural resources. The second is that of resource protection, the teaching (and often preaching) of sound resource and habitat management. At first glance, fee hunting would seem a nice fit for both objectives. It would increase income for landowners (presumably many of them farmers, a traditional MES client), and it would lead to better management of private land resources because hunters would pay for better habitat. Not so, counter some hunting organizations. What you're doing is simply promoting a way for farmers--your major clients--to get more money from hunters--who don't get as much help from your programs.

Extension services always maintain that their activities are "educational," that they simply provide the information about opportunities and research evaluations that allow private persons to make better decisions about their own futures. For example, Miller, a federal Extension Service official, argues that Extension's role ought to be to

> provide private landowners and managers with educational information and technical assistance...to enhance and sustain productive natural resources on their lands. These multidisciplinary educational programs will also provide objective information on potential incentives and disincentives, costs/benefits, risk/benefits, and marketing associated with managing access...if the owner or manager is considering such management as a potential opportunity or preferred option.

Miller claims that these would not be "advocacy" programs. I am not so sanguine. Even such a seemingly laudable goal as "natural resources sustainability and enhancement" can have significant efficiency and distributional implications in its actual practice. What really is Extension's purpose here: to sustain the resource or to teach

people? This is more than a semantic difference. It might happen that people, when "properly" educated, choose, as is their right, to degrade the resource, given the prevailing pattern of prices and property rights. Is the education program therefore to be judged "bad?"

Perhaps the focus of Extension's investment of research and teaching is itself wrongly placed. If its goal is resource sustainability, then Extension ought to focus instead on the people who make the decisions that affect underlying prices and property rights--policymakers in particular. Landowners, even though a traditional Extension client group, are perhaps the wrong focus of education programs if the goal of such programs is more "the resource" rather than people and their decisions.

In the case of fee hunting, there may be a constellation of MES activities that will be perceived as clearly educational, and therefore permitted, but there may also be a set of activities that are thought by some to go beyond the pale. This is not just a communications problem that can be resolved through public relations efforts.

For example, the extension service might conduct landowner training on how to write contracts with other parties (who may be hunters) or how to manage land for increased game populations. But extension personnel probably should steer clear of such activities as running a fee hunting brokerage service, or advertising local fee hunting rates, or serving as secretaries of landowner organizations devoted to fee hunting--even though MES personnel have traditionally served such roles in other economic sectors, notably crop and livestock production and marketing organizations.

Above all, the Minnesota Extension Service needs to carefully think about where

its obligations to teach individuals about business end and where an unwarranted subsidy of individual economic entities begins.

The author thanks these knowledgeable sources for spending time with him discussing fee hunting issues:

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