

Minutes of the Meeting of the
Arizona Game and Fish Commission
Wednesday, January 16, 2002 – 2:00 p.m.
Friday, January 18, 2002 – 8:00 a.m.
Wildlife Building – State Fairgrounds
McDowell Road & 17th Avenue
Phoenix, AZ

PRESENT: (Commission)

(Director's Staff)

Chairman Dennis D. Manning
Commissioner Michael M Golightly
Commissioner Joe Carter
Commissioner Sue Chilton
Commissioner W. Hays Gilstrap

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell
Asst. A.G. Jay R. Adkins
Asst. A.G. Jim Odenkirk

Chairman Manning called the meeting to order at 2:00 p.m. on Wednesday, January 16. Members of the Commission and Director's staff were introduced. Mr. Adkins was not present at the meeting on January 16, 2002. The meeting followed an agenda dated December 21, 2001.

Several announcements were made. On behalf of the other commissioners, Commissioner Gilstrap thanked Department staff for the successful legislative luncheon held earlier in the day. Commissioner Carter reported that in the sunset hearing for the Department, the committee unanimously voted to continue the Department for another 10 years. Director Shroufe noted that the Game and Fish Employees' Association, the Arizona Game Rangers Association, and Department employees worked hard to organize the legislative luncheon.

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2. Hunt/Draw Issues Associated with the Department's 2001 Fall Hunts

Presenter: Richard Rico, Assistant Director, Special Services Division

The September 11, 2001 terrorist attacks resulted in a variety of concerns from the hunting public. Today's meeting was called to allow those individuals who requested a hearing and others to have an opportunity to address the Commission.

Mr. Rico presented an overview of the events that led up to today's meeting.

The terrorist attacks on the United States resulted in the closure of military installations to civilians with permits for various species; police or firefighting personnel had leave cancelled and some were deployed to other parts of the country, i.e., New York City; reserve or active duty military personnel were either called to duty or were deployed to other parts of the country or in the world. Subsequent to this event, all U.S. military installations worldwide went to a high level of alert. While some of those installations have reduced that level to some degree, many of them remain on a high level alert.

Immediately following the attack, the airline transportation industry in the United States was shut down for one week.

State statute prohibits the Department and the Commission from issuing a refund for the purchase of a license or tag (ARS §17-332). Also, the Department does not have authority to issue tags for future hunts or to reinstate bonus points, i.e., the Department did not have any authority to address this issue. The situation was unusual because normally a person would not be able to appeal to the Commission regarding the Administrative Procedures Act because this was not an agency-appealable decision (the agency had no authority to address the issue for it to fall within the purview of the Administrative Procedures Act).

Because of this concern, the Department recommended to the Commission that a hearing be held after the fall hunts were completed because there was no way to tell in September, October or November what the overall impact to 2001 fall season would be.

Camp Navajo originally started notifying civilians who had upcoming hunts within the week after the attack that their hunts were going to be cancelled. It was not evident until a few weeks later that Camp Navajo would not be open to civilians during the entire 2001 season.

About October 1, 2001, the Department drafted a letter to all individuals who contacted the agency regarding this particular issue. Each individual letter or phone call received a response letter from the Department. The letter indicated the Department had no authority to address the issue; however, it would be brought before the Commission in mid-January 2002. The letter indicated a person could request an administrative hearing before the Commission if so desired. If a hearing was requested, the individual was asked to respond back to the Department within 30 days. A second letter from the Department indicating the time and place the item would be discussed was sent to those individuals who requested a hearing.

The Department felt the Commission had certain broad authority within ARS §17-231 to address the issue within certain parameters.

Colonel Trippin described Camp Navajo's natural resource program and its importance. The program encourages Army installations to allow hunting on the installations to the extent that security mission parameters would allow.

The mission of Camp Navajo is three-fold and has impacts on public access, natural resources program and the hunting program. Missions include the receipt and storage inventory, and minor maintenance of Class 5 munitions items. The Triton 1 storage mission also includes the storage of large motors that are explosive in nature. The Camp handles cruise missiles for the Air Force and explosives for the Army. The value of the stockpile is approximately \$6 billion.

Another mission of Camp Navajo is to provide training for all units of the Services. At times, some of the things those units do are sensitive in nature.

The events that led up to and occurred on September 11 had a great impact on the Department of Defense (DOD). All of the installations went to the highest security level within the DOD. This level constrains the latitude a commander has with regard to

public access, i.e., all non-essential personnel will not be admitted onto DOD installations. This level was enforced until early December at which time the level was slightly relaxed but was almost as restrictive as the first. The colonel stated he decided on the first hunt after September 11 to basically shut down all hunting by civilians with permits and access to the installation.

Mr. Rico provided information on the nonresident category. To date, the Department received four letters requesting an administrative hearing from nonresidents. Their primary issue was related to the loss of airline transportation immediately following the terrorist attacks or general concerns related to flying after air travel was restored. Mr. Rico read into the record letters from three nonresidents who requested a hearing but were unable to be at the meeting.

Mr. Rico provided information on military personnel. To date, the Department received three letters requesting an administrative hearing from military personnel. This category included active military personnel who were either restricted to base or deployed and reservists who were either called to active duty or deployed. One individual who had a javelina tag for Unit 24A (February 22-28) requested a hearing. This person's father submitted a letter, which was also read into the record by Mr. Rico. It was noted some of the military personnel, unlike the nonresidents, had tags for more than one hunt that were impacted. Mr. Rico read into the record the remaining letters from military personnel who were unable to hunt.

Mr. Rico stated the Department received four letters requesting an administrative hearing from police and firefighters with the following issues and concerns: leave and/or vacation cancelled and deployment. Two persons who are on the fire management team for the U.S. Forest Service were also a part of an emergency incident command group that was also deployed to New York on two separate occasions. Mr. Rico read four letters into the record.

Access to Camp Navajo by civilian hunters was suspended indefinitely and affected 60 civilian hunters. Of the 60 hunters, 32 contacted the Department and nine requested an administrative hearing. Mr. Rico read seven letters into the record. Hunts for military personnel were allowed to continue on Camp Navajo.

The primary requested relief was a refund of license and tag fees. It was noted in the Department's initial letter that the Department and the Commission were prohibited by state statute from providing a relief of license or tag fees.

A number of individuals requested that, at a minimum, their bonus points be reinstated. One of the Commission's options would be reinstatement of bonus points. The requests are to make them whole again as if they were not drawn for 2001.

The third request from individuals was for tags for the 2002 season.

There were three major areas of concern for the Department: financial, precedent and total impact being unknown. Categories were established for resident and nonresidents for affected tag fees to date. These tag fees amounted to approximately \$8000 in

revenue; tag fees for individuals who requested a hearing amounted to \$2,683. Dependent upon the Commission's decision, Mr. Rico could not state what the total impact would be, i.e., he did not know how many more nonresidents may come forward requesting relief and there was no way for the Department to determine whether or not they participated in hunts or not (except for the Camp Navajo group).

The Department receives 30-40 requests annually from individuals asking us to consider their situations with regard to being drawn for a hunt with a tag they cannot utilize. Potentially, the Commission would have to determine the pros and cons of an issue and decide whether or not they wanted to hear the item and provide the individual(s) with any relief.

Depending on Commission action, a variety of unknown impacts could exist because there is no way to quantify the total number of nonresidents, police/firefighters, or other individuals who have not contacted the Department or requested relief.

The Department looked at four potential options for the Commission to consider.

1. No action
2. Reinstatement of bonus points
3. Hunter provided with a 2002 tag – similar or same unit, they pay for license and tag
4. Hunter provided with a 2002 tag – similar or same unit, they pay for license only

The last three options have three important qualifiers.

Reinstatement of Bonus Points - Reinstatement of bonus points to all individuals/subset of individuals as long as determination is made on a rational basis and not otherwise unconstitutional. To award to a subset of individuals the Commission would need to ensure that its decision was not discriminatory or otherwise unconstitutional. These awards would have to be carefully developed and well defined and supported by rational reasoning. The net effect would be similar to not being drawn for a fall 2001 hunt.

Permit 2002 Hunt – Hunter Pays License/Tag – Provide all individuals or a subset of individuals with tags for the same/similar hunt in the fall of 2002. If a subset of individuals is selected, determination must be based upon same requirements as option 2. The hunter would pay for tag and license.

Permit 2002 Hunt – Hunter Pays License; Department Pays Tag – Same option as #3. This option would require a determination of a justifiable claim against the Department, i.e., that the Department was in some manner responsible for their being unable to hunt. Without a justifiable claim, the Department would be in violation of the gifting statute.

Public comment

Don Martin, representing the Mohave Sportsman's Club, was a former police officer and military person, thought these were voluntary employments on his part. Regarding Camp Navajo, military personnel and disabled persons hunted; any other civilians did not get a chance to hunt and that was not fair or equitable.

Jon Vance, representing self and a member of the Yuma Valley Rod and Gun Club, viewed the issue of \$8000 as potential lost revenue if those tags were reissued. If those revenues were based on game management objectives, if the game management objectives were not reached, theoretically, those animals were still there. If the same number of tags were rolled over to next year, the animals are still there. The revenue would not be lost if the tags were reissued as additional tags. He saw the solution was to reissue the tag for Camp Navajo or adjoining areas.

Richard Hamilton, representing self, did not understand why it was not defined that bonus points could not be reinstated or tag monies returned. As a hunter, he felt he was discriminated against in not being able to hunt at Camp Navajo. He was a 40% disabled military veteran and he was still turned down to hunt there. He had five bonus points and they were gone now. He wanted to have reinstatement of the lost bonus points or a game permit-tag for the 2002 hunt in an area around Camp Navajo. He wanted to see clear guidelines so that if Camp Navajo were to be closed again and civilian personnel were not allowed to hunt, it would be defined in state statute that hunters could receive refunded tags or reinstated bonus points.

Ray Dean, member of the Arizona Bowhunters Association, wanted to be able to hunt and hoped the Commission makes the right decision.

Kevin Curran, member of the Arizona Bowhunters Association, stated there were many things people in the military miss and cannot get back, but this was one thing they could get back. The Commission should do the right thing. The military, police and firefighters serve the public and this was a chance for us to do something for them.

Bill McCaston, representing self, stated he was drawn as a civilian to hunt Camp Navajo. He believed the situation could have been avoided if hunters were allowed to hunt outside of the area. He believed reinstatement of bonus point was not a fair compensation for the amount of money that sportsmen spent. He asked to be reinstated next year, the same as this year. Sportsmen paid for the opportunity to hunt.

Mary Keebler, representing self, stated she was drawn for a civilian permit for the early bull elk hunt on Camp Navajo. Her husband was drawn for a muzzleloader hunt later in the year in the same area. Her husband was a retired National Guardsman and is considered military. As a civilian, she was denied access to the entire area of Camp Navajo; however, her husband was told she would be able to accompany him as a non-hunter on his hunt in mid-October. This troubled her. She was told on her hunt, she would have authority to carry a firearm, and on her husband's hunt she would not have authority to carry a firearm on Camp Navajo. She was upset that she lost her points and she could not hunt anywhere else. Her preference was to have a hunt permit-tag for the 2002 Camp Navajo bull elk hunt in the same time frame as the one denied to her in 2001. In the event Camp Navajo has no hunts in 2002, in equity, she wanted an early 2002 bull elk hunt in the same time frame as the 2001 hunt in the remaining area of Unit 6B.

Commissioner Chilton asked about the suggestion to increase the number of tags for next year for animals that were not taken this year. Mr. Rico stated surveys have not been completed and the Department has no idea as to the number of tags from one year to the next. Tice Supplee, Game Branch Chief, stated Camp Navajo was a limited geographic

area. Season dates were spread out to relieve the hunt pressure. There might be logistical issues with doubling the number of civilian permits although it could be looked at in the total. These civilian permits were still a small percentage of the total available. A point of flexibility could be fewer military permits to compensate for the civilian permits that were not used. Unit 6B does not have early seasons; the hunt structure tends to rotate through units in Region 2.

Commissioner Carter believed the attack of September 11 was not the end to the kinds of activities this country will face in the future. The Camp Navajo issue was of concern. He felt the guidelines did not contain adequate clarification. Mr. Rico pointed out a specific note for the Camp Navajo archery elk hunt in the current hunt regulations booklet. There was a packet mailed to hunters that were drawn for Camp Navajo that outlines the restrictions and/or requirements for hunting there. There was a disclaimer in the packet that the start of a hunt may be delayed or a hunt may be cancelled due to military training activity. He did not know if that information was given when someone called in to request the hunt number for his hunt application. Commissioner Carter did not see a justifiable claim against the Department in this case.

Mr. Odenkirk stated that the reference to justifiable claim meant that a fault or lack of responsibility by the Department created a liability back to the individual. With Camp Navajo, there were a number of individuals who were not able to hunt. The question was whether or not the Department was responsible for the situation. Each group could be looked at; each individual did not need to come forward and prove specific circumstances.

Commissioner Carter thought that Camp Navajo could be dealt with as one class of issues because they all dealt with access for civilians. All of the others would have to be decided on a case-by-case basis. Mr. Odenkirk thought that with regard of all of the circumstances, he would be hard-pressed to find the Department was at fault for any of the issues. With regard to proving a justifiable claim against the agency, one does not exist. In terms of creating distinct sub-categories of affected groups, the Camp Navajo group could be looked at as one. It may be difficult to distinguish the other groups. There may be factors that could be grouped with the others.

In Option 3, Mr. Odenkirk stated the Commission would be exercising its authority to prescribe tags under Title 17. It would be relying upon its equitable or fairness authority to resolve issues of this nature. The Commission is constrained by the state constitution to not give away something of value that belongs to the state for a purpose that is not a public purpose. Tags represent a monetary value; to give away tags without compensation to the agency constitutes a gift. Mr. Odenkirk's reading of the case suggests that if a tag was given to an individual, it does not constitute a public purpose and would be restricted by the state constitution.

Commissioner Carter spoke with regard to reinstatement of bonus points, which seemed the most reasonable way to handle the issue. He wondered how many more would come forward that would have to be dealt with individually if the Commission took action to do anything today. Mr. Odenkirk stated the Commission would want to develop notice to the public that would allow them to respond. The individual should be required to

demonstrate that he was not able to hunt; that it was circumstances as a result of events on September 11, and not some other circumstances.

Commissioner Carter noted another consideration should be the number of available tags based on biological data. Something needed to be done. He did not want to deal annually with these for various reasons.

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Meeting recessed 4:03 p.m.

Meeting reconvened 4:15 p.m.

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Commissioner Golightly stated this issue has the potential to be a problem for the Department and Commission in the future. He believed the terrorist attacks were not finished and there would always be closures of military installations and wildlife refuges as a result. The Commission would have to provide direction to the Department on how to handle future situations.

Chairman Manning stated relief should be given to people who suffered the direct consequence of not being able to hunt during the 2001 season. A disclaimer should be in the hunt regs to clarify this point. If the military closes its bases to hunting or if a person is unable to get to his hunt because of a natural or terrorist attack, he will not be able to get his bonus points, tag or license refunded or replaced. We do need to give relief at this juncture.

Commissioner Carter wanted the Commission to give direction to legal counsel to prepare a motion that is specific in two areas: 1) dealing with civilian access to military installations where they were prohibited and how this can be resolved one time, with an upfront disclaimer and 2) frame a motion dealing with the other group of individuals, whether they be law enforcement, military, firefighters, nonresidents, that there would be a one-time action, again, with a disclaimer, that justification be provided to reinstate bonus points. This motion needs to be framed in a proper manner and should not be done today, but rather, before the Commission meeting ends on Friday, January 18. Individuals who have not been contacted by the Department to date have the opportunity to provide justification.

Commissioner Gilstrap stated it was difficult for the Commission to decide what to do because of the potential long-term ramifications of its action. He was uncertain that a decision of long-term consequence could be reviewed and terminated at this meeting with the degree of forethought it deserves.

Mr. Odenkirk clarified there were two separate issues. The Commission was looking for a motion that would authorize the reinstatement of bonus points to individual hunters who were affected by the events of September 11 and that there be a notice provided to the public that allows for hunters to opt into this reinstatement provision. Time would be needed to craft language so that those people affected by the events and eligible and are confined to that group alone. Commissioner Carter stated this reflected his thoughts. Mr. Rico clarified that the group of civilian hunters at Camp Navajo were not able to hunt. The people who were drawn for the military hunts at Camp Navajo were able to hunt.

The category would be for everyone else, i.e., the nonresidents, the military and firefighters.

Commissioner Carter's direction referenced two parts: 1) civilian access to military installations because of a national tragedy; 2) everyone, because of the tragedy, reinstatement of bonus points, which would include public notice regarding the types of justification that would need to be submitted to the Department to make a determination as to whether or not they are eligible to have their bonus points reinstated. He clarified he was advocating giving 2002 tags similar to the ones for 2001 to those people denied access to Camp Navajo. Everyone else would have reinstatement of bonus points.

Commissioner Chilton did not regard option 4 to be a good one. Option 3 was her preference. The terrorist attack of September 11 was a major national tragedy that caused the country to stop dead in its tracks. Most of the people did not feel like driving to go on a hunting trip. In the future, a Commission would have no difficulty distinguishing between a personal problem and a national tragedy. The Department relies on the good will of the hunters. The good will gained from what little the Commission can do here to remedy this problem should be done. The affected people should get their 2002 hunt tags, but with payment. Commissioner Golightly asked how many people would be involved under Option 3. Mr. Rico stated there was no way to determine how many nonresidents were unable to use the tags that they drew for this year due to the terrorist attack, but Camp Navajo can be quantified at 60.

Commissioner Chilton thought the Commission could request that Mr. Odenkirk draft a letter with sideboards that would state the Commission's decision and would contain a deadline for responding. Mr. Rico stated it would be difficult to determine all of the nonresidents who were drawn to send them a letter, and it would be impossible to identify people in the military or police to send them any notification. A broad statewide notification would have to be done. Mr. Odenkirk stated individual notice would not have to be necessarily given. This was not a situation where the Department was dealing with individual claimants that we know needed to be sent certified notice; it is more akin to making notice in the state register, press releases, websites, etc. He needed to know how to determine what was a fair amount of time for someone to notify the Department and he needed to know the range the Commission wanted to pursue. Commissioner Carter noted there were other groups that made a significant contribution, e.g., contractors, construction workers; that was the reason why his direction was for civilian access to military installations and all others who met the justification requirements to either reinstate bonus points or to do something that was agreeable and to define sideboards for justification.

Motion: Chilton moved and Manning seconded for discussion purposes THAT THE DEPARTMENT DRAFT A LETTER THAT PUTS SPECIFIC SIDEBORDS ON THIS OPTION: THOSE HUNTERS WHO CAN DEMONSTRATE THAT THEY DID NOT HUNT DURING THE 2001 SEASON AFTER THE SEPTEMBER 11 EVENT BE PROVIDED THE OPTION OF TAG AND LICENSE FOR WHICH THEY WILL PAY FOR THE 2002 SEASON FOR SIMILAR OR THE SAME HUNT AREAS FOR WHICH THEY HAD BEEN PREVIOUSLY ASSIGNED WITHIN THE CONSTRAINTS OF THE DEPARTMENT'S FINDING THAT BIOLOGICALLY IT IS ACCEPTABLE AND DOABLE.

Commissioner Carter noted the Commission did not need a motion since it was giving legal counsel direction to prepare a motion that would be adopted before this meeting ended on Friday evening. Commissioner Golightly thought that the motion superseded Commissioner Carter's direction. He was not comfortable with the issue of the hunter being provided a 2002 tag similar to the unit they paid for in 2001.

Mr. Odenkirk commented that the motion refers to justifiable cause. From a legal perspective, this raises some concerns. It is a standard that is hard to apply. Without guidance, it would be hard for the Department to make a determination. He advised that some additional criteria be added to the concept of justifiable cause to give him and the Department direction so that a decision can be made. If this was not done, he would have to advise the Department to essentially authorize the issuance of the tag to anybody who gives any slightly credible justification for not hunting. The Commission may want to look at whether or not an individual was prohibited from hunting because of the events and he made a choice, or to look at whether or not someone's ability to hunt was prevented because of the events.

Vote: Chilton – Aye
Golightly, Carter and Gilstrap – Nay
Chairman voted Aye
Motion failed 3 to 2

Commissioner Carter reiterated that it was critical to tie this to the national tragedy and that the Commission deal with two separate components: civilian access to the Navajo and all others. Justification requirements should be developed to authorize the Department to take whatever action was necessary related to this event.

Motion: Gilstrap moved and Chilton seconded THAT WITH THE INPUT COMMISSIONER CARTER JUST GAVE AS A PREAMBLE TO THE FOLLOWING MOTION, THAT MR. ODENKIRK PREPARE A MOTION THAT WOULD INCLUDE HUNTERS BE PROVIDED 2002 TAGS SIMILAR OR THE SAME UNIT ON THE DEPOT AND THAT THEY PAY FOR THE LICENSE AND TAG.

Vote: Unanimous

Motion: Golightly moved THAT RELATED TO THE MOTION THAT JUST PASSED WHICH GAVE DIRECTION TO LEGAL COUNSEL, THAT THE GAME BRANCH STRUCTURE WHATEVER THAT MOTION WOULD DO TO GIVE THE COMMISSION AN IDEA OF WHAT WOULD HAPPEN AND TO LET THE COMMISSION SEE WHAT THE HUNT WOULD LOOK LIKE WITH THOSE NUMBERS.

Ms. Supplee noted the dilemma was that the Department did not know if Camp Navajo was going to offer civilian permits. The same hunt opportunities may not be available next year, in which case the Department would have to look at similar hunts. Season date, legal method and legal animal would dictate criteria for similar hunts. Commissioner Golightly withdrew that part of his motion. Ms. Supplee stated the Department could provide the framework to go with the recommendation.

Mr. Odenkirk stated this did not have to be part of the motion. If the Commission gives direction, the hunts could be structured in accordance with that direction. Mr. Odenkirk stated the last motion referred to people who were not permitted to hunt on Camp Navajo. Each of the individuals would be entitled to a tag for the 2002 fall season for the same or similar hunt.

Commissioner Golightly withdrew his previous motion.

Motion: Golightly moved and Carter seconded THAT CONSIDERATION BE GIVEN TO ALL OTHERS AS DEFINED IN PART B EARLIER IN THE CONVERSATION AND BE PUT IN THE FORM OF A SECOND MOTION FOR COMMISSION CONSIDERATION.

Vote: Golightly, Chilton and Gilstrap – Aye
Carter – Nay
Chair voted Aye
Motion passed 4 to 1

Motion: Gilstrap moved and Golightly seconded THAT THIS ITEM BE CONTINUED TO THE FRIDAY, JANUARY 18, MEETING.

Vote: Unanimous

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Motion: Gilstrap moved and Carter seconded THAT THE MEETING BE RECESSED UNTIL FRIDAY MORNING.

Vote: Unanimous

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Meeting recessed 5:15 p.m.

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Friday, January 18, 2002 – 8:00 a.m.

Chairman Manning called the meeting to order at 8:00 a.m.

1. Litigation Report

- a. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 98-0632-PHX-ROS; *Conservation Force v. Shroufe*, CIV 98-0239 PHX RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754 and *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)

A copy of the update, which was provided to the Commission prior to today’s meeting, is included as part of these minutes.

Messrs. Adkins and Odenkirk had nothing further to report at today’s meeting.

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2. Executive Session

- a. Legal Counsel. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 98-0632-PHX-ROS; *Conservation Force v. Shroufe*, CIV 98-0239 PHX RCB; *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Center for Biological Diversity v. Dombeck et al*, CIV00-1711-PHX-RCB; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754 and *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)
- b. Personnel matters. Director’s goals and objectives.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Golightly, Carter and Gilstrap – Aye
Chilton - Absent
Chairman voted Aye

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Meeting recessed 8:08 a.m.

Meeting reconvened 8:15 a.m.

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Chairman Manning introduced members of the Commission and Director’s staff. Commissioner Chilton arrived at the meeting at 8:17 a.m. after introductions were made. The meeting followed an agenda dated December 21, 2001. Director Shroufe noted Item #13 on the agenda was withdrawn.

9. Call to the Public

William McCaston, representing self, spoke regarding the item on Wednesday's agenda, Hunt/Draw Issues Associated with the Department's 2001 Fall Hunts. Of the options available to the Commission, he preferred #4. He thought that Option 3 was not the fair, equitable, and moral way to proceed. He hunted at Camp Navajo before and he knew the rules that the base can be closed at any time under any circumstance; however, he did not receive any information from the Depot before the hunt. He relinquished his complaint against the Commission and would gladly pay for his tag next year.

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3. An Update on Current Issues, Planning Efforts, and Proposed Projects on Federal Lands in Arizona and Other Matters Related Thereto

Presenter: John Kennedy, Habitat Branch Chief

A copy of the printed update, which was provided to the Commission prior to today's meeting, is included as part of these minutes.

No further discussion occurred on this item.

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4. An Update on Proposed Development Activities on Arizona State Trust Land Located Near the Little Colorado River in the Springerville-Eagar Area, Apache County

Presenter: John Kennedy, Habitat Branch Chief

Copies of an updated map pertinent to this item were distributed to the Commission.

The Department reviewed the Arizona State Land Department (SLD) right-of-way application dated November 7, 2001, for a non-exclusive access road, filed by George H. Johnson of The Ranch at South Fork, LLC. The Department provided comments on the application to the SLD in a letter dated December 6, 2001. Despite discussions regarding potential commercial development in the area, the Department's comments were limited to the right-of-way application for the access road.

As explained in our letter to the SLD, the Department attempted to contact Mr. Johnson on December 3, 2001, to discuss the application and to obtain additional information regarding the proposed access road. On December 5, Tim Blakeley from the law office of Lewis and Rocca in Phoenix contacted the Department and clarified several issues regarding the proposed project. This information was incorporated into the Department's comments on the right-of-way application.

The Department visited the project area the end of November. The majority of the applicant's private land is directly accessible using County Road #4124. Less than two acres of the private land are located along the bluff above the Little Colorado River south of Highway 260. The proposed road will provide access to this portion of the applicant's

private land. The application specifies a 60' width for the proposed access road; it is understood the SLD is requiring the road to be fenced although this was not mentioned in the application.

The proposed access road occurs within Game Management Unit 1 and is within critical winter range for big game, specifically elk and pronghorn. Additionally, the area is contiguous with and includes critical fawning habitat for pronghorn. The area is virtually roadless at this time and is used extensively by pronghorn for both fawning and winter range.

Establishment of a new road in the area could potentially result in a significant increase in unauthorized wildcat roads in the area, which could result in increased adverse impacts to wildlife resources. Along with increased vehicle access in the area, the potential exists for increased human disturbance. This disturbance during the fawning period may negatively impact fawn survival rates in the area; construction of the road itself would result in the direct loss of pronghorn habitat.

Required fencing along the road would fragment pronghorn habitat and significantly impact pronghorn movement and use patterns in the area. Should pronghorn or elk get on the road, the fence may funnel these animals onto the highway, which could result in wildlife-vehicle collisions. The Department questions the need for a right-of-way fence along the road, particularly given the relatively short distance (approximately 660') to the private land. The proposed road occurs on SLD land that is currently grazed by livestock under a state grazing lease, but there are similar situations on State Trust lands where access roads occur on grazing leases and the roads are not fenced.

The Department discussed its issues and concerns regarding the road width and fencing during a phone conversation with Mr. Blakeley. Mr. Blakeley noted the 60' road width on the application was not firm and a 20' wide access road would be acceptable. Mr. Blakeley indicated that the SLD advised fencing was needed because the proposed road would occur on a grazing allotment. Mr. Blakeley had no problem with either a cattle guard or gate at the highway right-of-way fence.

If the right-of-way application is approved, the Department recommended that the SLD modify the width of the road to 20' and that the road not be fenced. The Department recommended that if the road is fenced, the SLD incorporate either a gate or a cattle guard where the proposed road meets the highway right-of-way fence to decrease the likelihood of wild ungulates being funneled onto the highway. The Department also recommended that the fence meet Department wildlife specifications to facilitate pronghorn and elk movement in the area.

On January 14, 2002, the Department met with Mr. Johnson to discuss the draft conceptual site plan and the proposed commercial development. Although Mr. Johnson has not filed a commercial lease application with the SLD at this time, he has met with the SLD to discuss a 99-year commercial lease and an associated draft conceptual plan.

The Department understands the proposed development plan will include all State Trust land in three sections, which total approximately 1300-1500 acres. Currently these lands are classified for grazing purposes with three separate grazing leases.

Based on preliminary information, the Department indicated that the draft conceptual site plan as proposed at the meeting would result in negative impacts to wildlife resources. Mr. Johnson indicated that development in sensitive areas could be removed from consideration to maintain some habitat values in the area and is willing to mitigate potential impacts either on site or off site related to this project.

Commissioner Chilton stated development in this wildlife corridor would have an impact on wildlife, hunting access, and historic uses of the land. She urged the Department to keep abreast of what is occurring and to look into the need for the proposed access to see if there are any alternatives or options that could be exercised instead. The Department should be able to have some input into the final decision.

Commissioner Gilstrap stated developments in Arizona cause a dilemma when they occur in major wildlife corridors, but would be good for schools and revenue. The state was losing habitat at a tremendous rate, and he shared Commissioner Chilton's concern that we stay abreast of this issue and make whatever effect minimal where possible.

Mr. Kennedy stated the Department will continue to work aggressively and will work with Mr. Johnson and the SLD. The Department has not received any input from the SLD regarding the right of way, and that is the only piece on which the Department has formally commented. He noted the proposed road purpose and need is vague at this point. It was more convenient to access the property from the north.

Tim Blakeley was present and stated the road was needed because a particular part of the ranch was isolated and inaccessible by the current road.

Public comment

Wink Crigler, representing self, stated the proposed road would fragment the entire habitat. She showed photos of the area less than ¼ mile away from the proposed road. There was only one constant water source for the animals that travel through the area; it is classified as a flight-zone pattern for wildlife. She has strived to maintain the area as a high quality habitat which was across the highway from the Grasslands area of Game and Fish. As leaseholders on the land, she would like to see habitat protected and not allowed to be devastated by roads and traffic into the area. She supported smart growth, but she could not support this kind of road that takes away from the beautiful habitat in Arizona.

Blaine Bickford, representing self, stated he was the Chair of the Springerville Habitat Partnership Committee (HPC). The developer has not come forth to the HPC to solicit any kind of partnership in this area. The potential detriment to wildlife was great and he wanted to be fully knowledgeable on this issue and to participate in this endeavor as much as possible. He invited the gentlemen to give a presentation to the HPC; there would be a meeting on February 12.

Commissioner Carter asked about proposed activities in terms of development that would be provided if the access were to be scheduled. Mr. Kennedy stated the development would include three sections (16, 17, and 18). He understood development at this point would include approximately 500 RV sites dispersed through-out the area, approximately 200 vacation homes, clubhouse, large equestrian facility, neighborhood convenience

store, boy/girl scout village and numerous summer/winter recreational activities. The Department was knowledgeable of the proposal, but had not seen it. The Department obtained information through its meetings with the applicant as well as SLD. A draft conceptual map was available.

Commissioner Carter agreed with Commissioners Chilton and Gilstrap and expressed valid and critical concern regarding the current uses of the property. He cautioned that the Department be sensitive to the economic needs of the community, but not at the expense of such a critical area. The Department should keep the Commission informed to allow for input in the future.

Commissioner Chilton was aware Apache County needed economic development. She asked if the Commission could purchase development rights from the State Trust. She wanted to know if that would be an acceptable avenue to the parties involved.

Chairman Manning stated the Commission and Department supported multiple uses on public lands and access to these lands. If this would have a detrimental impact on wildlife in the area, it would need to be critically looked at.

Mr. Blakeley clarified that the right of way application was a separate matter from proposed development of the area. There has been no application for the proposed recreational development. Input would be taken from the Commission and various groups to develop a plan that would address everyone's concerns.

Chairman Manning stated the Commission was concerned about the grasslands habitat for wildlife, but it was premature for the Commission to further discuss this issue.

Pete Cimellaro, representing self, stated the project was extensive. He owned property close to the subject property proposed for development. This development would result in a clear departure from the area. Wildlife areas were critical and riparian areas were diminishing. If development occurs, antelope will not winter in the area. There were concerns from the locals about how this development has been handled already. He hoped this agency and many others carefully scrutinize this project as it could affect a lot of wildlife habitat along the Little Colorado River.

Carl Lee, representing self, stated his concerns were two-fold: 1) wildlife and 2) the fish in the Little Colorado River that would be impacted by this development. The proposed road would result in increased use of the area and sedimentation would occur in the river. Mr. Lee is a Board member of the Zane Grey Chapter of Trout Unlimited and is a member of the Arizona Flycasters. The Board of Directors of Trout Unlimited was opposed to the development proposal.

George Johnson of The Ranch at South Fork stated the reason for the access was to be able to get to the home he was building in that area. If access was from the property below, the Little Colorado and the bluffs would be destroyed. He would be applying for a 20' easement for a driveway. Everything was being done before an application is made. It was needed and was in the economic forecast in the new general plan for Apache County. He was concerned about wildlife. He felt he could not be denied access to an isolated piece of property as long as he enhanced the area and did not hurt it. The

easement he would like to have in order to build his home had nothing to do with the large project. He wanted everyone's approval before proceeding.

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3. An Update on Current Issues, Planning Efforts, and Proposed Projects on Federal Lands in Arizona and Other Matters Related Thereto – cont'd.

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club, stated federal agencies (Department of Defense and Department of the Interior) have yet to accept states' rights to manage wildlife on particular lands, i.e., military installations, refuges and monuments. The Game and Fish Department was spending too much time begging to be at the table. The issue needed to be resolved.

Commissioner Carter shared Mr. Fugate's views, but thought the Commission and Department were aggressive in meeting responsibilities and jurisdictional issues both administratively and challenging in the courts to reaffirm its responsibilities and jurisdictional issues. He hoped state and federal agencies would become cooperators to get back to where we need to be.

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4. An Update on Proposed Development Activities on Arizona State Trust Land Located Near the Little Colorado River in the Springerville-Eagar Area, Apache County – cont'd.

Public comment

Chairman Manning read a comment from Milton Ollerton, Senior Planner for Apache County, that as this project progresses, the Department should plan on holding public hearings on this issue in Apache County.

Carm Moehle, State Chair for Trout Unlimited, was concerned with wild ungulates and other wildlife and the Commission should be concerned about the wildlife resource. There was a possibility of having a wild, self-sustaining trout fishery in the Little Colorado River, which also has economic value. Erosion or dust from unnecessary roadways results in problems for salmonids in a fragile environment.

* * * * *

5. An Update on the Arizona Supreme Court Decision Regarding Restoration and Preservation of State Trust Lands Classified as Grazing Lands

Presenter: John Kennedy

A briefing was presented on the Arizona Supreme Court decision, *Forest Guardians, et al. v. Wells, et al.*, Arizona Supreme Court No. CIV 00-0177-PR (11/21/01) regarding restoration and preservation of State Trust lands classified as grazing lands.

In 1997, the Forest Guardians applied for a 10-year lease on approximately 5000 acres of State Trust grazing lands in Coconino County. The then current lessee also applied to renew its lease to graze 85 head of cattle on the land for \$2,150/year. Forest Guardians' offer was approximately twice that amount.

Forest Guardians also applied for a 10-year lease of approximately 162 acres of land in Santa Cruz County. That land had also been previously leased and the lessee had applied for renewal at \$50.16/year. Forest Guardians offered to pay five times that amount.

Jonathan Tate applied for a 10-year lease on approximately 16,000 acres of State Trust land in Pinal County, offering to pay twice the amount that the then-current lessee offered for renewal of the lease. Although the Land Commissioner had classified these parcels as grazing land, Forest Guardians and Jonathan Tate did not intend to graze livestock on any of the parcels in question. Instead, they informed the Land Commissioner that the land would be rested for the entire term of the 10-year leases and requested the Commissioner permit Forest Guardians to use the land for purposes other than domestic livestock grazing. Forest Guardians explained that non-use for the 10-year term would restore the properties, thus allowing grazing in the future and enhancing the amount of the trust, while its higher bids would satisfy the Commissioner's other legal obligations to obtain the highest revenue for the school trust lands.

The plaintiffs were advised that their application would be rejected because they did not propose to use the land for grazing, the purpose for which it had been classified. The State Land Department (SLD) informed the plaintiffs that they would have to file an application to have the lands reclassified for commercial rather than grazing use if they wanted to lease trust land for preservation or restoration. The plaintiffs continued to request the Commissioner to accept their bids and issue leases for resting or non-use of the grazing lands. The Commissioner denied the plaintiffs' lease applications because they did not intend to range livestock and such non-use would be consistent only with commercial lease.

According to the SLD, the plaintiffs' failure to apply for reclassification for the commercial uses would prevent the Trust from receiving additional lease income based on the higher commercial use standard and, therefore, was not in the best interest of the State Trust. The administrative law judge concluded the Commissioner did not violate his fiduciary duty by rejecting the plaintiffs' application (1998). The plaintiffs then sought judicial review by special action filed in Superior Court. The first judge affirmed the Commissioner's decision and the plaintiffs appealed. The Court of Appeals' majority held that the land must be used for the purpose for which it was classified and that the use could not be changed unless it was reclassified. The Arizona Supreme Court granted review and vacated the Court of Appeals' opinion and reversed the trial court's judgment (2001).

The Arizona Supreme Court concluded that restoration and preservation of State Trust lands classified as grazing were a part of good range stewardship and the uses must be considered by the Land Commissioner, especially when proposed by the high bidder. The Commissioner may not reject such a proposal by the high bidder as inappropriate for land useful only for grazing when those who lease for grazing are routinely permitted to make such uses. The Court also concluded that the SLD may not apply the classification

statutes to discourage conservationists and others from bidding on grazing land by requiring them to have the land reclassified and pay the higher rentals resulting from commercial classification. If the parcels in question are usable for something of higher revenue than grazing, then the SLD should institute reclassification procedures and open the land to commercial bidders. The court recognized that grazing lands currently have no other purpose other than grazing or non-use.

This decision by the Arizona Supreme court requires the Land Commissioner to determine whether the plaintiffs' high bids were, in the long term, best for the school Trust and their beneficiaries. If so, the Land Commissioner shall accept the bids and issue the leases. This decision will require the Land Commissioner to adopt new regulations with criteria to determine if an application proposing non-use for a grazing lease is the best use for the Trust. The Commissioner, however, cannot disregard and label restoration uses as inappropriate for a grazing lease.

The Department's main issues and concerns at this point are:

1. If State Trust and state grazing lease land is rested and not used through a 10-year lease, would there be any new restrictions or limitations on public access for hunting and fishing.
2. Range improvements on State Trust lands, primarily associated with water, benefit wildlife. Would existing range improvements be maintained during the 10-year non-use period.
3. The issue of range improvement pertains to not only wildlife but whether or not the lands would be appropriate for grazing purposes after the 10-year lease.

Present at today's meeting was Jody Latimer, Manager of the Natural Resource Conservation Section of the SLD.

Commissioner Carter was greatly concerned. In general, the ranching community has been excellent stewards of the land. If the lands were used for other purposes, what limitations or restrictions would there be regarding general public access that exists today and, would there be a continuation of beneficial improvements for wildlife. This was a critical issue in the Department's partnership with the SLD. He hoped the Director would make this a personal agenda item in terms of his goals and to keep the Commission informed as to where the SLD was going with this as related to implementation of processes, rules, regulations or orders and in the legal arena.

Commissioner Chilton made it clear that the court decision was not a win for habitat, hunters or Arizona's character. Ranch units are composed of state and federal grazing leases and private land. Ms. Crigler presented a map that showed a result of this court case if it developed along the lines of those who sought that remedy and obtained it. Ranching would be made unfeasible in the area and the character of the land would be changed. She referenced a study by Professor Jerry Holechek (*Managed Grazing vs. Grazing Exclusion Impacts on Rangeland Ecosystems: What We Have Learned*). A summary was presented: The best thing to do is graze the land in a managed, conservative fashion and the worse thing to do is to leave it unmanaged.

She gave a copy of the study report to the Department to make it available to those people involved in habitat.

Commissioner Gilstrap looked forward to the input from the state and wanted the Department to monitor occurrences as a result of the court case.

Chairman Manning noted a letter dated December 7, 2001, from William Berlat to Justice Zlaket, Chief Justice of the Arizona Supreme Court, regarding his displeasure of the court's decision on the grazing lease opinion.

Ms. Latimer provided information to the Commission. The SLD would handle conflicting applications in accordance with existing state statutes. The economic viability of a ranch is a primary consideration; management practices will be considered; the compensation for improvements will be dialogued; statements of equity will be presented by both of the applicants and every component of the ranch management plan will be reviewed. The Land Commissioner would make a decision within the scope of the court's opinion and in the best interest of the Trust; this court ruling would not impact hunter access. Maintenance of improvements is not as clearly defined in the grazing leases as in commercial leases. The SLD has concerns about stock tanks because if they were not maintained, surface water rights would be lost after five years. The dollar amount may or may not be in the best interest of the Trust for a long-range management plan. Grazing leases were akin to holding bonds in a personal portfolio. Every application will be considered on a case-by-case basis.

The lower court has not redirected those three initial conflicting applications back to the SLD for reconsideration. These conflicting applicants will not be allowed recreational use or exclusion of the public for any of those types of uses requested that are not consistent with grazing leases.

Commissioner Carter stated that if the issue is resolved with legislation, the Commission and Department would be interested in working with the Commissioner to keep public policy in the hands of policymakers.

Commissioner Chilton elaborated further on the stock tank surface water rights. Stock tanks are the primary wildlife water sources throughout the state.

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3. An Update on Current Issues, Planning Efforts, and Proposed Projects on Federal Lands in Arizona and Other Matters Related Thereto – cont'd.

Public comment

Tom Hale, representing the Gila County Cattlegrowers, thought that the U.S. Forest Service was running people off their permits. There were two permits in Gila County and he thought the Department was working with the Forest Service to get them off and the Department was working with the Forest Service on game management on the allotments. Chairman Manning noted the Department has input on final Forest Plans regarding game management.

Commissioner Chilton noted Mr. Hale's comments referenced the Tonto National Forest on page 2 of the federal lands update. The statements made in the update were unsupported. There should be more coordination between the Department and with the owners of the ranches. Statements made by the Department should not unduly impact and offend the people with whom it is working to gain hunter access.

Commissioner Gilstrap read the update and saw concern over existing range conditions and the Department was working cooperatively with the Forest. The Commission has concerns about wildlife needs. Game and Fish is not the lead agency and it cannot overrule the lead agency nor can it circumvent the process. It was not the intent of the Commission or the Department to run anyone off the land.

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Special Presentations and Awards

On behalf of the Flagstaff Chapter of the Mule Deer Association, Bob Jacobs presented the Department with a Brushcat Attachment for mechanical removal of undesirable plant species, e.g., sagebrush, in order to provide better forbs and browse plant production. It has minimal impact on habitat. The Brushcat works in conjunction with a Bobcat.

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6. State and Federal Legislation

Presenter: Duane L. Shroufe, Director

HB 2048 (Game and Fish Department sunset) passed with a 9-0 vote in the House committee to continue the Commission and Department for 10 years.

Director Shroufe reported on two recent pieces of legislation. One has to do with changes in Title 5 (Watercraft) to allow mini-storage operators to have a process that would guarantee items left in an abandoned storage unit could be sold. Sometimes boats or jet skis are left in units. The Department recommended support of this legislation. The Department has also been meeting with representatives from the towing industry who have a similar problem. Richard Rico, Assistant Director for Special Services Division, explained further that Title 5 currently does not allow the Department to release watercraft registration information to a mini-storage operator. The primary issue occurs when someone defaults on a contract with a mini-storage operator. A notice is sent to the person stating that a lien foreclosure process would begin to sell those items to recoup losses. If the person never gets back to the operator, the operator may find watercraft. It becomes incumbent upon the operator to identify the registered owner of the watercraft. Many times this is not the same person with whom they had a contract. If there is a lien on the watercraft, it becomes a problem for the operator to sell it. The change to Title 5 would be to add a mini-storage operator to the list of individuals the Department can provide registration information. This will make it easier for them to sell the watercraft.

Chris LaVoy, attorney representing the Mini-storage Association, stated legislation was needed to sell watercraft.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION SUPPORT LEGISLATION RELATED TO SELF-SERVICE STORAGE UNITS (MINI-STORAGE UNITS) BASED ON THE PRESENTATION MADE BY THE DIRECTOR AND AS PRESENTED TODAY.

Vote: Unanimous

Kerry Baldwin, Acting Assistant Director for Information and Education, explained the two shooting range bills that have been introduced in the Legislature. Director Shroufe distributed copies of the bills. S 1008 was submitted by Senator Tom Smith and is a result of the Joint Legislative Committee on Firearm Safety and Shooting Ranges. The bill establishes basic criteria for sound standards for shooting ranges and protects operators of ranges in the future. If they are compliant when the ranges are built and the basic standard is maintained and housing or urbanization builds around them, the zoning changes would have to be responsive to attenuating any sound problems in the community area. The Department feels S 1008 is the most viable vehicle and should be supported.

HB 2218 was introduced by Representatives Brimhall, Johnson, Anderson, Graf and Pearce. The language in this bill is similar to an existing statute in California. The language previously went through the process in the Legislature but was killed in the Senate Committee. Concern exists regarding the vagueness of the language. S 1008 is more specific about how, when and where the sound is measured. The House version is more open and does not provide criteria for measurement.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION SUPPORT S 1008 AND TO WORK WITH THE SPONSORS OF HB 2218 TO ENCOURAGE THEM TO GET CLOSER IN LINE WITH THE SENATE VERSION OF THIS BILL.

Vote: Unanimous

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Meeting recessed at 10:02 a.m.

Meeting reconvened 10:18 a.m.

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Commissioner Gilstrap arrived back at the meeting at approximately 11:00 a.m.

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7. Statewide Shooting Range Project Update

Presenter: Kerry Baldwin, Acting Assistant Director, Information and Education

Written updates were provided to the Commission on various issues in the program prior to today's meeting.

Commissioner Golightly asked when the Commission would discuss the draft strategic shooting ranges plan for review. Mr. Baldwin stated there should be discussion at the

next Commission meeting in February in the shooting ranges briefing and it will be brought to the public in March.

Commissioner Carter asked if feedback had been received from the congressional delegation regarding the transfer of lands in Pima and Coconino Counties. Director Shroufe stated the Department has been working on the issue. He had a meeting in the Governor's Office with Senator Kyl's staff about this issue last week. His staff understood the issues and would ask Senator Kyl to consider introducing legislation. Other congressional delegation staffers will not be asked until Senator Kyl has a chance to respond.

Coconino Forest Supervisor Jim Golden's response has been the only one received from the Forest Service stating the Department cannot meet the terms of the special use permit. There was never any official word from the solicitors. Max Peterson, Executive Vice President of the International Association of Fish and Wildlife Agencies, has been working hard with his connections in the Forest Service to move this along. One of the fronts is the indemnification and the other is the land exchange.

Mr. Adkins gave a report regarding indemnification language. He has been in contact with the Regional Forest Service (FS) solicitor in Albuquerque. The FS has been insisting that Arizona not only indemnify the FS for the actions of the State of Arizona employees, but that the federal government be insured for anything it does on that shooting range facility. Laws in Arizona will not permit that. The FS refused to consider language that was sent to them several months ago. The FS language is not acceptable in Arizona unless it is approved by the Department of Administration. There is a way this can be approved in unique situations and this situation may present that. Within recent days, the FS solicitor submitted language that might be more acceptable to Arizona and would drop indemnification for actions taken by the federal government.

The Department would like to tie the approval of that language to not only the Bellemont Shooting Range special use permit but to all special use permits that the Department has with the Forest Service. The Forest Service will be insisting on this language in all new or current special use permits that will be expiring and will be renewed in the future. The Department would like to get the Forest Service to agree that, if their language is approved by the Arizona Department of Administration for the Bellemont Range, the language be included in all future special use permits. There is a chance the indemnification issue will be resolved.

Director Shroufe noted a lot hinges on the appraisal that will be done in February. The indemnification language problem may not solve the issue of building a range at Bellemont. If the intent is to issue a special use permit, the permit must be for 20 years because the Department cannot get money to build a range unless there is permanency. Forest Service officials have said there was a possibility of getting a 20-year special use permit, and with an exchange of letters, indicate that this is in the interim and we will cease and desist once a land exchange is expedited.

Mr. Baldwin stated an issue arose since the written update was prepared regarding the proposed Buckeye Hills facility. The Department talked with Maricopa County. Phoenix Trap and Skeet has been looking for a site for several years. An agreement would be worked out with the County to place the new Phoenix Trap and Skeet facility on the

Buckeye Hills property. This would bring in approximately \$1 million to the facility. The County has started to drill for water as there is no permanent water source.

It was important for the Commission to look at the strategic plan, especially the action items and the parameters that were established for the Department to use when people come to the Department with shooting range issues. There has to be a good evaluation process to help separate the critical ranges vs. those that are important but may not have the greatest impact for effort, time and resources available.

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8. Request to Close the Rulemaking Record for Docket P and to Approve the Final Rulemaking Package for R12-4-119, R12-4-304, R12-4-307, and R12-4-309

Presenter: Mark Naugle, Manager, Rules and Risk Management

(For additional background information, see minutes for October 20, 2001, pages 42-45.)

Motion: Carter moved and Golightly seconded THAT THE COMMISSION VOTE TO CLOSE THE RULEMAKING RECORD FOR DOCKET P AND APPROVE THE NOTICE OF FINAL RULEMAKING; THE ECONOMIC SMALL BUSINESS AND CONSUMER IMPACT STATEMENTS AND THE CONCISE EXPLANATORY STATEMENTS FOR R12-4-110, R12-4-304, R12-4-307 AND FOR THE REPEAL OF R12-4-309 FOR FILING WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL.

Vote: Golightly, Carter, Chilton – Aye
Gilstrap – Absent
Chair voted Aye
Motion passed

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9. Call to the Public

Steve Chevront, representing self, talked about wildlife waters. He was in Unit 13B for 26 days to scout and to help hunt deer. He went back a short time later. He found many different water sources and described the different types. Water was turned off at some of the catchments. Many of the catchments are in need of repair in Unit 13B. Two things need to be done: identify water catchments that exist and identify those that need to be repaired.

Dale Haggard, representing self, addressed the difficulties involved in hunting buffalo on House Rock. The buffalo go where they cannot be hunted. He asked that his request be put on the next meeting's agenda, that the Department verify what he said, and to request that his buffalo tag be extended to hunt the buffalo when they move down the mountain in the spring.

Anna Marsolo, homeowner in Cave Creek, stated the neighborhood has appeared before the Commission on several occasions. There is much growth in the area; the Commission allowed archery hunting to continue approximately 18 months ago. The Commission was given a packet that contains a map that shows where a hunting incident occurred on January 8, 2002. Also in the packet were 16 letters representing 44 property

owners, letters from the Cave Creek Mayor and Town Manager, and a boundary-approximate map of Sections 10, 11, 12, 13, 14 and 15. She requested that the Commission again be proactive with the heavily populated north Cave Creek area and remove archery hunting from those sections. It is unincorporated with Maricopa County. She asked that the issue be put on the agenda for the next meeting in Phoenix. Because the area is private property, homeowners have asked hunters to leave. Officer Cooper spoke with two of the three hunters on January 1 and explained it was private property. If game were killed, it would have to be done instantly because the animal would wander onto private property where it would not be able to be retrieved, and the hunters would have to be cited.

On January 8 a deer was shot and passed her on the road and wandered onto private property. The arrow is a weapon. The hunters were forewarned on January 1, and it was inexcusable for them to return a week later.

This was not an anti-hunting issue; it was a safety issue. Private property rights were being taken away in Arizona during certain parts of the year. There were few deer left in the area due to the growth that was occurring. It was not fair to put the residents' lives in danger because hunters were ignoring signs that the property was posted. There were plenty of hunting areas for an honorable hunter.

Eileen Kettner, homeowner in Cave Creek, added to the comments regarding hunting near her residence and noted the lack of jurisdiction. An arrow landed three feet from her while she was in her backyard. A short time prior to that her 15-month old grandson had been standing in the spot where the arrow landed. Shortly after, two hunters jumped her fence to retrieve the arrow. There are paved roads and security gates in the neighborhood. She did not understand why hunters were allowed in such a developed area. She also requested that this be put on the agenda for the next meeting in Phoenix and added that Section 16 be closed to hunting, including archery.

Janet Mohr, homeowner in Cave Creek, asked that Sections 1 and 2 be added to areas considered for closure to all hunting. There were too many people living in the area. The area cannot be posted because hunters remove the signs. There was no legal access to get to the Tonto National Forest or to the BLM land from the Town of Cave Creek limits. This is a safety issue.

Nan Byrne, homeowner in Cave Creek, spoke with regard to hunting occurring on private property. She referenced an incident on January 16 when two trespassing hunters were disrespectful to a property owner in the area, which was within Cave Creek town limits. When the hunters were asked to leave, the hunters revealed a cocked semi-automatic handgun to the property owner. Ms. Byrne reported this incident to the Department's Operation Game Thief desk; to date, no response has been received. This was not an isolated case of flagrant disrespect of a true sportsman. Incidents are escalating yearly. She asked that this item be put on the agenda for the next meeting in Phoenix. She presented the Commission with a letter from the property owner of the described incident.

Keith Laizure, homeowner in Cave Creek, stated there was a lot of confusion on the part of the Sheriff's Office and Game and Fish when these incidents occurred. There needed to be a clear understanding of what was occurring.

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4. An Update on Proposed Development Activities on Arizona State Trust Land Located Near the Little Colorado River in the Springerville-Eagar Area, Apache County – cont'd.

Public comment

Anita McFarlane, representing self, stated Mary Ellen Bittorf, President of the White Mountain Audubon Society, asked her to talk to the Commission about the South Fork property. The rancher that lives in the area sent some photos that show the importance of this area. The land contained important habitat that may qualify for the Arizona Preserve Initiative. The list of bird sightings was remarkable. Included was a letter from the White Mountain Audubon Society to the State Land Commissioner. She hoped the Commission would ask the Land Commissioner preserve and not develop the area.

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9. Call to the Public

Chairman Manning read the names of people who filled out blue slips but who did not wish to speak regarding opposition to hunting in the Cave Creek area: Rene Rulletta, Sue Van Camp, Thomas E. Hardy and Penelope Cox.

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Director Shroufe introduced Dale Hall, new Regional Director for the U.S. Fish and Wildlife Service (FWS) Regional Office in Albuquerque. He stressed the importance of Game and Fish and the FWS working together. There were three important areas: 1) scientific integrity, 2) laws and regulations and 3) partnerships.

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Meeting recessed at 11:48 a.m.

Meeting reconvened 12:15 p.m.

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10. Petition to Close a Road on State Trust Land Associated with the White Mountain Grassland Wildlife Area

Presenter: Fred Bloom, Development Branch Chief

A petition was submitted by Region I to close an unauthorized road located on State Trust land located approximately four miles west of Springerville. This road is located on lands that are currently part of the state grazing lease lands that were obtained through the Department's purchase of the Cross L Ranch. These State Trust lands, along with Commission-deeded land, are part of the White Mountain Grassland Wildlife Area.

People using four-wheel drive vehicles and ATVs have created this road by traversing a cinder knoll.

The purpose of this proposed road closure is to prevent further resource damage to the soils and vegetation on the cinder knoll. A secondary benefit to closing the road is to prevent potential accidents and serious injury to the public who could lose control of their vehicles on the steep slope. This road provides no useful access to any significant destination for either lessees, e.g., livestock operators, or other legitimate public use. The sub-lessees support the closure. The road dead-ends at the top of the cinder knoll.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE PETITION TO CLOSE AN UNAUTHORIZED ROAD ON STATE TRUST LAND ASSOCIATED WITH THE WHITE MOUNTAIN GRASSLAND WILDLIFE AREA.

Vote: Unanimous

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11. Update on Alternative Access into the Northern Portion of the Mule Mountains Southeast of Tombstone, Arizona in Unit 30B

Presenter: Fred Bloom, Development Branch Chief

(For additional information and background, see Commission meeting minutes for September 7, 2001, pages 27-29.)

In early October 2001, Department personnel met with the State Land Department (SLD) Range and Right-of-Way staff to discuss the application for right-of-way. The SLD indicated at that time the application was essentially "on hold" and encouraged the Department to pursue other options. The Department agreed to re-evaluate potential road improvements to existing access from the High Lonesome Road. When Department personnel contacted Howard Harshbarger, the landowner adjacent to the Cowan property to discuss an easement across his property, he indicated he was amenable to maintaining the current access as is and was adamantly opposed to any improvements to the roadway or to entering into any agreement with the Department.

The Department recently sent letters to SLD and the State Land Commissioner advising them all options were exhausted and that we wished to proceed with the right-of-way application process.

In a phone conversation yesterday with the SLD, the Department was advised the application continued to be under review.

Commissioner Carter stated the Department was a victim in a situation in which it had no control; i.e., it was a border issue. The Department's direction was clear last August.

Commissioner Golightly was concerned that the Department's wait may continue to next hunting season. He wanted to send a letter to the Governor's office describing the Department's plight with the issue and to ask for a quick resolution to the application

process. He asked the Department for a chronology of events on paper. It maybe up to the sportsmen to put pressure on the SLD. A letter should be sent to the State Land Commissioner about making a decision in the near future.

Motion: Golightly moved THAT THE DEPARMTENT DRAFT A LETTER TO THE GOVERNOR'S OFFICE SEEKING SUPPORT TO A QUICK RESOLUTION AND/OR DECISION TO OUR APPLICATION THAT HAS BEEN SUBMITTED TO THE STATE LAND DEPARTMENT FOR A DECISION ABOUT GRANTING THE COMMISSION A RIGHT-OF-WAY FOR A ROAD AND TO INCLUDE A CHRONOLOGICAL SEQUENCE OF EVENTS THAT HAVE OCCURRED IN THIS PROCESS AS AN ATTACHMENT.

Commissioner Gilstrap noted that if the SLD was going to deny this application, it was also asked to look at options. He thought that the motion should state a letter should be sent to the State Land Commissioner rather than to the Governor since he was not sure the State Land Commissioner delayed it other than the Commission may have imposed the delay. Director Shroufe stated that earlier last spring the direction was to work on two tracks: 1) the Department try to find alternate access and 2) to keep the permit moving. Commissioner Carter noted this preceded the affirmation at the September meeting, where the Commission also asked the SLD to look for alternatives as well when the SLD asked the Commission to consider withdrawing the application. Commissioner Golightly noted the request was made six months ago and nothing has been done.

Chairman Manning concurred with Commissioner Golightly's assessment and seconded the motion.

Vote: Golightly and Chilton – Aye
Carter and Gilstrap – Nay
Chair voted Aye
Motion passed 3 to 2

Commissioner Gilstrap explained his vote in that all efforts should be made to communicate and work with the SLD before taking it to the Governor's Office. Commissioner Carter agreed. Commissioner Chilton stated the issue has been pursued for many months.

Chairman Manning stated the letter would go to the Governor with a sequence of events. He urged that all commissioners willing to sign the letter should do so.

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17. Commissioners' Forum at WAFWA

Presenter: Duane L. Shroufe, Director

A resolution was supported at the early January meeting in Las Cruces, New Mexico, of the Western Association of Fish and Wildlife Agencies (WAFWA) to establish a WAFWA-Western Governors' Association (WGA) committee of which the Commissioners' Committee would be a part.

It was not exactly what Commissioner Gilstrap initially wanted (to establish a standing committee of the WAFWA to allow western state commissioners a forum by which they may seek federal legislation or WGA support on key wildlife issues in western states).

In many western states the directors work for the governors and the commissions act more in an advisory role rather than in a policy-making role. In discussing the WGA commissioners' forum during the WAFWA business meeting, discussions tended to lean more towards a WAFWA forum, rather than a commissioners' forum.

Commissioner Gilstrap stated that in talking with the governor's liaison, there was interest in furthering this and to have follow-up, but there was no definite yes. This was an opportunity to allow states to work with the delegations and the governors on multi-state wildlife issues.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION ACCEPT THE RESOLUTION.

Vote: Unanimous

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15. Selection of New Members of the Heritage Public Advisory Committee

Presenter: Steve Ferrell, Deputy Director

The terms of seven members of the Heritage Public Advisory Committee (HPAC) are due to expire in March 2002. The positions involve one representative from each Region and one statewide representative. The terms are for three years. In accordance with the HPAC Charter, two nominees for each Region and three statewide nominees were forwarded to the Commission for its consideration as appointments to HPAC.

The way to facilitate the election was described. Each commissioner would indicate his or her choice on a ballot. The ballots would be collected and tabulated during presentation of the next item. The results of the vote would then made known. Chairman Manning noted the first choice would be noted by a 1, the second choice would be noted by a 2, etc.; the person with the lowest score would be chosen.

Nominees were:

Region I

Blaine G. Bickford
Jon C. Cooley

Region II

Maggie A. Sacher
Frank Ronco, Jr.

Region III

Annette M. Morgan
James D. Jett

Region IV

Roberta J. McDermott
John F. Colvin, Jr.

Region V

Dennis Ward
Cindy Cartwright

Region VI

Larry Cullen
Phil Smith

State

Gary E. Allen
Warren Leek
Brian D. Pinney

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16. Revision of 2002 Commission Meeting Schedule

Presenter: Steve Ferrell, Deputy Director

Since the schedule for the 2002 Commission meetings was decided at the June 2001 meeting, the Department learned that the International Association of Fish and Wildlife Agencies (IAFWA) annual conference was scheduled at the same time and conflicted with the September 2002 Commission meeting dates. It is important that the Director, several staff members and perhaps Commission representatives attend the annual IAFWA conference.

Therefore, the Department proposed changing the September 20-21, 2002 Commission meeting date to September 13-14, 2002.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE CHANGING THE SEPTEMBER 2002 COMMISSION MEETING TO OCCUR ON SEPTEMBER 13-14.

Vote: Unanimous

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20. Director's and Chairman's Reports

Director Shroufe worked with the delegation on shooting ranges and Bellemont. He has been working with the International Association of Fish and Wildlife Agencies on getting indemnification issues straightened out with the Forest Service. Events were monitored in the Legislature.

Chairman Manning had nothing of significance to report.

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21. Commissioners' Reports

Commissioner Chilton attended meetings of the Altar Valley Conservation Alliance, the legislative reception on Wednesday, and with the U.S. Fish and Wildlife Service regarding improving habitat for the Chiricahua leopard frog. She attended a meeting with several groups to work on state land issues and habitat uses.

Commissioner Carter attended the Eastern Arizona Counties Organization meeting. He worked closely with staff on a number of issues that would be forthcoming to the Commission with respect to the renewal of the agreement for Roper Lake, as well as some right-of-way issues between the Department and Graham County on roads within the Cluff Ranch area. He attended the hearing on S 2048 and the legislative reception on Wednesday.

Commissioner Golightly worked on the shooting range issue. He attended a Game and Fish Department Wildlife Assets Committee meeting and co-chaired the Habitat Partnership Committee meeting at the Ben Avery Shooting Facility.

Commissioner Gilstrap attended a meeting of the Arizona Quail Alliance. He assisted Commissioner Golightly and met with some of Senator Kyl's staff to try to move the Bellemont process along more quickly. He attended the Western Association of Fish and Wildlife Agencies' (WAFWA) meeting. It would be important to have as many commissioners as possible attend the WAFWA annual meeting in July 2002 in Albuquerque. He attended the Lottery Commission's stakeholders' meetings and he has been involved in looking at an initiative and referendum to respond to the lottery sunset. He attended the Habitat Partnership Committee meeting with Commissioner Golightly.

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15. Selection of New Members of the Heritage Public Advisory Committee – cont'd.

Mr. Ferrell noted the Commission's selections:

Region I – Blaine G. Bickford

Region III – Annette M. Morgan

Region V – Cindy Cartwright

State – Brian D. Pinney

Region II – Frank Ronco, Jr.

Region IV – Roberta J. McDermott

Region VI – Phil Smith

Chairman Manning noted that because there were so many qualified candidates, the people who were not selected should be sent letters noting that their resumes would be kept on file for the next selection process.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION ACCEPT THE MEMBERS AS READ.

Vote: Unanimous

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22. Approval of Minutes

Motion: Carter moved and Golightly seconded THAT THE MINUTES FOR NOVEMBER 14, 2001 AND DECEMBER 7-8, 2001 BE APPROVED.

Vote: Unanimous

The minutes for August 21, 2001 and September 6-8, 2001 were signed.

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24. Future Agenda Items

Mr. Ferrell noted the following items had been previously mentioned as future agenda items:

1. Consideration of an alternate strategy for the House Rock buffalo hunt
2. Hunting in Cave Creek (in April)

Commissioner Carter wanted a briefing on the water issues that were brought forth today in Unit 13B and north of the Colorado River. He requested an assessment by the Department as to where it was at and an overall briefing in terms as to how they got to those developments and what legal documents and agreements exist between the Department, permittees and other agencies.

Commissioner Chilton requested a presentation by either Mr. Adkins or Mr. Odenkirk on the state case regarding the decision by the 9th Circuit Court of Appeals regarding the U.S. Fish and Wildlife Service and the issuance of incidental take statements in coordination with biological opinions, as related to utilization of lands in Arizona.

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Meeting recessed at 1:00 p.m.

Meeting reconvened 1:30 p.m.

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12. Hearings on License Revocations for Violation of Game and Fish Codes and Civil Assessments for the Illegal Taking and/or Possession of Wildlife

Presenter: Leonard Ordway, Law Enforcement Branch Chief

Record of these proceedings is maintained in a separate minutes book in the Director's Office.

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13. Appeal of Department Action by Mr. William W. Bloom

This item was withdrawn.

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2. Hunt/Draw Issues Associated with the Department's 2001 Fall Hunts – cont'd.

This item was continued from Wednesday, January 16, 2002.

Presenter: Richard Rico, Assistant Director, Special Services Division

Copies of a proposed motion prepared by Mr. Odenkirk were distributed to the Commission. Mr. Rico noted the Department preferred that the dates on page 2 regarding the time frames for when individuals would have to provide verifiable evidence to the Department be changed to April 1. The primary reason was that this issue needed to be rectified before the application and permitting process started for the fall draw. On page 1, if the Commission agrees with the time frame of September 11 to December 31, 2001, there will be one individual who will not be covered in that bracket (Captain Traxler).

Public comment

Ray Dean, representing self, thanked the Commission for listening on Wednesday to give the public a chance to hunt.

Commissioner Gilstrap stated the words we speak can never begin to express or describe the collective horror and despair that the people of this nation endured in the aftermath of the unprecedented attack that occurred on September 11. But as despicable as those acts were, the courage, strength, and sacrifice of the American people in response exemplified why this country will survive and flourish as the greatest civilization. Many of the people that this agency serves made personal sacrifices or suffered hardships that prevented them from participating in a hunting opportunity this past fall. In prior years, there have been isolated circumstances that also prevented individuals from using a hunting permit. It is generally recognized that obtaining a permit has some inherent risk that events beyond the control of the individual or this agency may interfere with that opportunity, and in accepting that risk, the hunter has no expectation of compensation for the lost opportunity. This year, however, is unparalleled, and where we would not normally provide any remedy to those who could not hunt, we feel that because of the pervasive impact of the terrorist attacks, it is an appropriate gesture of unity that we provide some measure of relief to those who, through no choice of their own, were unable to experience their hunts this past fall.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION AUTHORIZE THE DEPARTMENT TO REINSTATE TO AN INDIVIDUAL THE NUMBER OF BONUS POINTS THAT AN INDIVIDUAL HAD WHEN APPLYING FOR THE FALL 2001 BIG GAME HUNTS PLUS ONE ADDITIONAL BONUS POINT IF THE DEPARTMENT ISSUED A HUNT-PERMIT TAG TO THE INDIVIDUAL THAT WAS VALID ANY TIME BETWEEN SEPTEMBER 11, 2001 AND DECEMBER 31, 2001, AND THAT AS A RESULT OF THE TERRORIST ATTACKS IN NEW YORK CITY AND WASHINGTON, D.C. ON SEPTEMBER 11, 2001, THE INDIVIDUAL WAS PREVENTED FROM USING THAT HUNT PERMIT-TAG AND, IN FACT, DID NOT HUNT WITH OR USE THE HUNT PERMIT-TAG.

IT WAS FURTHER MOVED, THAT AN INDIVIDUAL IS ELIGIBLE FOR REINSTATEMENT OF BONUS POINTS IF THE INDIVIDUAL CAN PROVIDE CREDIBLE AND VERIFIED EVIDENCE AS THE DEPARTMENT, IN ITS SOLE DISCRETION, MAY ACCEPT AND DETERMINE THAT THE INDIVIDUAL WAS INVOLUNTARILY PREVENTED FROM USING THE HUNT PERMIT-TAG BECAUSE OF CIRCUMSTANCES RELATED DIRECTLY OR INDIRECTLY TO THE TERRORIST ATTACKS. AN INDIVIDUAL IS NOT ELIGIBLE FOR REINSTATEMENT OF BONUS POINTS IF THE INDIVIDUAL HAD THE OPTION TO USE THE HUNT PERMIT-TAG BUT CHOSE NOT TO DO SO FOR ANY REASON, INCLUDING REASONS RELATED DIRECTLY OR INDIRECTLY TO THE TERRORIST ATTACKS, OR IF CIRCUMSTANCES RELATED DIRECTLY OR INDIRECTLY ONLY MADE IT MORE DIFFICULT FOR AN INDIVIDUAL TO USE THE HUNT PERMIT-TAG.

IT WAS FURTHER MOVED, THAT AN ELIGIBLE INDIVIDUAL MUST PROVIDE SUCH CREDIBLE AND VERIFIED EVIDENCE TO THE DEPARTMENT NO LATER THAN APRIL 1, 2002. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF THIS OPPORTUNITY FOR REINSTATEMENT OF BONUS POINTS BY FEBRUARY 15, 2002. THE PUBLIC NOTICE SHALL INCLUDE THE INFORMATION PROVIDED IN THESE MOTIONS AND SHALL BE PROVIDED IN ANY MANNER AS MAY BE LEGALLY REQUIRED AND IN A MANNER THAT THE DEPARTMENT DETERMINES WILL HAVE THE BEST PROBABILITY OF REACHING THE LARGEST NUMBER OF ELIGIBLE INDIVIDUALS WITHOUT INCURRING AN UNREASONABLE EXPENSE. IF, FOR ANY REASON, THE DEPARTMENT DOES NOT PROVIDE NOTICE AS PRESCRIBED HEREIN, AN ELIGIBLE INDIVIDUAL MUST STILL COMPLY BY APRIL 1, 2002.

FURTHER, THAT FOR THOSE CIVILIAN INDIVIDUALS THAT THE DEPARTMENT ISSUED A HUNT PERMIT-TAG WITHIN CAMP NAVAJO DURING THE FALL 2001 SEASON, THE COMMISSION PRESCRIBE REPLACEMENT TAGS FOR THE SAME OR SIMILAR HUNT, AND THAT THE DEPARTMENT SHALL ISSUE THE TAGS TO THOSE CIVILIAN INDIVIDUALS FOR USE DURING THE FALL 2002 SEASON. THE DEPARTMENT IN ITS SOLE DISCRETION SHALL DETERMINE ON AN INDIVIDUAL BASIS WHETHER AN INDIVIDUAL WILL RECEIVE THE SAME OR A SIMILAR TAG. THE TERM, "SIMILAR TAG" SHALL MEAN A TAG THAT IS VALID FOR A LOCATION OTHER THAN CAMP NAVAJO AND IS OF THE SAME SPECIES, GENDER, LAWFUL METHOD OF TAKE AND GENERAL LOCATION AND DATES AS THE INDIVIDUAL'S 2001 CAMP NAVAJO HUNT PERMIT-TAG. THE INDIVIDUAL MUST PURCHASE THE HUNT PERMIT-TAG AND A 2002 LICENSE.

IT WAS FURTHER MOVED THAT THE DEPARTMENT SHALL PROVIDE NOTICE BY CERTIFIED MAIL TO EACH OF THE CIVILIAN HUNTERS ELIGIBLE FOR A HUNT PERMIT-TAG UNDER THIS MOTION.

IT WAS FINALLY MOVED THAT THE COMMISSION AUTHORIZE THE DEPARTMENT TO MAKE NECESSARY ADMINISTRATIVE DECISIONS TO IMPLEMENT THESE MOTIONS UNLESS SUCH DECISIONS CONFLICT WITH ANY PROVISION.

Commissioner Chilton thought that the first half and the second half of the first paragraph on page 2, to be different in spirit. The second half of the paragraph was unacceptable to her ("An individual is not eligible for reinstatement of bonus points if the individual had the option to use the hunt permit-tag but chose not to do so for any reason, including reasons related directly or indirectly to the terrorist attacks, or if circumstances related directly or indirectly only made it more difficult for an individual to use the hunt permit-tag.). The second half of the paragraph was far more restrictive than the first. She could not understand why the Commission was so reluctant to give back to these people and was setting the barrier so high when there was no cost to the Department to go ahead and reinstate the bonus points for the people who did not hunt. This did not respond to the spirit of what the Commission was trying to do. She recommended that the motion be amended to delete the words that begin, "an individual will" and end with "permit-tag."

Mr. Odenkirk stated he focused on allowing bonus points for individuals who involuntarily were prevented from hunting. The Commission described circumstances where someone may have made choices to do something in their lives related to the aftermaths of the events and chose to undertake that activity as opposed to hunting, but it did not want to extend this opportunity to those individuals. He also understood the Commission did not want to extend it to those who could have hunted but it would have been more difficult to do so.

Commissioner Carter believed that the motion that was prepared was fully consistent with the direction given and continues to be consistent with his thoughts.

Commissioner Golightly noted an individual does have the ability to appeal the Commission's decision if he disagrees.

Vote: Golightly, Carter, Gilstrap – Aye
Chilton – Nay
Chair voted Aye
Motion passed 4 to 1

Commissioner Chilton explained her vote in that the motion should have been more liberal.

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14. A Briefing on the Elk Harvest Management Strategy Rulemaking Team's Public Outreach Efforts and a Request to Provide Direction to the Department on Rule Changes to Implement the Elk Harvest Management Strategy Report Recommendations

Presenters: Richard Remington, Region I Supervisor
Dana Yost, Rulewriter

At the August 11, 2001, Commission meeting, the Commission directed the Department to open a rulemaking docket to begin considering the rule changes that would be necessary to implement the Elk Harvest Strategy Report recommendations. The Commission also directed the Department to conduct a public outreach campaign to determine the level of public support for the proposed rule changes.

The Notice of Rulemaking Docket Opening for Docket Q (R12-4-101, 102, 104, 114, 115, and 609) was filed with the Secretary of State on August 15, 2001, and during the August-October timeframe, the rulemaking team implemented the public outreach program.

Messrs. Yost and Remington gave a Powerpoint presentation on the results of the public outreach efforts. The Department will be coming back to the Commission in March, based on whatever direction the Commission gives today, with some actual draft rule language. The material will be taken to the public April-June to allow for input. In August 2002, the Department will present the final version of the Notice of Proposed Rulemaking based on Commission direction. The notice will then be filed with the Secretary of State. The official public comment period will be from September to October. Notice of Final Rulemaking will be presented to the Commission in December.

Upon Commission approval, the Department will file the material with the Governor's Regulatory Review Council (GRRC). The GRRC will meet in February 2003; with its approval, the anticipated effective date for any rule changes will be February 21, 2003, which would be effective in the hunting regulations for the fall 2003 seasons.

The recommended rule changes for the Elk Harvest Management Strategy Report Implementation were:

1. Create a Hunter Pool file of applications for supplemental population reduction hunts.

Recommended Action: Amend existing Docket Q rules to establish a hunter pool for supplemental hunts, which would allow depredation, emergency and population reduction hunts to be contained in a single rule.

Public Support: Of those responding, 64% support.

2. Create a Restricted Nonpermit-tag to be issued to hunter pool applicants.

Recommended Action: Amend existing Docket Q rules to create a new restricted nonpermit-tag that could be issued for all supplemental hunts, which include depredation, emergency and population reduction hunts.

Public Support: Of those responding, 65% support.

3. Exclude Restricted Nonpermit-tags from the bonus point system.

Recommended Action: Ensure bonus points are gained and lost only through the draw, which would exclude first-come first-served tags and restricted nonpermit-tags.

Public Support: Of those responding, 95% support.

4. Establish flexibility in rules to allow bag limits to be increased so that an individual can apply for more than one tag if necessary to achieve management objectives.

Recommended Action: Amend existing Docket Q rules to allow flexibility for bag limits to be increased. This would allow an individual who takes an elk on a restricted nonpermit-tag through the hunter pool to still be eligible to apply for a hunt permit-tag. Under the current rules, an individual who takes an elk on a restricted nonpermit-tag through the hunter pool would not be eligible to apply for a hunt permit-tag. This will create logistical difficulties with managing who is and who is not on the hunter pool list and may reduce hunter pool applicants.

Public Support: Of those responding, 32% support.

5. Establish flexibility in rules to allow an individual to apply for more than one permit-tag per calendar year.

Recommended Action: Amend existing Docket Q rules to exclude supplemental hunts from current tag restrictions. This would allow an individual to apply for a hunt permit-tag and still be eligible for a restricted nonpermit-tag through the hunter pool during the same calendar year. Under the current rules, an individual who applies for a hunt permit-tag could not be issued a restricted nonpermit-tag as a part of a hunter pool, which would create logistical difficulties with managing who is and who is not on the hunter pool list.

Public Support: Of those responding, 48% support.

6. Establish flexibility in rules for the Department to offer spring elk hunt opportunities if necessary to achieve management objectives.

Recommended Action: Amend existing Docket Q rules to give the Department flexibility to offer spring elk hunt opportunities if necessary to achieve management objectives. This proposed rule amendment would allow for hunters who are unsuccessful in any spring season to apply for hunt permit-tags in the fall.

Public Support: Of those responding, 56% support spring elk hunts, but the majority of this support was limited to spring elk hunts for limited population zones and not for incorporation into the Department's standard elk management strategies.

7. Delegate authority to the Director to issue Restricted Nonpermit-tags pre-authorized by the Commission for Depredation, Emergency, and Population Reduction hunts and for reducing fees on Restricted Nonpermit-tags for hunts determined to be less desirable.

Recommended Action: Amend existing Docket Q rules to give the Director authority to establish or implement a population reduction hunt (determining timeframe, Restricted Nonpermit-tag numbers, etc.) and to reduce fees on Restricted Nonpermit-tags for hunts determined to be less desirable. This would allow the Commission to authorize a set number of additional Restricted Nonpermit-tags, which the Director could issue through the hunter pool. The Director would have the ability to rapidly establish a Population Reduction hunt and then issue the pre-authorized Restricted Nonpermit-tags through the hunter pool to meet an immediate management need or unplanned harvest opportunity. Delegating authority to the Director to reduce prices on Restricted Nonpermit-tags for hunts determined to be less desirable would ensure that all tags could be distributed in a timely manner so that an immediate management need or unplanned harvest opportunity could be addressed.

Public Support: Of those responding, 69% support delegating authority to the Director to issue Restricted Nonpermit-tags pre-authorized by the Commission, while 33% support giving the Department flexibility to reduced Restricted Nonpermit-tag fees.

8. Ensure that no more than 10% of bull elk Restricted Nonpermit-tags are available to nonresidents.

Recommended Action: amend existing Docket Q rules to ensure that no more than 10% of bull elk Restricted Nonpermit-tags are available to nonresidents.

Public Support: Of those responding, 85% support extending the 10% cap on bull elk tags to Restricted Nonpermit-tags.

Public comment

Jack McCall, Vice Mayor of the Town of Eagar, stated the town council appointed an elk management committee and he was selected as its chairman. He noted there were certain things in the guidelines that would work for the residents of the Springerville-Eagar area. He asked the Commission to support the Department's recommendations. The elk cause a lot of property damage within city limits.

Commissioner Golightly was concerned about #6 because most of the spring hunts would occur in Region 2. He recalled the proposed elk depredation hunt in spring 1991 and the considerable public comment it generated, especially by the anti-hunting groups, which resulted in the cancellation of the hunt. He asked that #6 be withdrawn. Commissioner Gilstrap shared the same concerns, but these rules allow for flexibility. This in no way means that the Department will implement a spring hunt; it only gives flexibility to do so if necessary in the future. Chairman Manning wanted to eliminate #6 immediately because it had a detrimental concept that might hurt the entire program. Commissioner Chilton thought #6 should be used if and when there was a need to do so. Commissioner Carter wanted to delete #6 because if it was there, there would be pressure to use it and all commissioners would be a victim in the end.

Motion: Golightly moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE RULE CHANGE ITEMS 1, 2, 3, 4, 5, 7 AND 8 TO IMPLEMENT THE ELK HARVEST MANAGEMENT STRATEGY REPORT RECOMMENDATIONS.

Vote: Golightly, Carter and Gilstrap – Aye
 Chilton – Nay
 Chair voted Aye
 Motion passed 4 to 1

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18. Director's Goals and Objectives - 2002

Presenter: Duane L. Shroufe, Director

After discussion, the following recommendations were made:

1. Delete: Department Personnel Issues
2. Retain: Access to Public and State Lands
 Add: Collaborate with private landowners and lessees
3. Retain: Enhance Statewide Image
4. Delete: Communication Issues
5. Retain: Shooting Range Management
 Add: Continue with Ben Avery Land Development Plan

- 6. Retain: Improve Legislative Day
Add: Improve and enhance the Legislative Day Reception; identify sources to sponsor and bring plan to Commission by October
- 7. Add: Enlarge Legislative Presence to be Year Round
- 8. Add: Insure Revenue Streams and Find New Sources

All other goals established for 2001 had been completed and were not carried over to 2002.

Motion: Carter moved and Chilton seconded THAT THE COMMISSION ADOPT THE DIRECTOR’S GOALS FOR 2002.

Vote: Unanimous

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19. Call to the Public

There were no comments.

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23. Election of Officers

Motion: Manning moved and Gilstrap seconded THAT MICHAEL GOLIGHTLY BE CHAIRMAN AND JOE CARTER BE VICE CHAIR FOR 2002.

Vote: Unanimous

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Motion: Carter moved and Chilton seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned 3:30 p.m.

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