

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, March 6, 2015
Saturday, March 7, 2015
Graham County General Services Building
Assembly Room, 921 Thatcher Blvd.
Safford, Arizona 85546

PRESENT: (Commission)

(Director and Staff)

Chairman Robert E. Mansell
Vice Chairman Kurt R. Davis
Commissioner Edward "Pat" Madden
Commissioner James R. Ammons
Commissioner James S. Zieler

Director Larry D. Voyles
Deputy Director Ty E. Gray
Assistant Attorney General Jim Odenkirk
Assistant Attorney General Linda Pollock

Chairman Mansell called the meeting to order at 8:00 a.m. and led those present through the Pledge of Allegiance. The Commission and Director Voyles introduced themselves and Director Voyles introduced his staff. This meeting followed an agenda revision #1 dated February 4, 2015.

Chairman Mansell requested a moment of silence in honor of Kayla Mueller, a dedicated humanitarian aid worker and citizen of Arizona.

Former Commissioner J.W. Harris was present and participated in a "passing of the torch" ceremony with incoming Commissioner Zieler. The Commission and Department bid farewell to outgoing Commissioner Harris and honored him with a video tribute of his five-year tour of duty on the Commission.

* * * * *

Meeting recessed for a break at 8:24 a.m.
Meeting reconvened at 8:34 a.m.

* * * * *

1. Call to the Public

From Region 5 via video teleconference:

Ricardo Small from Tucson, representing himself, expressed opposition to multiple bag limits for mountain lions in Arizona; provided a book for each Commissioner titled "Where the Wild Things Were" life, death, and ecological wreckage in a land of vanishing predators, and pointed out chapter nine called Lions of Zion; is also opposed to killing coyotes.

Drew John, member of the Graham County Board of Supervisors, welcomed the Commission and Department staff and thanked them for coming to the Gila Valley and holding a meeting here for the community.

* * * * *

2. Consent Agenda

The following items were grouped together and noticed as consent agenda items to expedite action on routine matters, and/or they were previously presented to the Commission as a “first read” item. These items were provided to the Commission prior to this meeting and the Department requested that the Commission approve these matters as presented, subject to approval or recommendations of the Office of the Attorney General. Director Voyles presented these items to the Commission and no items were pulled for discussion. The Commission took action on the following:

a. Approval of New Commission Policy A2.3, Law Enforcement Access

Presenter: Jim Hinkle, Field Operations Division Assistant Director

The Department requested Commission approval of a new Commission policy A2.3, Law Enforcement Access (attached). The Commission was presented with a draft of Commission policy A2.3 at the February Commission meeting for review. This policy establishes the Commission's formal position on access to state and private land for the purposes of ensuring compliance with A.R.S. Title 17.

The Department recommends THAT THE COMMISSION VOTE TO APPROVE THE REVISED COMMISSION POLICY A2.3, LAW ENFORCEMENT ACCESS.

b. Request to Repeal Commission Policy A2.15, Procedures for Implementation of the Water Conservation and Recreation Development Fund and All Water-Oriented Developments

Presenter: Al Eiden, Landowner Relations Program Manager

The Department is in the process of reviewing all Commission policies and developing recommendations designed to ensure they are updated to reflect current Commission direction. The Department recommends Commission policy A2.15, Procedures for Implementation of the Water Conservation and Recreation Development Fund and All Water-Oriented Developments be repealed as it is obsolete; A.R.S. § 17-267 prescribes how monies deposited to this account may be used. In addition, repealing the policy does not diminish the Commission's authority over how the Land and Water Conservation and Recreation Development fund may be spent. The Commission was presented with this recommendation at the February Commission meeting for review and consideration.

The Department recommends THAT THE COMMISSION VOTE TO REPEAL COMMISSION POLICY A2.15, PROCEDURES FOR IMPLEMENTATION OF THE WATER CONSERVATION AND RECREATION DEVELOPMENT FUND AND ALL WATER-ORIENTED DEVELOPMENTS.

c. Approval of Revised Commission Policy A2.28, Protocol for Closing Wildcat Roads on State Trust Grazing Land

Presenter: Al Eiden, Landowner Relations Program Manager

The Department requests Commission approval of revised Commission policy A2.28, Protocol for Closing Wildcat Roads on State Trust Grazing Land (attached). This policy establishes the process by which wildcat roads can be closed, if agreed upon by the Wildlife Manager, Arizona State Land Department Range Resource Area Manager, and lessee. The purpose of the revision is to increase clarity and understanding. The Department presented a draft of revised Commission policy A2.28 at the February Commission meeting for review and consideration.

The Department recommends THAT THE COMMISSION VOTE TO APPROVE THE REVISED COMMISSION POLICY A2.28, PROTOCOL FOR CLOSING WILDCAT ROADS ON STATE TRUST GRAZING LAND.

d. Approval of a License Agreement with Navopache Electric Cooperative for Providing Electrical Service at White Mountain Grasslands Wildlife Area.

Presenter: Joyce Francis, Habitat Branch Chief

The Department requested Commission approval to renew a License Agreement with Navopache Electric Cooperative for providing electrical service at White Mountain Grasslands Wildlife Area. The Commission currently has an agreement with Navopache Electric Cooperative authorizing them to provide electrical service to the White Mountain Grasslands Wildlife Area. The agreement expires April 10, 2015. The Region has determined that the service is needed to power a circulation pump in the fish refugia pond on the property. The terms and conditions would remain the same. This item was presented to the Commission for consideration at the February Commission meeting.

The Department recommends THAT THE COMMISSION VOTE TO APPROVE THE RENEWAL OF A LICENSE AGREEMENT WITH NAVOPACHE ELECTRIC COOPERATIVE FOR PROVIDING ELECTRICAL SERVICE AT WHITE MOUNTAIN GRASSLANDS WILDLIFE AREA, AND AUTHORIZE THE DIRECTOR, AS SECRETARY TO THE COMMISSION, TO EXECUTE THE AGREEMENT AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Motion: Ammons moved and Madden seconded THAT THE COMMISSION VOTE TO APPROVE CONSENT AGENDA ITEMS A, B, C, AND D.

Vote: Unanimous

* * * * *

3. Legislative Engagement and State and Federal Legislation

Presenter: Anthony Guiles, Assistant Director, IEWR and Legislative Engagement Division

Mr. Guiles provided a PowerPoint presentation and briefing on the current status of selected state and federal legislative matters. The presentation included the following information and Commission action:

Budget:

The Legislature is starting its budget process. The budget looks favorable for the Department, except for the million dollar issue from the Watercraft Fund. The Department is working to get an adjustment.

State Legislation Update

Commission Sponsored Legislation:

- HB2365; Off-Highway Vehicles; Enforcement; passed House 57-3, transmitted to Senate
- HB2396; Wildlife; Guides; Firearms; passed House 51-7, passed Senate Government Committee 5-2
- HB2399; G&F Hunter Harassment; passed House 57-0, referred to Senate Natural Resources
- SB1386; Wildlife Transportation and Release Prohibition; awaiting Floor Action
 - Amendment: Changes the definition of “person” to include an agent of the federal government, an agent of a state or local government or any agent of a political subdivision; Decreases felony offenses
- SB1387; Recreational User Immunity Access; passed House 30-0, transmitted to House
- SB1466; Livestock Loss Board; Compensation Fund; passed House with Amendments 22-8, transmitted to House

Commission Supported Legislation:

- HB2236; ATV & motorcycle passengers; passed House 49-8, passed Senate Transportation 6-0
- SB1185; Appropriation; Wolf Recovery; Litigation Costs; passed Senate 18-11, passed House Agri-Water-Land 6-2; awaiting House Appropriations Action

Congressional Update

Grand Canyon Watershed National Monument Designation: The Department has worked with Congressman Gosar on a letter of opposition that he has sent to his colleagues. Twenty-four House members have signed the letter. The Senate passed SCM1001 20-10 opposing the national monument designation; Congressman Kirkpatrick will have a public meeting on March 12th to take comments; the Department will attend and submit comments.

S.405 Bipartisan Sportsmen's Act of 2015: The bill includes 14 provisions, several similar to those within the Bipartisan Sportsmen's Act of 2014 from the 113th Congress. Among other provisions, the bill makes the existing exemption from EPA regulation for lead shot permanent, and adds lead tackle to the exempted products, leaving regulatory authority to the U.S. Fish and Wildlife Service and state fish and wildlife agencies; Requires federal land managers to consider how management plans affect opportunities to engage in hunting, fishing and recreational shooting; enables states to allocate a greater proportion of federal funding to create and maintain shooting ranges on federal and non-federal lands; and directs 1.5 percent of the Land and Water Conservation Fund to enhancing public recreational access for hunting, angling, and recreational shooting, otherwise known as Making Public Lands Public (MPLP).

The Department is coordinating with Senator McCain's office on a potential bison amendment

Motion: Madden moved and Zieler seconded THAT THE COMMISSION VOTE TO SUPPORT S.405, BIPARTISAN SPORTSMEN’S ACT OF 2015.

Vote: Unanimous

* * * * *

4. Customer Portal Project

Presenter: Doug Cummings, Branch Chief, Information Systems

Mr. Cummings presented an update using a PowerPoint presentation on the development of the Customer Portal (website with Customer Login capabilities with improved customer access to information, products and services) along with the next steps. The briefing included updates on the development of bundled/subscription services, planning for future releases of the Portal, and discussion of potential paperless sales. The presentation included snapshots of what the Portal pages will look like and what the content will be.

Scott Lavin, Wildlife Recreation Branch Chief, provided an update on the “I Support Wildlife” bundle process and the benefits of membership.

The following actions are in progress:

- Portal 1.0: Launch between elk/antelope draw closing and draw results announcement, and prior to Outdoor Expo
- Portal X.X: Assembling team to define functionality of upcoming releases; beginning to define new functionality for future release
- Paperless: Assembling team to define requirements and approach
- Initial rules / legislative side boards discussion; likely to be an extension of the Portal
- Related/supporting projects; Game Data Management and FINS RX.X

* * * * *

5. Wolf Briefing

Presenter: Jim deVos, Assistant Director, Wildlife Management Division

Mr. deVos provided a PowerPoint presentation and a general wolf briefing that included an update on all actions the Department has taken since the last Commission meeting to accomplish the direction provided by the Commission at the August 5, 2014 Commission Meeting. The following summary of activities was provided:

- Op Ed Article by Chairman Mansell was published by the Arizona Republic, and also submitted to 70 other media outlets
- Op Ed Article by Senator McCain’s office will be released soon

- Outreach Strategy: The Department has initiated a public affairs program targeting sportsmen and conservationists; materials include positive survey data, electronic media (You Tube), and print material
- AGFD NOI: Served January 6, 2015; Establishes Department position regarding the Mexican Wolf Recovery Plan; There was statewide media interest and broad support for the Department's actions
- The Department is an intervener in the Center for Biological Diversity vs. USFWS suit regarding the 10(j) rule revision
- New Mexico Cattle Grower's Association et al filed two NOIs against the USFWS; on regarding the Mexican wolf listing decision and one regarding the 10(j) rule revision
- Commission Supported Legislation:
 - SB1185: appropriation; wolf recovery; litigation costs
- Commission Sponsored Legislation:
 - SB1466: Livestock loss board; compensation fund
 - SB1185: appropriation; wolf recovery; litigation costs

2014 End of Year Count:

- Nov-Dec ground and aerial survey data (minimum)
- 109 MW in wild
- 31% increase
- 19 packs
- 38 wild-born pups (surviving)
- 56 MW in AZ
- 53 MW in NM
- 14 releases and translocations in 2014

Other activities:

- Mr. deVos and Director Voyles participated in an Executive meeting Feb 19 – 20; Mr. deVos also participated in the Middle Management Team meeting; participants included USFWS, AGFD, USDA APHIS, USFS; discussion included renegotiation of contract funding, unified budget for all entities
- The Department is in the process of filling a vacant biologist position assigned to Payson in response to expansion.

Motion: Madden moved and Davis seconded THAT THE COMMISSION VOTE TO PROVIDE THE DEPARTMENT DIRECTION TO CONTINUE TO INTERACT WITH THE FISH AND WILDLIFE SERVICE FOR THE DEVELOPMENT OF AN ACCEPTABLE MANAGEMENT APPROACH FOR THE MEXICAN WOLF; AND THAT THE DEPARTMENT CONTINUE TO PURSUE POTENTIAL LEGAL REMEDIES.

Vote: Unanimous

* * * * *

Meeting recessed for a break at 9:50 a.m.

Meeting reconvened at 10:07 a.m.

* * * * *

6. Request to approve the Article 8 Wildlife Areas and Department Property Five-year Rule Review Report, for Submission to the Governor's Regulatory Review Council (G.R.R.C.).

Presenter: Pat Barber, Yuma Regional Supervisor

Mr. Barber presented the Five-year Rule Review Report for Article 8 regarding wildlife areas and Department property, for submission to G.R.R.C. A.R.S. §41-1056 requires each state agency to review all of its rules at least once every five years. The Article 8 Five-year Rule Review Report is due to G.R.R.C. by March 31, 2015. If approved by the Commission, the Department will submit the report to G.R.R.C. for their review. Submission of this report will not change any of the Article 8 rules; however, if the Department fails to submit the report by the established due date, the Commission's Article 8 rules will expire and no longer be in effect or enforceable.

In addition to the review criteria prescribed under A.R.S. §41-1056, the Article 8 rule review team considered internal and external comments received during the previous five years, and processes that have changed since the last rulemaking. The Article 8 Rule Team determined there are enough potential changes to warrant convening an Article 8 Rule Making Team, and if approved by the Commission the Department will take that recommendation to G.R.R.C.

Motion: Madden moved and Ammons seconded THAT THE COMMISSION VOTE TO APPROVE THE ARTICLE 8 FIVE-YEAR REVIEW REPORT FOR SUBMISSION TO THE GOVERNOR'S REGULATORY REVIEW COUNCIL.

Vote: Unanimous

* * * * *

7. A Briefing on Public Comment Received on Hunt Guidelines

Presenter: Amber Munig, Big Game Management Supervisor

Ms. Munig briefed the Commission using a PowerPoint presentation and provided an update on comments received thus far on the existing hunt guidelines and on the timeline that will be followed in review and approval for the remainder of this guideline cycle. The Department began taking comment on the existing hunt guidelines formally on January 5, 2015, although any comment received by the Department since September 2013 (last guideline adoption by Commission) regarding hunt guidelines has been retained on file for evaluation during this evaluation cycle (The Commission has been provided with all comments for review). As part of the hunt guidelines review process, the Commission requested an opportunity to formally identify to the Department any areas of inquiry in which they might have interest. This briefing is the second formal opportunity for the Commission to provide the Department with direction regarding this process, although they will have additional opportunities at the June Commission meeting and when the guidelines are submitted for final approval in September. The remaining timeline was reviewed as follows:

- Early May: News release noticing Hunt Guidelines public meetings
- Mid May: Second news release

- Late May: Hunt Guidelines Team finalizes the draft proposal and provides to Commission; draft proposed Hunt Guidelines posted on the website
- June 1-11: Public meetings hosted around the state
- June 12: Present information from public meetings to the Commission
- June 30: Public comment period ends
- July: Team evaluates and drafts responses to all comments to the draft proposed hunt guidelines
- Early August: Proposed hunt guidelines to Executive Staff and Commission for review
- Late August: Proposed hunt guidelines posted on website
- September: Proposed hunt guidelines presented to the Commission for approval

Public Comment

From Region 5 via video teleconference:

Su Neuhauser, Certified Animal Control Humane Officer, opposed to killing too many animals and too often, such as Predator Masters killing as many coyote and bobcat as they are allowed to; animals are under terrible stresses in the Sonoran desert in addition to hunting pressure; urged the Commission to reconsider bad policies and social carrying capacity.

From the Department Headquarters via video teleconference:

Randy Phillips, Arizona Bowhunters Association, expressed opposition to moving the Unit 9 muzzleloader elk hunt before the archery elk hunt; muzzleloaders already enjoy the most successful hunts out of all weapon types; looks forward to working with the Department on plans to provide more hunting opportunity to all.

Darr Colburn, an outdoorsman, representing sportsmen and bowhunters, expressed opposition to putting muzzleloaders hunts in front of archery hunts with no public input or comment; shared data on muzzleloader hunt success verses archery hunt success.

Chairman Mansell discussed several of the comments with Ms. Munig and stated that he read all the comments.

Commissioner Ammons commented that he received a lot of calls and emails regarding the muzzleloader being moved before the archery, and requested that any future changes be given more consideration.

* * * * *

8. Community Fishing Program Vision

Presenter: Chris Cantrell, Fisheries Branch Chief

Mr. Cantrell provided a PowerPoint presentation and briefing on the Department's vision document for the Community Fishing Program. The Community Fishing Program generates partnerships with municipalities to provide additional opportunities for inter-city residents to

engage in recreational fishing. The motto of the program has been “If the people can’t get to the fish, we’ll bring the fish to the people”.

In January 2014, the Urban Fishing Program was rebranded and renamed to the Community Fishing Program (CFP). In addition, the Program expanded by 70% from 21 to 36 waters. Angler participation has steadily increased in this program since inception 30 years ago. Currently, the CFP has established designated waters in 15 Arizona communities. The importance of these waters to reaching and connecting with people within urban communities remains vital. This briefing provided an overview of the CFP vision for the future and identified objectives planned to undertake in an effort to reach over 200,000 anglers by 2025. Information provided included the following:

VISION: To ensure that anglers in all (91) incorporated communities within Arizona have opportunities to go fishing within 5 miles of home.

Objective 1: Focus on incorporated communities with the highest populations and lowest amount of opportunity; achieve an angler satisfaction rate of at least 85% for each individual CFP water, and overall catch-rates greater than 0.50 fish/hr.

Objective 2: “feature species” stockings; Maintain commitment to 100% on-time delivery; manage through the integrity of our data.

Objective 3: Utilize data to drive stocking numbers, timing/frequency, and number of stockings; adjust stockings as needed to achieve desired catch rates and angler satisfaction levels; increase Community Pride through the Community Fishing Waters.

Objective 4: Ensure that community leaders are invited to events that take place on CFP waters; build new constituencies with non-traditional customers and groups, park- and/or neighborhood-affiliated groups; target a customer base (communities) that encompasses non-traditional angling customers.

Objective 5: Use CFP waters as part of their rehabilitation efforts for troubled youth; CFP angler demographics mirror demographics of the communities that they serve; use this program as one of the Department's main youth recruitment avenues; maintain a minimum of 20% program funding through partnership agreements; encourage fish brokers to implement guaranteed price contracts for 5-year increments with fish suppliers; use a cost-per-acre based budgeting framework for funding requests; implement sound business practices to help support CFP growth and angler recruitment efforts while minimizing costs.

Objective 6: Utilize the Reserve Officer pool to patrol CFP waters and participate in sting operations; seek to establish a full-time law enforcement (LE) position dedicated to CFP; work with cities park staff to cite CFP violations into Municipal Courts; increase law enforcement to a minimum of 1,400 hours of patrol on CFP waters to improve compliance and reduce violations.

Objective 7: Conduct a minimum of 1,400 hours of enforcement patrols on CFP waters annually; conduct focused patrols around stocking events; be able to provide a rapid in-person officer response to Operation Game Thief (OGT) calls; work with cities more closely to

determine root causes of water quality problems instead of repeating costly treatments; improve fish habitat and reduce stressors within CFP waters.

The Department's community fishing program is the largest in the United States and other states model after it. We have a proven business record and we plan to continue its success through additional tools. The Department is engaged in the very communities that reflects Arizona's growing population. We are versatile and can engage with any community in Arizona and build effective partnerships. The CFP compliments every community in Arizona and is intrinsically linked to the North American Model and Sport Fish Restoration.

* * * * *

9. Approval of Community Fishing Program Intergovernmental Agreements, Designation of new Community Fishing Waters, and Commission Order 40 Amendments on new Community Fishing Waters.

Presenter: Chris Cantrell, Fisheries Branch Chief

Mr. Cantrell briefed the Commission on the renewal of Intergovernmental Agreements between the Department and the cities of Casa Grande, Glendale, Youngtown, and Maricopa to continue the Community Fishing Program for the next four fiscal years in those cities. The Commission was also briefed on an amendment to Commission Order 40 on new Community Fishing Waters in Casa Grande and Youngtown. Commission action is required under the provisions of A.R.S. § 17-231 B.7 to enter into agreements with other entities for the operation of wildlife facilities and the conduct of related wildlife management. Furthermore, A.R.S. § 11-952 F (Intergovernmental Agreement and Contracts) requires that appropriate action by ordinance or resolution or otherwise pursuant to the laws applicable to the governing bodies of agencies (Commission) approving or extending the duration of the agreement or contract shall be necessary before any such agreement, contract or extension may be filed or become effective.

Two agreements are due to expire June 30, 2015 with Maricopa and Glendale, and negotiations are underway with two new communities, Casa Grande and Youngtown, to implement the program at two new waters. Combined, these four agreements would provide estimated revenue of \$33,600 to the program over a four-year duration. Bringing on a new Community Fishing Water in Casa Grande also requires the Commission to designate the waters, setting appropriate the license requirements, as Community Fishing Waters. In addition, the CFP recommends setting proper regulations to ensure stocked fish remain in the water for a longer duration. The proposed Commission Order 40 amendments for Dave White Park, Casa Grande and Maricopa Lakes, Youngtown the limit recommendation is 2 catfish, 2 trout, 5 sunfish, 1 bass, greater than 13 inches in length, and 1 white amur, greater than 30 inches in length.

Motion: Madden moved and Mansell seconded THAT THE COMMISSION VOTE TO PLACE THIS ITEM ON THE CONSENT AGENDA FOR THE NEXT REGULAR COMMISSION MEETING.

Vote: Unanimous

* * * * *

10. Approval of Revised Commission Policy A2.22, Consideration of Economic Impact

Presenter: Sherry Crouch, Funds Planning Branch Chief

Ms. Crouch provided a PowerPoint presentation and briefing on revised Commission policy A2.22, Consideration of Economic Impact. This policy establishes the Commission's position to consider the economic impacts of wildlife management decisions to the State, industries, local communities, and others for all policies or decisions. The policy was revised to increase clarity and understanding.

The current Commission policy A2.22 primarily quotes A.R.S. § 17-231(B)(12). The proposed revised Commission policy A2.22, no longer reiterates statute, but reflects the importance of consideration of economic impacts.

Proposed Commission policy A2.22: Wildlife and other related outdoor recreation is an important economic driver for Arizona, especially to the State's rural economies. As such, wildlife resources and related recreation greatly contribute to the quality of life for many Arizonans.

It is the policy of the Arizona Game and Fish Commission to consider:

1. The contributions of Arizona's diverse wildlife resources to the quality of life in Arizona, which includes economic benefits from wildlife recreation activities.
2. The best available biological and social science to inform wildlife management and related recreation decisions.
3. The economic impacts of wildlife management decisions to the State, industries, local communities, and others.

Motion: Mansell moved and Madden seconded THAT THE COMMISSION VOTE TO PLACE THIS ITEM ON THE CONSENT AGENDA FOR THE NEXT REGULAR COMMISSION MEETING.

Vote: Unanimous

* * * * *

11. License Agreement with *Up the Creek Grill*

Presenter: Joyce Francis, Habitat Branch Chief

Ms. Francis briefed the Commission on a license agreement with Up the Creek Grill, pending transfer to Up the Creek Grill of a portion of the Page Springs Hatchery property, Yavapai County, Arizona. The Page Springs Restaurant, now known as *Up the Creek Grill*, is located on Page Springs Road, northeast of the Bubbling Ponds Hatchery. The restaurant's original building was constructed in 1956 as a general store. In 1974, the general store building was expanded and eventually transformed to a restaurant. A portion of the restaurant, the parking area, and the leach field are on Commission-owned property. Patrons of the restaurant often park on the south side of Page Springs Road and walk across the road to access the restaurant. Yavapai County has an

interest in seeing this issue resolved as it relates to county permitting and the desired improvements the new owners wish to implement.

On June 22, 2012, the Commission approved entering into a license agreement and disposal of a portion of the Page Springs restaurant, now known as *Up the Creek Grill*. The restaurant has new owners necessitating a new license agreement. This trespass poses liability issues to the Department in its current state. Approval to enter into a license agreement as an interim solution, while finalizing the disposal to resolve the trespass and remove the liability currently facing the Department. The Department has determined that these measures will not interfere with the operation of the Fish Hatchery and will also benefit the Commission and the Department by supporting positive relationships with private land owners in the area.

Chairman Mansell requested that the two renewal clauses be removed from the license agreement and that it have a start date and an end date.

The Commission was in consensus to make the changes as requested and to bring this back on the consent agenda at the next regular Commission meeting.

* * * * *

12A. Request to Commission to permit Department to contract with Arizona Office of Administration Hearings (OAH) to conduct a hearing for the Commission

Presenter: Linda Pollock, Assistant Attorney General

Ms. Pollock briefed the Commission on the Department's request to have the Arizona OAH conduct the administrative hearing involving the denial of an application by Dona Mae Dougherty, dba Donamae Cattery for a Private Game Farm License. The Department has denied this application for renewal of a Private Game Farm License on the basis that the applicant, who is currently licensed for a private game farm, unlawfully sold an African Serval to an unlicensed person, is apparently unlawfully attempting to propagate African Servals with domestic cats, and is advertising the availability of servals for sale to prospective buyers for personal financial gain.

This hearing may take more than a full day and will involve testifying witnesses and exhibits. The Commission, as a self-supporting regulatory board, may elect to either conduct the hearing or contract with the Arizona Office of Administrative Appeals to conduct the hearing for the Commission. A.R.S. § 41-1092.01(E). Following the conclusion of the hearing, the administrative law judge will send a copy of the decision to the Department and Commission, along with the record of the hearing upon request. The Commission retains its authority to make the final administrative decision on the appeal by accepting, modifying or rejecting the administrative law judge's decision. A.R.S. § 41-1092.08.

Motion: Davis moved and Mansell seconded THAT THE COMMISSION VOTE TO HAVE THE ARIZONA OAH CONDUCT THE ADMINISTRATIVE HEARING INVOLVING THE DENIAL OF AN APPLICATION BY DONA MAE DOUGHERTY, DBA DONAMAE CATTERY FOR A PRIVATE GAME FARM LICENSE.

Vote: Unanimous

* * * * *

13. Executive Session

The Commission voted to meet in Executive Session in accordance with A.R.S. § 38-431.03 (A)(3) and (4) for the purpose of discussion and consultation with legal counsel.

Motion: Harris moved and Mansell seconded THAT THE COMMISSION VOTE TO GO INTO EXECUTIVE SESSION.

Vote: Unanimous

* * * * *

Meeting recessed for lunch at 11:55 a.m.

Meeting reconvened at 1:50 p.m.

* * * * *

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

Presenter: Gene Elms, Law Enforcement Branch Chief

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

* * * * *

Meeting recessed for a break at 11:55 a.m.

Meeting reconvened at 2:58 p.m.

* * * * *

14. Litigation Report

There were no comments or questions on the Litigation Report.

* * * * *

15. Approval of Minutes and Signing of Minutes (From Friday’s agenda)

Motion: Mansell moved and Davis seconded THAT THE COMMISSION VOTE TO APPROVE THE MINUTES FROM FEBRUARY 6-7, 2015.

Vote: Unanimous

The Commission signed the minutes following approval.

* * * * *

16. Director and Commissioner Comments

Director Voyles reported on the Arizona Game and Fish Department Heritage Grant Awards offered in 2015 as follows:

In fiscal year 2015, the Department received 48 Heritage Grant applications and 25 applicants will be offered a grant award. Of the \$432,000 available, \$408,092 will be offered for award. Following is information for each of the 25 potential award recipients:

Environmental Education (EE) received four applications and three applicants will be offered Heritage EE Grant awards totaling \$23,591 of the \$24,000 available.

1. Arizona State University – Poly and Tempe Campuses, for the project titled “The Ecology and History of the Sonoran Desert.” The award offer is \$4,800.
2. U.S. Fish and Wildlife Services sponsoring Sonoran Joint Venture, for the project titled “All About Birds Eco-Program.” The award offer is \$8,791.
3. Arizona State Parks (ASP) sponsoring Toursphere, for the project titled “Ecology through Technology Wildlife Tours (ETT).” The award offer is \$10,000

Outdoor Education (OE) received six applications and five applicants will be offered Heritage OE Grant awards totaling \$7,920 of the \$8,000 available.

1. Mesa Public School District, Kerr Elementary, for the project titled “Reptiles, Amphibians and Mammals, Oh My!” The award offer is \$2,230.
2. Washington Elementary School District, Orangewood Elementary, for the project titled “Orangewood at Camp Colley Environmental Workshop.” The award offer is \$1,240.
3. Phoenix Elementary School District, Augustus Shaw Elementary, for the project titled “Hirsch Conservation Education Area at BASF.” The award offer is \$500.
4. Gowan Science Academy, for the project titled “Colorado River Tour.” The award offer is \$2,500.
5. Coolidge Unified School District, for the project titled “Hohokam Outdoor Adventures.” The award offer is \$1,450.

Schoolyard Habitat (SCHOOLYARD) received 11 applications and five applicants will be offered Heritage Schoolyard Grants totaling \$37,500 of the \$37,500 available.

1. Tempe Union High School District, for the project titled “The Pride Preserve.” The award offer is \$6,500.
2. Arizona State University, for the project titled “Outdoor STEM Center Education – Habitat Program.” The award offer is \$9,210.
3. Roosevelt School District, Martin Luther King Jr. Elementary, for the project titled “Martin Luther King Jr. Early Childhood Center Exploration Forest.” The award offer is \$10,000.
4. Isaac Elementary School District, for the project titled “Isaac Discovery Habitat.” The award offer is \$5,084.
5. Lake Havasu High School, for the project titled “Lake Havasu High, Outdoor Classroom & Wildlife Habitat.” The award offer is \$6,706.

Urban Wildlife (URBAN) received 10 applications and five applicants will be offered Heritage Urban Grant awards totaling \$112,500 of the \$112,500 available.

1. Arizona State University, for the project titled "The Urban Owl campaign: Reducing secondary poisoning of raptors through community education." The award offer is \$15,950.
2. Town of Prescott Valley, for the project titled "Fain Lake Sediment Mitigation Project." The award offer is \$13,000.
3. The University of Arizona, for the project titled "Pusch Ridge Wilderness, Coronado National Forest and Catalina State Park." The award offer is \$59,684.
4. The City of Flagstaff, for the project titled "Development of Prairie Dog Management Handbook Using non-lethal Control." The award offer is \$20,514.
5. Scottsdale Community College, for the project titled "Center for Native & Urban Wildlife Education & Biodiversity Research." The award offer is \$3,352.

Public Access (ACCESS) received three applications and all three applicants will be offered Heritage Access Grant awards totaling \$50,000 of the \$50,000 available.

1. Town of Payson Water Department, for the project titled "Green Valley Lake Shoreline Stabilization Phase-II." The award offer is \$7,760.
2. The Town of Payson, for the project titled "American Gulch Loop Trail & Viewing Area." The award offer is \$28,200.
3. Yavapai County Dewey Annex, for the project titled "Wildlife Viewing Program with Observation Deck." The award offer is \$14,040

Identification, Inventory, Acquisition, Protection and Management (IIAPM) received 14 applications and four applicants will be offered Heritage IIAPM Grant awards totaling \$176,581 of the \$200,000 available.

1. The University of Nevada, Las Vegas, for the project titled "Implementation and Development of Conservation Strategy for Relict Leopard Frog." The award offer is \$44,974
2. United States Geological Survey, Southwest Biological Science Center, for the project titled "Evaluate Post-Stocking Survival of Roundtail chub in the Verde River." The award offer is \$33,420.
3. Arizona State University, for the project titled "Microhabitat Evaluation for Northern Mexican Gartersnakes." The award offer is \$49,108.
4. Northern Arizona University School of Forestry, for the project titled "New Mexico Jumping Mouse Surveys & Habitat Modeling in Arizona." The award offer is \$49,079.

Director Voyles also provided a brief review of his activities since the last Commission meeting:

- Met with Hunter Moore, the new Governor's Office Natural Resources Advisor
- Met with Steve Hirsch and Wildlife for Tomorrow Foundation on concepts related to our partnership
- Attended the unveiling of the new California condor exhibit at the Phoenix Zoo
- Attended a meeting with a public relations firm that is going to be working with the Department and highlighting the important conservation work that hunters, anglers and the Arizona Game and Fish Department do in Arizona

- Attended the National Wild Turkey Federation Convention in Nashville, TN
- Spoke at the only wildlife conservation law school class in the country at MSU Law School
- Met with a representative from the Council of Environmental Quality who would like to develop more of a direct dialogue with state wildlife agencies relative to issues in conservation and how we can better integrate efforts, and how they can better support our efforts
- Met with the new Regional Director for USFWS
- Met with Arizona's Attorney General Mark Brnovich along with Commissioner Davis
- Attended Legislative Day at the Capitol
- Attended a meeting at Fennemore Craig with a variety of interested parties regarding desert tortoise conservation and the development of a candidate conservation agreement for federal lands and a candidate conservation agreement to assure private landowners to be able to continue their businesses in the event the desert tortoise is listed.

Chairman Mansell made the following comments:

- Thanked Commissioner Harris again for his time and work on the Commission and welcomed new Commissioner Zieler; thanked Kevin Kinsall for coordinating the Morenci Mine tour and Raul Vega for coordinating the field trip; also thanked Graham County for their hospitality and use of their assembly room.

Commissioner Davis welcomed new Commissioner Zieler and commented on Department staff and the great work that they do.

Commissioner Madden expressed his appreciation for the mine tour, and mentioned that he attended Legislative Day and it was a great event.

Commissioner Zieler expressed his appreciation to Jorge Canaca and other staff. He has observed that the Department is an outstanding organization and he counts himself fortunate to be seated on the Commission at this time.

Commissioner Ammons welcomed Commissioner Zieler and also expressed his appreciation for Department staff.

* * * * *

17. Future Agenda Items and Action Items

There was no recap of future agenda item or action items.

* * * * *

13. (continued) Executive Session

The Commission voted to meet in Executive Session in accordance with A.R.S. § 38-431.03 (A)(3) and (4) for the purpose of discussion and consultation with legal counsel.

Motion: Madden moved and Zieler seconded THAT THE COMMISSION VOTE TO GO INTO EXECUTIVE SESSION.

Vote: Unanimous

* * * * *

Chairman Mansell adjourned this meeting.

* * * * *

Meeting adjourned at 4:00 p.m.

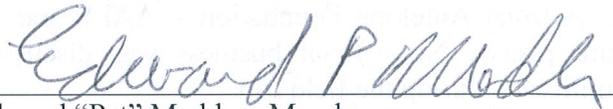
* * * * *

On Saturday, March 7, 2015, from 8:00 a.m. to 12:30 p.m. the Commission and Department staff carpooled to the Bonita Grasslands Restoration Project where the Commission was provided with briefings and discussions led by Brent Haas (landowner), Glen Dickens and John Millican (the Arizona Antelope Foundation – AAF), and Region V staff on collaborative efforts and future plans. No official business was discussed and no legal action was taken by the Commission during the field trip.

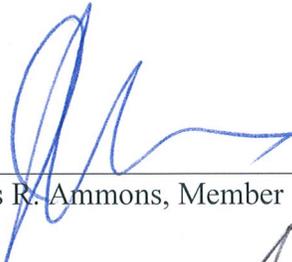
Robert E. Mansell, Chairman



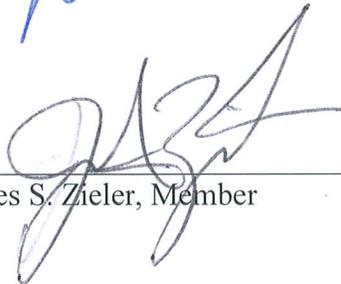
Kurt R. Davis, Vice Chair



Edward "Pat" Madden, Member



James R. Ammons, Member



James S. Zieler, Member

ATTEST:



Larry D. Voyles
Secretary and Director

**Game and Fish Litigation Report
Presented at the Commission Meeting
March 6, 2015**

The Assistant Attorneys General for the Arizona Game and Fish Commission and the Arizona Game and Fish Department are representing these agencies in the following matters in litigation. This report does not include claims and lawsuits for damages against these agencies in which the agencies are represented by Assistant Attorneys General in the Liability Defense Section of the Attorney General's Office.

1. *Center for Biological Diversity et al. v. United States Forest Service*, CV-12-8176-PCT-SMM. Plaintiffs filed an action in the U.S. District Court for Arizona on September 4, 2012. The lawsuit alleges the U.S. Forest Service ("USFS") is violating the Resource Conservation Recovery Act ("RCRA") by allowing the disposal of lead ammunition on the Kaibab National Forest, and the disposal results in significant harm to the California condors and other avian wildlife. Plaintiffs are seeking declaratory and injunctive relief requiring the USFS to abate the harm.

On November 4, 2012, the State of Arizona, on behalf of the Arizona Game and Fish Commission, filed a limited motion to intervene for the sole purpose of filing a motion to dismiss on the grounds that the State of Arizona is a required party but joining the State is not feasible due to sovereign immunity. Because the State is a required party that cannot be joined, the case must be dismissed. Plaintiffs filed a response to the State's motion on November 20, 2012. Plaintiffs did not object to the State's intervention but argued that the State does not meet the requirements of a required party.

The National Rifle Association (NRA) and Safari Club International (SCI) filed motions to intervene on November 21, 2012. The State filed a reply on December 4, 2012, to the Plaintiffs' response to the State's motion to intervene. The USFS filed a motion to dismiss on December 14, 2012, on the basis the Court lacks jurisdiction. Plaintiffs filed a response to NRA's motion to intervene on January 4, 2013. On January 22, 2013, the National Shooting Sports Foundation (NSSF) filed a separate motion to intervene.

On February 5, 2013, the plaintiffs filed a response to the USFS' motion to dismiss. On February 22, 2013, the District Court issued an order granting the USFS until March 25, 2013 to file a reply in support of its motion to dismiss. On March 25, 2013, the Forest Service filed a reply in support of its motion to dismiss. The parties are awaiting an oral argument hearing on the motion to dismiss.

On July 2, 2013, the court granted the Forest Service's motion to dismiss. The court agreed with the Forest Service that CBD did not have standing to bring the RCRA challenge against the Forest Service. The court found that CBD could not satisfy the requirements for standing because redressability was speculative on two grounds. First, in order for the Forest Service to regulate the use of lead ammunition, it would need to undertake a rulemaking process, comply with NEPA and consult with the Arizona Game and Fish Commission. Due to uncertainty with this process, the court found the outcome of the process speculative. Second, the court found that condors range in an area well beyond the Kaibab National Forest and into areas that do not prohibit the use of lead ammunition. Therefore, even if the Forest Service banned lead ammunition, this would not necessarily reduce the level of lead ingestion in condors.

Plaintiffs filed a notice of appeal on August 21, 2013. On November 27, 2013, plaintiffs (now appellants) filed an opening brief with the Ninth Circuit Court of Appeals. The Forest Service filed its opening brief on January 29, 2014 and the Commission filed its amicus brief on February 7, 2014. Plaintiffs filed their reply brief on March 21, 2014.

2. *WildEarth Guardians v. James Lane*, 12-00118 (LFG-KBM). Plaintiff challenges New Mexico's failure to regulate trapping in the Mexican wolf occupied range to avoid take of any wolves. The Commission authorized the filing of an amicus curiae brief in support of New Mexico. The Court granted the Commission's motion for leave to file an amicus brief and on September 19, 2012, the Commission filed its amicus brief. Plaintiff filed a response on October 9, 2012, and the Commission filed a reply on October 30, 2012.

The Court issued an order on December 3, 2012, granting Defendants' motion to dismiss for failure to state a claim. Plaintiff filed a notice of appeal on December 28, 2012. The Tenth Circuit issued a briefing schedule on January 3, 2013, ordering Plaintiff to file an opening brief within forty days.

On February 12, 2013, WildEarth Guardians filed an opening brief. On February 15, 2013, the Tenth Circuit issued an order extending the time to file an answering brief until April 17, 2013. The Commission's amicus brief is due seven days after the date the answering brief is filed. The Appellees filed the answering brief on April 17, 2013 and the State of Arizona filed an amicus curiae brief on April 23, 2013. Guardians filed its reply brief on May 20, 2013.

Oral argument occurred on January 24, 2014. The Court's questions focused primarily on the jurisdictional issues of sovereign immunity and standing. The Court issued an opinion on February 19, 2014. The Court held that Plaintiffs had no standing due to a lack of redressability because the Chair of the New Mexico Commission had no authority alone to correct any alleged violations. The Court ordered the case remanded back to the District Court with instruction to dismiss the case without prejudice to allow Plaintiffs to refile the case.

On March 7, 2014, the Tenth Circuit granted New Mexico's motion for clarification, in which New Mexico requested that the Court's decision would not affect the District Court's decision dismissing as to Director Lane. The District Court's decision as to Director Lane stands. On March 18, 2014, the District Court dismissed without the prejudice the case against the Chairman.

On April 17, 2014, New Mexico filed a motion for attorney fees and costs. New Mexico is seeking reimbursement for \$580,000.00 in costs and fees. This represents 1231 hours for six different lawyers who worked on the case.

3. *Holden and Guynn v. Arizona Game and Fish Commission*, Maricopa County Superior Court CV 2014-013211 (filed October 14, 2014). The Plaintiffs, whose Title 17 criminal charges were dismissed by the justice court (Guynn) or resulted in an acquittal following a justice court bench trial (Holden) were civilly assessed by the Commission for the loss of wildlife to Arizona. Their 28-page complaint, with dozens of attached exhibits, alleges that A.R.S. §17-314 does not authorize the Commission to impose civil assessments and claims several due process violations in the manner in which the hearing was noticed and conducted. They seek an order from the court declaring the Commission's actions unlawful, enjoining the Department and Commission

from levying the civil assessments, and requiring the Department to issue resident/nonresident hunting licenses to Plaintiffs and permitting them to apply for big game tags.

On November 13, 2014 the Department filed a motion to dismiss the complaint in its entirety for lack of subject matter jurisdiction. Plaintiffs filed a motion to disqualify the Attorney General's Office from representing the Department and Commission which the superior court granted, relying on a relict 1929 statute (A.R.S. §17-103). **The Commission voted to appeal the decision to the Court of Appeals. Our office wrote the special action petition, and then offered to first submit it to the superior court in a motion for reconsideration, arguing that the superior court should have the benefit of the same comprehensive research involving the history of the Game and Fish Code and the Attorney General's Office that the Court of Appeals will get. The court accepted the offer, and the motion for reconsideration is now under advisement. Should the superior court not change its mind, our office will immediately file the special action in the Court of Appeals.**



A2.3 Law Enforcement Access

Effective: ##/##/2015

Policy Process Owner: Assistant Director for Field Operations

It is the policy of the Commission that the Department actively seeks access for law enforcement personnel, including vehicle access on existing roads, for routine law enforcement patrol to all areas of the state where wildlife is taken. This policy position extends to both private and public lands and is adopted to ensure that compliance with state laws regarding the taking of wildlife is maintained. This policy is based on the following authorities, responsibilities and principles.

1. Wildlife found in this state is the property of the state and shall only be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission.
2. The Commission is responsible for establishing broad policies and long-range programs for the management, preservation and harvest of wildlife including the promulgation of hunting, trapping and fishing rules and prescribing the manner and methods that may be used in taking wildlife.
3. The Commission has the authority to open, close or alter seasons and establish bag and possession limits for wildlife, statewide or in any portion of the state.
4. In accordance with A.R.S. § 17- 234, unless the Commission takes affirmative action to open an area to hunting, it is by default closed.
5. The Commission is responsible for the enforcement of laws for the protection of wildlife and through the Director shall enforce all of the provisions of A.R.S. Title 17 and all Commission rules.

In order for the Commission to fulfill its trust responsibilities, Department law enforcement personnel must have open access, unless otherwise prohibited by law, to all areas of the state where wildlife could be taken. In cases where property owners participate in or allow the taking of wildlife on property under their control, the Commission expects that access will be granted to Department officers to determine compliance with state law. In instances where law enforcement personnel access for routine patrol activities is restricted in any manner, the Commission may consider all available options including closing the area to the take of wildlife.