

Proceedings of the Arizona Game and Fish
Commission License Revocation and Civil
Assessment Hearings
Time Certain – 2:00 p.m.
Friday, October 9, 2009
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, Arizona 85086

PRESENT: (Commission)

(Director's Staff)

Chairman Robert D. Hernbrode
Vice Chair Jennifer L. Martin
Commissioner Robert R. Woodhouse
Commissioner Norman W. Freeman
Commissioner Jack F. Husted

Director Larry D. Voyles
Deputy Director Gary R. Hovatter
Deputy Director Bob Broscheid
Assistant Attorney General Jim Odenkirk

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

Mr. Elms presented the cases below to the Commission. Each of these cases were reviewed and it was determined that all cases met the criteria established in A.R.S. §15-714, §17-238, §17-314, §17-340, §17-362 and/or §17-363 for Commission action. The Commission and the respondents were provided with copies of the original court docket and case reports prepared by the officers along with copies of all other pertinent materials in each of these cases. All of these exhibits may be considered by the Commission in order to make a final determination. Each of the following individuals was legally noticed for this hearing.

| Name | Conviction |
|--------------------|--|
| Presmyk, Kevin D. | Assist unlawful take of Big Game for monetary gain (1) Mountain Lion |
| Limppo, Michael G. | Take Deer by unlawful method |
| DeWees, Michael W. | Exceed Bag Limit (1) Bighorn Sheep Civil Assessment Only |
| Smith, Jayme | Take Mountain Lion without tag |
| Ullery, Larry M. | Unlawful angling (5 poles) |
| Cook, Jacey | Knowingly take Big Game (White Tail Deer) during Closed Season Take White Tail Deer without valid license Take White Tail Deer without valid permit/tag |
| Johnson, Kyle | Possession of unlawfully taken Mule Deer |

White, Jered W. Knowingly take one (1) Mule Deer during closed season

Roll call was taken and the following were present: Kevin Presmyk, Michael DeWees, and Jayme Smith.

Mr. Elms stated that the civil assessment process is not intended to be punitive, but is a process allowing the Commission to recover financial damages to compensate the State for the loss of any wildlife. Hunter Education requirements are imposed as a remedial measure to increase knowledge and prevent future violations and not as punishment.

The Commission was asked to consider and take action on the license revocations and/or civil assessments for the individuals listed above.

Motion: Martin moved and Woodhouse seconded THAT THE COMMISSION VOTE TO TAKE JURISDICTION IN THESE CASES.

Vote: Unanimous

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Kevin D. Presmyk

Presmyk was found guilty by the Yavapai Justice Court for: Count A: Assist unlawful take of Big Game for monetary gain (1) Mountain Lion; and sentenced Count A: Fined \$1000.00 and 18 months supervised probation.

Case Officer Peebles was not present.

Presmyk was present and addressed the Commission stating that he was not a paid guide at the time Mr. Shaw killed the lion. The only reason he plead guilty was because the felony would have had long term effects on him and his family. He also stated that he had a polygraph showing that he was telling the truth that he was not a paid guide at the time Mr. Shaw killed the lion.

Motion: Martin moved and Woodhouse seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF KEVIN D. PRESMYK TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS TO RUN CONSECUTIVE TO THE ALREADY VOTED ON REVOCATION PERIOD; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST KEVIN D. PRESMYK TO COLLECT IN THE AMOUNT OF \$1,500.00 FOR THE LOSS OF ONE (1) MOUNTAIN LION; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO

THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

Mr. Elms recognized the hard work of the officers in this case. This case was two years in length and it is a testament to the Department's undercover operations. In addition Mr. Elms recognized prosecutor Mr. Eric English for his work with this case. The Commission asked that the award nomination submitted for Mr. Eric English be added to the agenda in December and that Mr. Elms edit the nomination to include the details of the "Canned Kitty" case.

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Michael D. DeWees

DeWees was found guilty by the Parker Justice Court for: Count A: Exceed Bag Limit (1) Bighorn Sheep Civil Assessment Only; County prosecutor declined prosecution and the charges were dismissed.

Case Officer Herbert was present.

In answer to an inquiry from the Commission, Officer Herbert stated that the county declined to prosecute because it was a self reported violation.

Deweese was present and addressed the Commission stating that he had fired at the first ram and then slid down where he was unable to see what was going on. Once he regained his position he saw the second ram and took a shot not knowing that the first ram had fallen down the back of the saddle. Because it was getting dark they made the decision to leave the ram(s). In the morning the group found both rams and realized the error. Mr. DeWees clarified for the Commission that the larger of the two was the ram he shot first. Mr. DeWees clarified that the shots were taken at a distance of 150 yards.

Gary Barcon addressed the Commission and stated the he was one of the parties that was located in the wash with Mr. DeWees. Mr. Barcon gave his account of the events of the case.

Motion: Martin moved and Hernbrode seconded THAT NO FURTHER ACTION BE TAKEN AGAINST MICHAEL D. DEWEES.

Vote: Aye - Hernbrode, Martin, Woodhouse
Nay - Husted, Freeman
Passed 3 to 2

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Jayme Smith

Smith was found guilty by the Snowflake Justice Court for: Count A: Take Mountain Lion without tag; and sentenced Counts A: Three (3) Hunter Education class presentations.

Case Officer Wagner was present.

Smith was present and addressed the Commission stating her version of the events.

Motion: Husted moved THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JAYME SMITH TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF THREE (3) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT SHE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST JAYME SMITH TO COLLECT IN THE AMOUNT OF \$1,500.00 FOR THE LOSS OF ONE (1) MOUNTAIN LION; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Motion died for lack of second.

Motion: Martin moved THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JAYME SMITH TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF THREE (3) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT SHE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Motion died for lack of second.

Motion: Woodhouse moved Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JAYME SMITH TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF ONE (1) YEAR; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT SHE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE

DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Aye - Hernbrode, Freeman, Woodhouse
Nay - Husted, Martin
Passed 3 to 2

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Michael G. Limppo

Limppo was found guilty by the Coconino County Justice Court for: Count A: Take Deer by unlawful method; and sentenced Count A: Fined \$1800.00.

Limppo was not present.

Motion: Hernbrode moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MICHAEL G. LIMPPO TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT’S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

The Commission would be interested in knowing what it would take to be able to asses a penalty for damage caused to a Department decoy. Mr. Elms stated and Mr. Guiles clarified that legislation has been drafted that would allow for this but when last proposed it was held up in committee and has not been proposed since.

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Larry M. Ullery

Ullery was found guilty by the Yuma Justice Court for: Count A: Unlawful angling (5 poles); and sentenced Count A: Fined \$92.80.

Ullery was not present.

Motion: Martin moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF LARRY M. ULLERY TO HUNT, FISH, AND TRAP IN THE STATE OF

ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF **TEN(10) YEARS**; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Jaycey Cook

Cook was found guilty by the Graham County Justice Court for: Count A: Knowingly Take Big Game (White Tail Deer) during Closed Season; Count B: Take White Tail Deer without valid permit/tag; and Count C: Take White Tail Deer without valid license; and sentenced Count A: Fined \$562.00; Count B: Fined \$186.00; and Count C: Fined \$124.00.

Cook was not present.

Motion: Freeman moved and Husted seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF **JAYCEY COOK** TO **HUNT, FISH, AND TRAP** IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF **FIVE (5) YEARS**; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST **JAYCEY COOK** TO COLLECT CIVIL DAMAGES IN THE AMOUNT OF **\$1500.00** FOR THE LOSS OF **ONE (1) WHITE TAIL DEER**; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Kyle Johnson

Johnson was found guilty by the Payson Justice Court for: Count A: Possession of unlawfully taken Mule Deer; and sentenced: Fined \$562.00.

Johnson was not present.

Motion: Woodhouse moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF KYLE JOHNSON TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST KYLE JOHNSON TO COLLECT CIVIL DAMAGES IN THE AMOUNT OF \$8,000.00 FOR THE LOSS OF ONE (1) TROPHY MULE DEER BUCK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Jered W. White

White was found guilty per plea agreement by the Payson Valley Justice Court for: Count A: Knowingly take one (1) Mule Deer during closed season; and sentenced Count A: Fined \$250.00.

White was not present.

Motion: Woodhouse moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JERED W. WHITE TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST JERED W. WHITE TO COLLECT CIVIL DAMAGES IN THE AMOUNT OF \$8,000.00 FOR THE LOSS OF ONE (1) TROPHY MULE DEER BUCK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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These hearings concluded at 3:37 p.m.

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