

Minutes of the Telephonic Meeting of the  
Arizona Game and Fish Commission  
Monday, August 9, 2004–2:00 PM  
Arizona State Fairgrounds –Wildlife Bldg  
1826 W. McDowell Rd.  
Phoenix, Arizona

PRESENT – On Site: (Commission)

(Director’s Staff)

Commissioner W. Hays Gilstrap

Director Duane L. Shroufe  
Deputy Director Steve K. Ferrell  
Asst. A.G. Jim Odenkirk  
Asst. A.G. Shelley Cutts

PRESENT – Phone:

Commission Chair Susan E. Chilton  
Commissioner Joe Melton  
Commissioner Michael M. Golightly  
Commissioner William H. McLean

Chairman Chilton called the meeting to order at 2:05 p.m. Roll Call was taken and all Commissioners were present. Other staff present were: Dana Yost, Executive Staff Assistant; Brian Wakeling, Big Game Supervisor; Chuck Emmert, AV Manager; Richard Rico, Assistant Director, Special Services; Harry Seck, IS Branch Chief; John Shelley, SSIS. The meeting followed an agenda dated August 5, 2004.

1. Executive Session

- a. Legal Counsel. The Commission may vote to meet in Executive Staff in accordance with A.R.S. § 38-431.03(A)(3) & (4) for the purpose of discussing and consulting with legal counsel in order to consider its position on the results of the 2004 big game draw as it pertains to R12-4-114(D).

**Motion:** Melton moved and McLean seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

**Vote:** Unanimous

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Meeting recessed at 2:07 p.m.

Meeting reconvened at 3:19 p.m.

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Chairman Chilton called the meeting to order at 3:19 p.m.

2. A Discussion of the Results of the 2004 Big Game Draw as it Pertains to R12-4-114(D).

**Presenter:** Steve K. Ferrell, Deputy Director.

Deputy Director Ferrell will read the agenda item and read recommendation to the Commission and we have two blue slips here.

Deputy Director Ferrell the agenda item is #2 on your agenda, which is to discuss the results of 2004 big game draw as it pertains to R12-4-114(D). The Commission will discuss the results of the 2004 big game draw as it pertains to that rule and the Commission may vote to take action on or to provide the Department direction on this item. The Department is prepared to read a recommendation as follows:

Madam Chairman, members of the Commission, to resolve the Department's error committed in the 2004 bighorn sheep draw, the Department recommends that the Commission authorize the Director to solicit the preferences of the 8 nonresidents who were mistakenly awarded bighorn sheep tags, and the 8 residents who were mistakenly denied sheep tags to learn if they would be willing to defer their privilege to hunt bighorn sheep to 2005. The nonresidents are to be approached first to determine how the residents are to be approached. The intent is to distribute these eight tags per year across the two years in a manner that is mutually agreeable among the 16 effected parties. The Department further recommends that regardless of the collective preference of the nonresidents and residents, the Commission authorize the Director to assign 8 bighorn sheep tags in 2005 to the remaining effected parties to resolve the Department's error.

**Motion:** Melton moved and McLean seconded THAT THE DEPARTMENT RECOMMENDATION BE APPROVED.

Call to the Public:

Pete Cimellaro, resides in Phoenix and represents the Arizona Desert Bighorn Sheep Society. I believe you have a letter from the Society suggesting to resolve this issue that the first 8 nonresidents receive tags, and other nonresidents have tags withdrawn with residents taking their place. Along with that, the Sheep Society looked at awarding those nonresidents tags next year, so that all nonresidents would have the ability to hunt in 2004 or 2005. If I understand what happened, is fact that going to contact all of the nonresidents first and then residents. Director Shroufe not ask what choice would be because would be limited, but if nonresident gives tag up, then we will give it to resident. If not, then let resident have option of 2005 tag. Mr. Cimellaro stated that at this time he will stand with letter from the Bighorn Sheep Society. Not authorizing additional tags at any time for this species. The Sheep Society will not have a problem with this recommendation.

Later the following was added to the motion to clarify the recommendation:

In the event that a mutually acceptable agreement does not exist, the Commission would authorize the Director to offer the 2005 tag to the resident, thereby allowing the nonresident to retain the 2004 tag.

Commissioner Gilstrap asked if person who made motion and seconder approved that amendment? Yes for both.

Bob Downing, resides in Phoenix. If I am correct, this year we would exceed 10% limitation on tags to nonresidents? Chairman Chilton answered that we aren't taking this action independent of anything that has to do with the 10% cap. We want to comply with the law in terms of the

nonresidents and we want to provide equity to residents who were accidentally deprived of opportunity to get a tag. We can distribute these tags for each year.

Commissioner Gilstrap clarified at a different microphone so Mr. Downing could hear. If I understand correctly the question was so in 2004 we would exceed 10% cap. The answer to that has yet to be determined. If all eight nonresidents defer to 2005, we would not exceed the 10% cap. If one does not defer, then we would exceed the 10% cap; however, you are also aware that there is a judge's ruling that the 10% cap is not constitutional. And even though that wasn't expressed specifically for sheep, it is by implication that it is for all big game.

Mr. Odenkirk, without elaborating on all of the issues that I discussed in Executive Session, I will speak generally that to follow up with Commissioner Gilstrap there is a concern that enforcing the 10% cap by removing permits to individuals that have already been issued tags, will establish a liability for the Agency that could be quite severe. The Judge's order last month specifically held that the regulation of a 10% cap on elk and deer is unconstitutional. The Agency is on clear notice that its other regulations that have similar restrictions on nonresidents are likewise unconstitutional. To enforce those regulations by removing tags at this point poses liability. That is part of the reason the Commission and the Department are working to come up with a solution that will not entail any further liability than necessary.

Mr. Downing replied that we have got to do a better job of doing the drawings. There is no excuse for this happening. It happened in 1994 with deer permits. This is elementary stuff and I hope the Commission has brought to task the Department for this error. It is 82 tags, the most coveted tags in the country and clearly a five minute perusal of a list would have prevented this from happening. As a sportsman and native, I am embarrassed by the Department having this happen again. Just hope Commission admonished the Department to improve. Thank you.

**Vote:** Unanimous

**Motion:** McLean moved and Melton seconded THAT THE MEETING ADJOURN.

**Vote:** Unanimous

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The meeting adjourned at 3:34 p.m.

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Sue Chilton, Chairman

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W. Hays Gilstrap, Member

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Joe Melton, Member

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Michael M. Golightly, Member

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William H. McLean, Member

ATTEST:

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Duane L. Shroufe  
Secretary and Director