

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, June 18, 2004 – 8:00 a.m.
Saturday, June 19, 2004 – 8:00 a.m.
Arizona State Fairgrounds-Wildlife Bldg.
1826 W. McDowell Road
Phoenix, AZ

PRESENT: (Commission)

(Director's Staff)

Chairman Sue Chilton
Commissioner W. Hays Gilstrap
Commissioner Joe Melton
Commissioner Michael M. Golightly
Commissioner William H. McLean

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

Chairman Chilton called the meeting to order at 8:03 a.m.

1. Executive Session

- a. Sale or Lease of Real Property
- b. Legal Counsel. *State of Arizona v. Norton*, CIV 02-0402-PHX-FJM; *Montoya v. Manning*, 301. F.3d 985 (9th Cir. 2002); *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; *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313; *Ameduri and Yee et al. v. U.S. Forest Service et al.*, U.S. District Court No. CIV 02-2495 PCT FJM; *Bar D Cattle Co. v. Shroufe*, CIV2002-0872; *Phelps Dodge v. Arizona Dept. of Water Resources*, LC2003-000243-001DT; *Arizona Biological Society et al. v. BLM, IBLA appeal no. 2002-412* and *Center for Biological Diversity v. Norton* 03 CV-01558 RCL, *Audubon Society of Portland et al v. USFWS, CIV04-670KI*.
- c. Legal Counsel regarding the Silverbell Bighorn Sheep Herd.

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

Vote: Unanimous

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Meeting recessed at 8:04 a.m.

Meeting reconvened at 9:25 a.m.

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Chairman Chilton called the meeting to order at 9:25 a.m. The commissioners introduced themselves and Chairman Chilton introduced the Director's staff. The meeting followed

a revision dated June 15, 2004. Director Shroufe noted Item 20 would be moved up on the agenda.

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2.a. A Presentation Regarding the Status of Forest Health and Restoration Projects Under the Healthy Forests Restoration Act of 2003 in Arizona

Presenter: Bob Broscheid, Habitat Branch Chief

A briefing was given on the current status of projects under the Healthy Forests Restoration Act of 2003.

Following catastrophic fire seasons in 2001-02, the President introduced the Healthy Forests Initiative, which directed federal agencies to develop several administrative and legislative tools to restore forests and rangeland ecosystems to more healthy and natural conditions, and to assist and execute components of the National Fire Plan. This Initiative led to the passage of H.R. 1904, or the Healthy Forests Restoration Act in November 2003. The Act provided the administration, specifically the Departments of Agriculture and Interior, the necessary tools and authorities to implement projects that focus on improving the health of our nation's forests and grasslands, while reducing the risk of catastrophic fires within those ecosystems and the wildland urban interface.

Harv Forsgren, Regional Forester of the U.S. Forest Service (USFS), provided a general overview of current efforts and progress towards reducing the risk of catastrophic wildfire within Arizona's wildlands and urban interface areas.

Major components of the USFS strategy to accomplish the priority of restoring ecological functionality of fire adaptive systems are:

- Within the next three years, the USFS would like to put fire use plans in place for every national forest in the Southwest. These identify where and under what conditions natural ignitions can be allowed to burn to achieve ecological restoration objectives. Without these plans, the USFS must do its best to suppress wildland fires, even those providing ecological benefits. In these situations, fire suppression is a double negative:
 - 1) fire cannot play a natural role in renewing health of the forests
 - 2) resources of people and money have to be diverted from restoration to fire suppression
- Reduce hazardous fuels in the national forest system adjacent to communities. Initial treatment of the wildland urban interface in the Southwest should be completed in 15 years and maintain suitable conditions adjacent to those communities in perpetuity. Current cost for treatment is \$1000/acre. Significant steps to accomplish the goal:
 - 1) redirect resources from other important work. There will be diversion of monies that went into fish and wildlife management to accomplish this restoration objective. Wildlife restoration work will be dovetailed with the broader objective, i.e., redirection of the emphasis of the USFS programs.

- 2) redirect treatment costs. Costs would be reduced by engaging the private sector in processing small diameter material and capturing the value in it.
 - 3) effective communication on the importance and success of efforts so that additional resources are attracted to the Southwest
- Reducing the risks to local communities is critical to the success of this broader goal of restoring ecological functionality for several reasons:
 - 1) demonstrates the USFS commitment to the communities at risk and provides a chance to demonstrate how on-the-ground treatments look to restore forest health. This will cultivate public support.
 - 2) enables the USFS to make greater use of naturally ignited fires and prescribed fires to treat the back “40.”
 - Do everything possible to foster utilization of the excess biomass in the forests. The private sector must be engaged to capture the value within excess biomass to offset the treatment costs. The effort to change the environment to make it friendlier for the industrial infrastructure to play the role is focused in three areas:
 - 1) provide greater assurance around the available supply of material so businesses can secure and invest capital resources in infrastructure needed to process the material. The number of acres cleared through the EA, appeals and litigation process would be increased by taking advantage of the new authorities provided by Congress (Stewardship Contracting).
 - 2) provide technical assistance and grant funding for biomass utilization businesses
 - 3) support changes in state and national laws, policies or regulations that discourage or fail encourage biomass utilization

Mr. Forsgren noted there was much consensus in Arizona and New Mexico on a course of action to try to find solutions. Chairman Chilton asked what the Commission could do to speed up the fire use plan. Mr. Forsgren stated there were two things the Commission could do.

- 1) Communicate publicly the message of the importance of active management to restore the health fish and wildlife habitats.
- 2) Projects must be well founded in science; the Department’s assistance is vital in the development of proposals.

Chairman Chilton wanted to know what specifically the Commission could do to advance the fire use plans. Mr. Forsgren would be willing to work with the Director to develop specific time frames in an action plan. These would allow the Commission to have an opportunity to be proactive.

Public comment

John Ratje, Assistant Director for Operations for the Mount Graham International Observatory, stated 85% of the spruce fir forest was dead on Mount Graham. This was

due to the drought. The trees have become stressed and the bark beetle and spruce beetle have killed the trees. He wanted to do something proactively and urgently. The observatory would support anything the USFS and the Department could do. Mr. Ratje invited the Commission to go on a field tour of Mount Graham. The Chairman thought that was an excellent idea and noted a Commission was scheduled for Safford in September 2004.

Dr. Martin Moore, representing the Eastern Arizona Counties Organization (ECO), supported the activities outlined by Mr. Forsgren. He described what was being done at his level of government to deal with forest health and community protection issues.

The counties are represented on the Governor's Forest Advisory and Oversight Councils. As part of that, the ECO chairs the Economic Utilization Committee for the Governor. The first step is working on Economic Utilization Guiding Principles. There are about 12 principles being worked on; one of those is that it is important to have areas of agreement, and where there are areas of agreement, to not file appeals and litigation.

One of the issues in dealing with community protection and forest restoration is the way that different information is collected. The counties, Governor and State Land Commissioner (Forester) are working together on statewide community mapping and assessment that also includes the national forests. The USFS has a representative on the Governor's Council. The Game and Fish Department was invited to make contributions.

There is concern for the Sky Island forests. A proposal was submitted to address critical infrastructure areas on Mount Graham to Congressman Renzi and Senator Kyl. An official request was made but Mr. Moore did not know if anything had been put into the budget. A request was made to Congress to make funding available for the Economic Action Program in the Forest Health Restoration Act. The funds are critical for the grants for developing economic incentives for products. Discussions are being held with Arizona Public Service and Salt River Project to encourage small community-sized biomass plants in other parts of the state.

Mr. Moore encouraged the Commission and Department to contact Congress regarding funding of forest health projects and to participate in the community wildfire protection planning process for Mount Graham. Chairman Chilton directed the Department to work with Mr. Moore in drafting a letter to the delegation for Commission review. Commissioner McLean would be the liaison with Mr. Moore's group.

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

Presenter: Bob Broscheid, Habitat Branch Chief

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

Commissioner Melton referenced the Bureau of Land Management (BLM) letter to Jon Fugate regarding Visual Resource Management (VRM). He read the letter into the record. He asked if the Department received anything related to managing for wilderness characteristics. Mr. Broscheid noted BLM is currently developing preferred alternatives. These would be a mix of planning use allocations for the Agua Fria National Monument and Bradshaw-Huarquahala areas. The Department was currently working on the preferred alternatives. Managing for wilderness characteristics is a new allocation but the specifics are still being worked out. One of the characteristics is visual and recreation is one of those. The VRM class objectives are to be used to guide in the placement of roads, trails and other facilities, and establishing conditions of use to be attached to permits, leases and other authorizations to achieve the desired level of resource protection. Commissioner Melton was concerned about this process affecting road closures. He asked the Department to keep the Commission updated on this process. Mr. Broscheid noted each planning area is in a different stage of development. Mr. Broscheid stated the Department could give a presentation at the August meeting regarding this issue. By that time, the Department should have further information about what it can and cannot do in those areas.

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2.b. Conservation of the Mount Graham Red Squirrel

Presenter: Tim Snow, Nongame Specialist, Region V

A presentation was given on the Mount Graham red squirrel, which occurs only in Arizona's Pinaleno (Graham) Mountains. The presentation focused on the biological, legal, and conservation status of the species, including updates on the relevant conservation, management and scientific issues; funding issues; outreach activities; stakeholder involvement and social consideration.

The Mount Graham red squirrel was designated as an endangered species by the U.S. Fish and Wildlife Service (FWS) in 1987. Before the final ruling on the biological opinion done in 1988, the Arizona-Idaho Conservation Act was enacted. The Act authorized the creation of the red squirrel refugium. In 1990, critical habitat was designated for red squirrels.

The current recovery plan was finalized in 1993. The objective of the plan is to increase and stabilize the existing Mount Graham red squirrel population by protecting existing habitat and restoring degraded habitats. Projects done under the recovery plan were described.

Interagency biannual survey was discussed. The latest survey conducted the end of May showed approximately 284 squirrels; 300 were referenced in the recovery plan.

The next steps are for the Department to continue to participate in the FWS Recovery Plan revision. The Department should continue to support and collaborate on the USFS fuel load reduction project and support insect infestation monitoring and management; continue with interagency population monitoring and need to investigate feasibility of augmentation and translocation.

Mr. Snow noted the current beetle infestation has greatly reduced cone production; without the habitat, the squirrels will not be there. The Pinaleno Ecosystem Restoration Project (PERP) was in the scoping stages, and the Department was participating in the process. The Department would provide more information to the Commission regarding its position in the scoping process.

Public comment

John Ratje, Assistant Director for Operations for the Mount Graham International Observatory, noted that 2/3 of the Mount Graham red squirrel population has chosen to live below the critical habitat and many have moved out of the refugium. The observatory complex was 8.6 acres, which includes a 2-mile road, which is 6.2 acres. The squirrel population did not have a big decline after the 1996 Clark Peak fire, but it did with the insect infestation. He wanted to manage the red squirrel with new information since the situation was entirely different from the mid 1980s.

Bill Van Pelt, Nongame Mammals Supervisor, noted the FWS reconvened the recovery team and the Department has and is participating on the team. Some of the issues brought up by the University of Arizona are being looked at by the recovery team. One of the issues was the refugium boundaries and the movement of squirrels as a result of new impacts, such as the insect infestation. There will be different recovery goals and objectives identified through the recovery plan that would be shared with the public. In order to change the rules for the refugium, a NEPA process would have to be done. There were no recovery criteria for this species yet, but would be in the new recovery plan.

Dr. Martin Moore, representing the Eastern Arizona Counties Organization (ECO), stated concern for the future viability of the spruce-fir forest on the top of Mount Graham. There were also insect infestations ongoing in the mixed conifer portions that are not yet appearing on aerial photos. It was important to consider the threats to the entire Sky Island ecosystem. Because recreation is important to the economies in the eastern counties, things should be done. He asked if there was a need for the refugium. Congress should address the issue of conservation of the Mount Graham red squirrel and the rest of the ecosystem. If warranted, the refugium should be dissolved, and the mountain should be managed for the recovery of the squirrels.

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Meeting recessed at 11:27 a.m.

Meeting reconvened at 11:37 a.m.

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Steve Ferrell introduced the staff of the Funds and Planning Section who assisted in preparing the budget.

3. Request to Approve the Heritage Fund Budget Amendments, Wildlife Conservation Fund Budget Amendments and Off-Highway Vehicle Budget Amendments for Fiscal Year 2005

Presenter: Steve Ferrell, Deputy Director

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THE EXPENDITURE OF UNSPENT FUND BALANCES FROM THE PUBLIC ACCESS; IDENTIFICATION, INVENTORY, ACQUISITION, PROTECTION AND MANAGEMENT; HABITAT EVALUATION AND PROTECTION; URBAN; ENVIRONMENTAL EDUCATION; ADMINISTRATION AND SUPPORT SERVICES (INTEREST MONIES) PROGRAMS; THE OFF-HIGHWAY VEHICLE FUND AND THE WILDLIFE CONSERVATION FUND FOR FISCAL YEAR 2005.

Vote: Unanimous

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4. Request to Approve the Game and Fish Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Revenues for the Department have fallen due in large part to the drought. The Department would buy only ½ of the vehicles authorized in 2005. The computer replacement schedule was changed from a three year to a four-year cycle.

Commissioner Golightly stressed the need for a dedicated sales tax (e.g., Arkansas and Missouri), but the Commission needed to start discussion on some form of a fee increase to preserve services and pay employees fairly. Commissioner Gilstrap stated Commissioner Golightly brought up something important about the process. It is critical to plan for the future now. Commissioner McLean supported what Commissioner Golightly said. Something needed to be done. A four-year replacement schedule for IT equipment was inadequate.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$23,447,075 FOR FISCAL YEAR 2006 AND \$23,669,075 FOR FISCAL YEAR 2007 FROM THE GAME AND FISH FUND.

Vote: Unanimous

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13. Request to Approve the Arizona Wildlife Conservation Fund Budget Request for Fiscal Year 2005

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$5,133,597 FOR FISCAL YEAR 2005.

Vote: Unanimous

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14. Request to Approve the Arizona Wildlife Conservation Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$5,115,000 FOR FISCAL YEAR 2006 AND \$5,115,000 FOR FISCAL YEAR 2007.

Vote: Unanimous

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5. Request to Approve the Watercraft Licensing Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$2,140,800 FOR FISCAL YEAR 2006 AND \$2,140,800 FOR FISCAL YEAR 2007 FROM THE WATERCRAFT LICENSING FUND.

Vote: Unanimous

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6. Request to Approve the Game, Nongame, Fish and Endangered Species Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$293,400 FOR FISCAL YEAR 2006 AND \$293,400 FOR FISCAL YEAR 2007 FROM THE GAME, NONGAME, FISH AND ENDANGERED SPECIES FUND.

Vote: Unanimous

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7. Request to Approve the Capital Improvement Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$500,000 FOR FISCAL YEAR 2006 AND \$700,000 FOR FISCAL YEAR 2007 FROM THE CAPITAL IMPROVEMENT FUND.

Vote: Unanimous

8. Request to Approve the Waterfowl Conservation Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$143,400 FOR FISCAL YEAR 2006 AND \$143,400 FOR FISCAL YEAR 2007 FROM THE WATERFOWL CONSERVATION FUND.

Vote: Unanimous

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9. Request to Approve the Wildlife Endowment Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$16,000 FOR FISCAL YEAR 2006 AND \$16,000 FOR FISCAL YEAR 2007 FROM THE WILDLIFE ENDOWMENT FUND.

Vote: Unanimous

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10. Request to Approve the Federal Assistance Funds Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED EXPENDITURES FROM THE PITTMAN-ROBERTSON; DINGELL-JOHNSON/WALLOP-BREAUX; COAST GUARD BOATING SAFETY; SECTION 6 ENDANGERED SPECIES ACT; STATE WILDLIFE GRANTS; LANDOWNER INCENTIVE PROGRAM AND SPECIAL CONTRACTS FEDERAL ASSISTANCE FUNDS FOR FISCAL YEARS 2006 AND 2007.

Vote: Unanimous

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11. Request to Approve the Heritage Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED EXPENDITURES FROM THE ENVIRONMENTAL

EDUCATION; HABITAT EVALUATION AND PROTECTION; ADMINISTRATION AND SUPPORT SERVICES (INTEREST MONIES); PUBLIC ACCESS; IDENTIFICATION, INVENTORY, ACQUISITION, PROTECTION AND MANAGEMENT; AND URBAN WILDLIFE AND URBAN WILDLIFE HABITAT FOR FISCAL YEARS 2006 AND 2007.

Vote: Unanimous

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12. Request to Approve the Off-Highway Vehicle Fund Budget Request for Fiscal Years 2006 and 2007

Presenter: Steve Ferrell, Deputy Director

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE PROPOSED BUDGET REQUEST OF \$779,450 FOR FISCAL YEAR 2006 AND \$782,350 FOR FISCAL YEAR 2007 FROM THE OFF-HIGHWAY VEHICLE FUND.

Vote: Unanimous

Commissioner Golightly wanted to know what the Department would do with the monies generated from a future license and tag increase in terms of justification. It was important to include justification for the timing of what was being done for legislative approval. Chairman Chilton noted the Department should list what products could be offered to the Arizona public so that more people could participate in various programs that might draw in revenue that was not part of the present stream. Mr. Ferrell stated a summary would be given to the Commission at the August Commission meeting.

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15. Call to the Public

John Beshears, Executive Director of the Arizona Heritage Alliance, asked about additional revenue sources. Director Shroufe stated the Department could use \$40 million annually. Commissioner Gilstrap stated there was a significant need for additional revenue and referenced capital needs of the current headquarters.

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Meeting recessed at 12:52 p.m.

Meeting reconvened at 1:35 p.m.

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16. 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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Meeting recessed at 2:55 p.m.

Meeting reconvened at 3:07 p.m.

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17. Litigation Report

State of Arizona v. Norton, CIV 02-0402-PHX-FJM; *Montoya v. Manning*, 301 F.3d 985 (9th Cir. 2002); *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; *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313; *Ameduri and Yee et al. v. U.S. Forest Service et al.*, U.S. District Court No. CIV 02-2495 PCT FJM; *Bar D Cattle Co. v. Shroufe*, CIV2002-0872; in the matter of *Search Warrant No. CR 2002-2395SW*; *The Fund for Animals et al. v. Norton et al.*; USDC D.C. 1:30-CV-00892 (RJL); and *Phelps Dodge v. Arizona Dept. of Water Resources*, LC2003-000243-001DT, *Arizona Biological Society et al. v. BLM, IBLA appeal no. 2002-412* and issues associated with potential litigation over the status of black-tailed prairie dogs and mountain plovers, and Mexican garter snake.

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

Mr. Odenkirk noted there was an item that came out of executive session earlier today related to litigation on the Page Springs Hatchery. He recommended that the Commission VOTE TO APPROVE A SETTLEMENT AGREEMENT AND AUTHORIZE THE DIRECTOR TO EXECUTE THE AGREEMENT WITH THE UNDERSTANDING THAT ONE PROPERTY OWNER ON THE DITCH HAS NOT SIGNED AND WILL NOT SIGN THE SETTLEMENT AGREEMENT. THE PROPERTY OWNER IS NOT A PARTY TO THE LITIGATION BUT IS A PROPERTY OWNER WHO TAKES WATER FROM THE DITCH.

Motion: Golightly moved and Melton seconded THE RECOMMENDATION AS STATED BY MR. ODENKIRK.

Vote: Unanimous

Director Shroufe brought the Commission up to date on *Bar D Cattle Co. v. Shroufe*. He and Ron Sieg gave depositions about two weeks ago. An attorney from the Risk Management Section is handling the case. Mr. Odenkirk stated that because these cases are handled in a different section in the Attorney General's Office, the updates are not provided in the formal reports to the Commission but are provided to the Department on a quarterly or semi-annual basis. In the future, litigation reports from the Risk Management Section will be sent to the Commission. Mr. Odenkirk briefly explained the case. Management of elk in Arizona is allegedly interfering with use of forage by livestock grazers and they are making a monetary claim for compensation for the loss of forage consumed by elk.

Chairman Chilton asked about Arizona intervening in *Audubon Society of Portland et al v. USFWS*. Mr. Odenkirk presented all the information he had related to the case in executive session. Bruce Taubert, Assistant Director for Wildlife Management, noted the

Commission should take action today to direct the Department to bring the issue before the other western states' commissioners at the upcoming Western Association of Fish and Wildlife Agencies conference in July. Mr. Odenkirk explained the responsibilities of an intervenor. Arizona could be categorized with any other defendant and be responsible for any judgment that is entered. We would not be solely responsible for all fees and costs; the FWS would also be responsible for that.

Mr. Odenkirk explained the FWS had been sued by various Audubon affiliates in the western United States regarding a decision by the FWS to allow states to issue permits for the take of nestling peregrine falcons by falconers. The number permitted is 5% of take of all production annually of falcons. The decision was issued earlier this year. The basic allegation in the complaint is a violation of NEPA in that the FWS did not adequately document impacts in its EA and it should have prepared an EIS. The plaintiffs have sought an injunction against the decision to allow for the take. No preliminary injunction or restraining order has been filed, but the plaintiffs are asking the

FWS to prepare an EIS. The Arizona Game and Fish Commission authorized the take of five birds in April; the season has already started and is near completion this year.

Motion: Melton moved and McLean seconded THAT THE DEPARTMENT INTERVENE IN THIS SUIT BECAUSE WE DO HAVE THE DATA AND SCIENCE, WE DO ISSUE PERMITS TO TAKE THIS SPECIES, AND IT IS FITTING THAT ARIZONA LEADS IN THIS ISSUE.

Director Shroufe noted a letter would have to be written to the Governor to ask permission to intervene in the peregrine falcon case.

Vote: Unanimous

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18. State and Federal Legislation

Presenter: Tony Guiles, Legislative Liaison

Written summaries were provided to the Commission. The Department did well with the budget. A special session may be called later this month dealing with State Trust Land Reform. Director Shroufe noted the Commission would be provided with updates. Mr. Guiles pointed out the Secretary of State has asked the Legislature to wrap up any business dealing with this issue before July 1 to make sure deadlines can be met to get on the November ballot. The Special Session would happen before July 1.

Commissioner Gilstrap noted this legislation would have some kind of impact on wildlife. The Commission needed to take formal action. It needed to know what was there now so it could deal with amendments as they come along. The Commission needed to know this legislation's effect on the Department and wildlife management. Mr. Guiles noted that at this time, no bill has been introduced. After further discussion, it was decided the Commission would be kept informed by the Department and a telephonic Commission meeting will be scheduled if developments require the Commission's decision.

Mr. Guiles distributed copies of the Legislative Effectiveness Evaluation to the Commission and asked that they provide comments. Solicitation for legislative proposals will be sent to Department employees and the Commission the beginning of July. The proposals would be brought to the Commission for consideration at its August meeting.

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19. Consent Agenda

- a. Inter-governmental Agreement for Sportfish Stocking Program of Fain Lake between the Arizona Game and Fish Department and the Town of Prescott Valley. Department recommendation: That the Commission vote to approve and adopt the inter-governmental agreement with the Town of Prescott Valley to stock sportfish in Fain Lake for a period of approximately three years commencing June 19, 2004, and ending June 30, 2007.
- b. Request for the Commission to Authorize the Department to Accept and Sign a Memorandum of Understanding between the University of Arizona, the Arizona State Land Department and the Arizona Game and Fish Department Relating to the Operation of the Santa Rita Experimental Range. Department recommendation: That the Commission vote to authorize the Department to sign a Memorandum of Understanding between the State Land Department and the Arizona Game and Fish Department relating to the management of the Santa Rita Experimental Range.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE CONSENT AGENDA.

Vote: Unanimous

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

Presenter: Bob Broscheid, Habitat Branch Chief

Mr. Broscheid provided a chronology of what is occurring with the Big A Ranch Allotment and the Black Mountains in Kingman. The Department has been working with the Bureau of Land Management (BLM) regarding their issuance of a grazing permit near the Black Mountains in Mohave County. The Department developed some actions in response to that evaluation and met with BLM a month ago. There were three main areas dealing with how grazing would be managed in drought conditions. The BLM allowed the permittee to release livestock on the allotment while there was a pending protest. The BLM field manager stated the Department did not provide a letter with data refuting that decision. It was within BLM's policies and guidelines to allow cattle on the allotment. The Department was requesting clarification from the state BLM office whether or not it was legal. Commissioner Golightly stated the challenge was whether or not cattle should be allowed at all on the range in terms of bighorn sheep management. There was limited forage for sheep and cattle. The latest criteria for science were in 1976. A letter in November 2003 from the BLM State Director led the Commission to believe its

comments would be considered. The Commission's concerns were not addressed at the ID Team level and/or the Commission level. Cattle were turned out onto the allotment 10 days ago without our knowledge.

Mr. Broscheid noted there was one pasture on the allotment; the Department had concerns with the suitability of those areas, not with livestock grazing but with competition with bighorn sheep, specifically with the spread of burros into the area as well. The initial stocking rate was adjudicated within this allotment in 1979, based on a 1976 ocular inventory. Because of fire or dry conditions, the Department asked BLM to recalculate its numbers. This outdated information was the basis of the November 2003 letter. Commissioner Golightly stated it was not that the Commission did not want any cattle on the allotment, but the concern was up on the slope and those pastures that would directly compete with sheep. Water was to be provided to cattle as they traveled up the slope to sheep country; however, the water would also draw burros.

Commissioner Gilstrap noted the sheep herd was stressed in the area. The allotment is relevant, but the bighorn sheep issue needed recommendations for some serious management. Mr. Broscheid agreed there were declines in the bighorn sheep population, but livestock grazing was not the only cause for the decline. Highway 93 improvements have been expanded; the Department was working with the Department of Transportation. There could be lion predation also. The Department is engaged in dialog with the lessee. Chairman Chilton wanted the Department to continue dialog with the lessee and to look at the impacts of the highway.

Director Shroufe noted Mr. Broscheid and he have been working with the State BLM Office. He recommended the Commission allow the Department to work with the lessee, the Kingman BLM Office and the State Office for another week before filing a letter to intervene. This started in November 2003 and we are not getting the attention we should be getting. Commissioner Gilstrap wanted to take the Director's recommendation, and if nothing happens within 12 days, the Commission should take formal action.

Public comment

Brian Dolan, representing the Arizona Desert Bighorn Sheep Society (ADBSS), asserted the ADBSS is worried about this bighorn sheep population. The decline occurred suddenly. This is not the time to be bickering with BLM about this sheep population because it is a valuable wildlife resource. The Department needed to be assertive in its right to manage the sheep population. The sheep do not need another stressor. It did not make sense to provide water for cattle that will also attract wild burros. He urged expedient action and an appeal would be appropriate. This was the first time the ADBSS has gotten involved in a grazing allotment. Chairman Chilton suggested the Department and Mr. Dolan meet with the permittee to seek resolution. Because this would not take care of the bigger problem, Mr. Dolan still stressed doing an appeal.

Commissioner Golightly stated 30% of the problem was with Big A, but 70% was with an Allotment Management Plan (AMP) coming up for Big B, which contains more bighorn sheep habitat. These pastures consist of 50,000 acres and cannot be fenced. Should the Department fail in Big A, it will set us up for disaster in Big B. Something should be done immediately with A; we must have input in B.

Mr. Broscheid noted the Department flies bighorn sheep survey routes once every three years. During past flights, declines were noticed. The decline is estimated to be 20-30%.

Motion: Golightly moved and Melton seconded THAT THE COMMISSION APPEAL THE DECISION, BUT TO NOT FORMALLY APPEAL IF BY WEDNESDAY THE DEPARTMENT IS SATISFIED SO THERE DOES NOT HAVE TO HAVE A TELEPHONE COMMISSION MEETING. THE DIRECTOR SHOULD BE EXTENDED THE ABILITY TO WITHDRAW OR NOT FILE THE APPEAL IF HE IS SATISFIED BY WEDNESDAY.

Commissioner Golightly thought it was unsuitable this year for cattle to be in that portion of the Black Mountains. The cattle were not being removed; they can graze in other areas. The Commission's responsibility was to wildlife.

Chairman Chilton did not want the lessee to bear the entire impact of the drought. The sheep should not bear it either. The Department should first try to offer constructive solutions to this problem. This is critical for long-term access to hunters and health of the bighorn sheep herd. She asked Commissioner Golightly what was meant by satisfied. He replied cattle should not utilize the pasture designated as bighorn sheep habitat.

Director Shroufe noted the Department protest concerned updating the ocular survey done in 1976. The Department was ignored. The habitat should be assessed as it is today. Mr. Broscheid noted BLM was working from a 1982 AMP for the allotment. Grazing guidelines need to be updated. He clarified there was a counter offer with BLM and the permittee; the Department did not hear of any decision: 1) There would be an ephemeral grazing system consistent with BLM standards and guidelines; 2) no livestock grazing would occur within bighorn sheep habitat during severe drought conditions as determined by the NOAA and the Palmer Drought Index and 3) livestock grazing would be modified based on declining bighorn sheep population numbers. Those three main areas were on the table; then the cattle were turned out. It is unknown if these areas would be incorporated into the grazing permit. The BLM was unwilling to update the AMP.

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

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21. Request for Commission Approval of a New Three-year Heritage Habitat Evaluation and Protection Project Narrative

Presenter: Bob Broscheid, Habitat Branch Chief

The new project narrative would be in effect from FY 2005 through FY 2007.

Motion: McLean moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE HERITAGE HABITAT EVALUATION AND PROTECTION NARRATIVE.

Vote: Gilstrap, Melton, and McLean – Aye
Golightly-Absent for Vote
Chair voted Aye
Motion carried

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22. Statewide Shooting Range Project Update

Presenter: Don Winslow, Acting Education Branch Chief

A written summary was provided to the Commission on major issues in the program prior to today's meeting.

The topic of unmanned shooting ranges, e.g., Adair Range, in Yuma, was discussed. Consensus of the Commission was favorable and felt it was important to be active in shooting sports and both large and small shooting range operations.

Mr. Winslow noted the Ben Avery Shooting Facility (BASF) was awarded a Points of Pride award from the City of Phoenix in June. The National Shooting Sports Foundation also recognized BASF as a Five Star Shooting Range; this is the first government-managed facility in the nation to have received this designation.

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23. Statewide Shooting Range Grant Request FY 2005

Presenter: Don Winslow, Acting Education Branch Chief

Grant applications were presented to the Commission for the FY 2005 grant cycle, totaling \$121,500, which exceeds the \$100,000 grant allocation by \$21,500. Also presented were the Statewide Shooting Range grants for FY 2005. The Department recommended a total of \$87,500 in grants.

Five applications were received:

1. Tucson Rifle Club

Requested \$5000 to repair and replace the roof of the main office building of the Three Points Range. This is a necessary project to protect the current investment of the range. This is a Commission-owned property.

Recommendation: Fully fund the project

2. Tucson Rifle Club

Requested \$27,000 for the Three Points Range to raise existing side berms and backstops; relocate firing lines; build armadas, concrete slabs and walkways; and install shooting benches and baffled pistol booths. This is primarily a project to improve the public use and safety of the public range and black powder range.

Recommendation: Fully fund the project with a stipulation that construction shall follow NRA Source Book Standards.

3. Mohave Sportsman Club

Requested \$5000 to construct a ten-foot noise and safety berm on the east side of this Commission-owned property. This is a safety project with sound attenuation objectives.

Recommendation: Fully fund the proposal with the stipulation that construction shall follow NRA Source Book Standards.

4. City of Casa Grande

Requested \$50,000 for the Elzy Pearson Public Rifle Range to construct backstops, lateral berms, shade covers, shooting tables and safety fencing on this city-owned range. This is a safety and security project and would be a new partnership for the Shooting Range Grants program.

Recommendation: Fully fund the project with the stipulation that construction shall follow NRA Source Book Standards.

5. Town of Gila Bend

Requested \$34,500 for the Gila Bend Shooting Range to construct shade covers and a picnic ramada as well as a security gate. The amount requested is more than the applicant's 50% contribution and cost estimates are not specific. If the Commission awarded the grant as recommended, \$13,000 would be available in the grants pool, which would not cover this request or be enough to maintain the Commission-directed 10% reserve for this grant cycle.

However, this project has merit and the Town of Gila Bend would be a new partner in the Shooting Range Grants program.

Recommendation: Do not fund the request this fiscal year; instead, invite the Town of Gila Bend to work with the Department to refine cost estimates and resubmit the application package for the FY 2006 funding cycle.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION APPROVE THE FISCAL YEAR 2005 GRANT PROPOSALS OF THE TUCSON RIFLE CLUB (2), MOHAVE SPORTSMAN CLUB AND CITY OF CASA GRANDE.

Vote: Unanimous

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24. Request for Commission Approval of a New Sport Fish and Wildlife Restoration Full-Time Employee Position

This item was deleted from today's agenda.

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25. Proposed Dates and Locations of Arizona Game and Fish Commission Meetings for 2005 and January 2006

Presenter: Steve K. Ferrell, Deputy Director

The Commission discussed and decided on the following schedule:

<u>Date</u>	<u>Location</u>
February 2, 2005	Phoenix-Legislator Day
January 21	Phoenix-Commission Meeting
January 22	Phoenix-Meet the Commission
February 11-12	Yuma
March 11-12	Tucson
April 15-16	Phoenix (hunt orders)
May 20-21	Prescott
June 24-25	Payson
August 12-13	Flagstaff
September 23-24	Pinetop
October 21-22	Phoenix (fish orders)
December 9-10	Casa Grande
January/February 2006	DATE OPEN/Phoenix-Legislator Day
January 20	Phoenix-Commission Meeting
January 21	Phoenix-Meet the Commission

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO ADOPT THE SCHEDULE AS PRESENTED OR WITH CHANGES MADE AT THIS MEETING AND SUBJECT TO CHANGES IN THE FUTURE ON THE AUTHORITY OF THE COMMISSION CHAIR.

Vote: Unanimous

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26. Call to the Public

Halina Szyposzynski, representing self, thanked the Commission and Department staff for providing two opportunities for the public to comment on wildlife management decisions and processes. One was the mountain lion workshop in Tucson and the other was a workshop for the Sonoran Desert Tortoise Interagency State Conservation

Agreement. She asked the Commission and Department to proactively involve Arizona citizens equally in decision making policies.

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27. Director's and Chairman's Reports

Chairman Chilton noted Director Shroufe, U.S. Fish and Wildlife Service Regional Director Dale Hall, and the state director for FWS attended the Altar Valley Conservation Alliance meeting regarding the Chiricahua leopard frog.

Director Shroufe attended the Trilateral meeting in Canada. He gave depositions on the Apache Maid and the Bar D matters. He attended two Wildlife for Tomorrow meetings; the Arizona Outdoor Hall of Fame banquet will be held August 27 and he will have tickets for that. Inductees this year are Ron and Sharon Eichelberger; Dave Cohen; the Rocky Mountain Elk Foundation and Steve Bodinet. He attended a Governor's Cabinet meeting. He attended an Arizona Outdoor Recreation Coordination Committee meeting. He worked on the mediation that will be occurring on Bellemont. Due to scheduling conflicts with the Fraternal Order of Police Lodge (FOP), he noted a meeting change of venue for the October 2004 Commission meeting. It will be in Phoenix at the Princess Resort. The meeting room there is actually cheaper than at the FOP Hall and lodging is within government rate.

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28. Commissioners' Reports

Commissioner McLean toured wildlife sites in the Pinetop-Lakeside area. He attended a Habitat Partnership Committee orientation meeting.

Commissioner Melton went to the Arlington Wildlife Area.

Commissioner Gilstrap spent a busy month with family.

Commissioner Golightly attended Department school and the employees' awards ceremony. He met with Nora Rasure, Coconino National Forest Supervisor, and with Director Shroufe regarding the mediation process that will occur next Tuesday.

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29. Approval of Minutes

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION APPROVE THE MINUTES FOR MAY 14, 2004.

Vote: Unanimous

The minutes for April 16-17, 2004, were signed.

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Motion: Gilstrap moved and McLean seconded THAT THE COMMISSION RECONVENE INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed at 5:15 p.m.

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Saturday, June 19, 2004 – 8:00 a.m.

Chairman Chilton called the meeting to order at 8:00 a.m. The meeting followed a revision dated June 15, 2004.

1. Consideration of Proposed Commission Orders 19, 20 and 24 for the 2004-2005 Hunting Season

Presenter: Mike Rabe, Migratory Game Bird Supervisor

Mr. Rabe noted a change in note 5 of the dove regulations. The wrong dates were noted for the junior hunts. The dates should be changed from September 7 and 8 to September 4 and 5.

Commission Order 19: Dove - Season Structure Recommendation:

The Department recommended continuation of the extended Falconry-Only dove season. Recommended dates are September 13 through October 30.

The Department recommended no change to the season structure for mourning doves and white-winged doves. The 2004 recommendation is for a September season of 15 days starting on September 1. The North Zone would be open to all day shooting and the South Zone would have ½ day shooting hours, starting ½ hour before sunrise and closing at noon. The late season (November 19, 2004-January 2, 2005) would be for mourning doves only and would be open to all day shooting statewide.

The full-day Juniors-only season would be for those areas and dates closed to general season afternoon dove hunts during September. This year the Juniors-only hunt opportunity is recommended at the Robbins Butte Wildlife Area, from September 4-5, 2004. Bag limits and shooting hours would be the same as for the general season.

Mr. Rabe pointed out the Western Management Unit Interim Dove Harvest Strategy (WMU). The U.S. Fish and Wildlife Service (FWS) asked all three management units for doves to look at management strategies for mourning doves in 2004 because of declining call counts. There is a national ongoing banding study to look at recovery rates on bands. Arizona developed a harvest plan for the WMU and will be presenting it to the FWS's Regulatory Committee next week. The plan would not be implemented until at least 2006, after completion of the current banding study. Change in habitat may be a factor in the decline in call counts and the Department would be studying this.

Commission Order 20: Band-tailed Pigeon – Season Structure Recommendation

The Department recommended no change in season length and bag limit from the 2003 season. The 2004 Department recommendation is for the season to open on September

24 and close on October 4, 2004, with bag and possession limits of 5 and 10 respectively. The recommendation provides for two weekend hunting opportunities.

Mr. Rabe noted the Department would work with the FWS to do better surveys on bandtail populations in the Four Corners area

Commission Order 24: Sandhill Crane – Season Structure Recommendation

The Department recommended four general 3-day hunts beginning on November 2, with 75 permits in each hunt. Each hunt will have a non-hunt day between hunts. Under the terms of the Rocky Mountain Sandhill Crane Management Plan, Arizona's 2004 maximum allowable harvest of RMP cranes is 43 birds. With the recommended season structure, it is estimated total harvest will be between 150-200 cranes. Predicted removal of RMP birds is estimated at 30-46 birds. All successful applicants will be notified of the mandatory check station for the 2004 season. Harvest in 2004 will be estimated using questionnaires for all hunts.

The Department recommended a 3-day archery-only hunt October 28-30, 2004, with 25 permits. Since the archery hunt occurs prior to the general hunts in late October, it is felt the majority of the cranes present at that time are mid-continent birds and the likelihood of archery harvest impacting the RMP allocation would be minimal.

The Lower Colorado River Valley sandhill crane population is doing well, but a certain population level must be reached before they can be hunted. There is an issue with California, which lists this population as threatened and endangered in its state's plans. If this crane population were to be hunted, issues would need to be worked out with California.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION ADOPT, SUBJECT TO FINAL FEDERAL FRAMEWORKS, COMMISSION ORDER 19: DOVE; COMMISSION ORDER 20: BAND-TAILED PIGEON AND COMMISSION ORDER 24: SANDHILL CRANE, AS PRESENTED.

Vote: Unanimous

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2. Presentation of Options Regarding Management of the House Rock Bison Herd to Address Issues Raised by Grand Canyon National Park

Presenter: Ron Sieg, Region II Supervisor

For additional information, see Commission meeting minutes for April 17, 2004, pages 18-19 and memo dated April 14, 2004, from the Director to the Commission.

Four broad categories exist for discussion with the Grand Canyon National Park (Park) and the Kaibab National Forest were presented to the Commission for the management of the House Rock bison herd. Those options are:

1. Status quo, but monitoring bison movement and presence in the Park
2. Fencing
3. Removal
4. Habitat modification

Options were further defined in each category. Before fencing options can be considered, there are four points to be considered:

1. Any fencing design would have to allow for free movement of other wildlife, but keep in bison
2. Allow for fair chase
3. Department owns only 30 acres of land in the House Rock Valley; the Kaibab Forest manages the rest; thus, any fence construction would require compliance with the NEPA and archeological surveys
4. Fencing would not remove bison currently on the Park

There are only four main fencing options to consider:

1. Fence the historic House Rock Valley Wildlife Area
2. Fence a smaller portion of the Wildlife Area to try to avoid fencing the wilderness area
3. Fence along the Kaibab National Forest/Grand Canyon National Park boundary
4. Fence specific habitat or structures within the Park where perception is resource damage has occurred

The next category is removal. There are these caveats to consider:

1. Bison can be difficult to locate and make removal difficult
2. Due to the remoteness, processing any animal killed would be difficult
3. There are no structures on the Forest or the Park for handling bison

With those caveats, there were three main removal options:

1. Remove all bison from the entire Kaibab Plateau and the Park
 - Two main methods
 - Kill the bison
 - Capture and remove the bison
 - Under these options, there are two additional options
 - Permanently remove bison from the area
 - Remove current bison and reintroduce other bison
 - Under this option there are two additional options:
 - Reintroduce naïve bison
 - Reintroduce pure bison
2. Use of a more aggressive harvest strategy
 - Two options
 - Use of bait to lure bison off of the Park and increase access to hunters
 - Harvest during calving or breeding periods when more bison return to the wildlife area
3. Allow Grand Canyon National Park to remove bison present on the Park

- Two options
 - Park Service personnel kill bison and salvage meat or leave in field
 - Park Service personnel captures bison on Park and transfers them to other locations

Habitat enhancement on the Kaibab National Forest and House Rock Valley Wildlife Area was another main option. Over the last few decades, there has been encroachment of ponderosa and pinyon-juniper into historic grasslands in these areas.

1. Removing trees could improve the grass and forage aspects.
2. The use of prescribed fire could stimulate forage and browse.
3. The use of fertilization and/or supplemental feeding to improve forage on the Forest and the Wildlife could stimulate bison use of the area.

Kate Cannon, Deputy Superintendent at the Grand Canyon National Park, made a presentation. Materials were provided to the Commission; Ms. Cannon referenced boundaries on a map.

The numbers of bison (120) on the Park have become quite large. Bison in the Park are a problem since they are not native to the Park and national parks are prohibited from introducing non-native species, particularly large and influential species. Bison in the Park are also a problem for Game and Fish because this is a huntable population. When in the Park, they are no longer accessible to hunters.

Ms. Cannon elaborated on why bison were not native to the Park. It was important to the Park as to whether or not bison were or were not present in the Park in historic times. The National Park Service was doing research on bones in the Park, but it appears bison were not native to the Park or its vicinity. The original House Rock herd was introduced into the area from Kansas in 1905. In 1927, Game and Fish purchased the herd. Since then, several Memoranda of Understanding between Game and Fish and the Kaibab National Forest have been signed and implemented. These agreements require containment of the herd within the 60,000 acres set aside for the buffalo ranch. Since the mid-1990s, the bison have been straying on to Park lands.

As a result of a meeting with Commissioner Golightly, Director Shroufe, staff from Game and Fish and a representative from the Governor's Office, the Park agreed to convene a working group consisting of Game and Fish, NPS and USFS representatives. The group's task would be to develop and make recommendations to the Commission on removing bison from the Park and prevent their return.

Commissioner Golightly asked questions of Mr. Sieg and Ms. Cannon. Mr. Sieg understood the bison were introduced in 1905 at Bright Angel Point, which is now part of Grand Canyon National Park by Charles "Buffalo" Jones. Congress designated the Grand Canyon Game Preserve in 1906 for the raising of bison, deer and other game. Ms. Cannon noted the national park designation superseded the game preserve where it overlapped. The park underwent legislative changes; the most recent major change occurred in 1975. Mr. Sieg noted it was unclear as to what happened between 1906 and 1950. In 1950 there was some discussion about moving the bison and assigning some

portions of grazing allotments. There were other non-native species present in the park, e.g., turkeys, chukar and elk.

Ms. Cannon stated the NPS was required to work to maintain natural populations of animals and plants. The Park was concerned with bison becoming influential on the Park and visitors. She noted bison were native to parks in the Dakotas and Yellowstone National Park and were managed by the NPS. Even if bison were found to be native to the Grand Canyon National Park, the NPS was still required to go through a public process.

Commissioner Melton inquired about putting legislation forward in Congress to allow the bison to stay since the bison were there prior to establishment of the national park. Ms. Cannon stated the idea had not been suggested as an option, but it conflicted with NPS legal requirements.

Ms. Cannon suggested the option of herding the bison out. It would be difficult, but not impossible. There may be options of luring bison out with water or salt thereby making them accessible. The NPS would be willing to help with manpower and money in helping the Department resolve the problem. The intention of the NPS is to come before the Commission with a recommendation.

Chairman Chilton wanted to see an explanation in writing as to what constitutes native and what does not. Ms. Cannon stated she would provide that as it was in policy. Chairman Chilton noted there were two different philosophies. Game and Fish concern is that when you place restrictions on movement of the herd, it is not neutral to its impact on hunters because the herd is not free ranging. Part of the worth of the bison is that it is a free-ranging herd.

Public comment

Sandy Bahr, representing the Sierra Club-Grand Grand Canyon Chapter, agreed there was a difference in philosophies relative to this issue. The Sierra Club was very interested in this issue as strong advocates for the Park and Arizona's wildlife. The Club wanted to be notified and involved on this issue.

Tom Robinson, Director of Government Affairs for the Grand Canyon Trust and representing the National Parks Conservation Association, asked that the Department continue to participate on the working group. The bison were causing major damage to the Park's natural resources. Most people come to the Park to see scenic wonders and geologic formations. The bison may impact threatened and endangered species. The NPS Organic Act trumps all previous laws and actions in this area unless taken away by Congress. It would be difficult to pass any law that is perceived as negatively impacting the Park's resources. As a possible future stakeholder, the Grand Canyon Trust supported the NPS position on this issue. Ron Sieg noted the Department has done several things the past few years to find a pattern of hunting that would increase harvest success and try to limit the bison population. The Department explored with the USFS the options of some habitat manipulation on the east side of the Kaibab Plateau next to the wildlife area and are currently doing that with Department funding. Baiting issues

have also been discussed with the UFFS. Road manipulation to limit public access during certain times of the year and camping restrictions have also been discussed.

Mr. Robinson continued that the Organic Act is paramount because the NPS actually manages the wildlife resources within its jurisdiction. The number one source of human injury in Yellowstone is with bison.

Stephanie Nichols-Young, representing the Animal Defense League of Arizona, wanted to be kept involved in the process. The challenge is balancing different interests within our philosophy. The herd should be humanely removed to appropriate habitat in a grassland area.

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Meeting recessed at 9:58 a.m.

Meeting reconvened 10:12 a.m.

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3. Report on Vendor Activities at the Ben Avery Shooting Facility

Presenter: Marty Macurak, Assistant Director, Information & Education

For additional background information, see Commission meeting minutes for February 13, 2004, pages 9-10, and March 13, 2004, pages 17-18.

Ms. Macurak provided a synopsis of material provided to the Commission prior to today's meeting.

Regarding legal vulnerabilities related to the way the Range Fund operates, Mr. Odenkirk informed the Department there is a statute that requires us to contact the Department of Economic Security and Rehabilitation Services Administration to have them conduct a survey of the operations to see if it might be appropriate for a blind person to operate a business there. This has not been done, but the Department will put in a request this month. In terms of vulnerability related to other vendor operations, Mr. Odenkirk stated that because the Range Fund is not receiving public money, the Department is not required to follow State Procurement rules. It was his assessment it would be in our best interest to ensure the rules or procedures the Department follows are fairly applied to everyone who wants to participate as a vendor.

Three options were presented to the Commission in terms of vendor activities:

1. Put parameters and formalize the current agreement with the Arizona State Rifle and Pistol Association (ASRPA) to operate the Range Fund
2. Establish a set of rules and procedures the Department would follow and offer that opportunity to others through the Request for Proposal process
3. Conduct sales activities that would require new legislation

The Department recommended #1.

Public comment

Terry Allison, President of ASRPA, provided more information on the Range Fund. The real value of it was to lever projects and money onto the range from other sources. He referenced the project for resetting targets on pistol silhouette. Volunteers worked on the project and the Range Fund was used to fund it at \$20,000. He noted other projects that were completed using Range Fund monies. He had no problem with #1.

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO WORK WITH THE ARIZONA STATE RIFLE AND PISTOL ASSOCIATION AND DRAFT FOR COMMISSION APPROVAL THE NECESSARY DETAILS THAT WOULD INCLUDE ACCOUNTING PRACTICES, INSURANCE REQUIREMENTS AND THINGS THAT ARE ACCEPTABLE BY THE STATE OF ARIZONA AND WITH THE ARIZONA STATE RIFLE AND PISTOL ASSOCIATION DURING THAT CONTRACT AND/OR DRAFT A DOCUMENT FOR A FUTURE COMMISSION MEETING TO FORMALIZE.

Vote: Unanimous

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4. Review of Proposals to Address Constitutional Concerns with Existing Regulations that Limit the Number of Nonresident Permits

Presenter: Steve Ferrell, Deputy Director

For additional information, see Commission meeting minutes for May 14, 2004, page 2.

Pros and cons of different options were considered to address constitutional concerns that Arizona's limitation on the number of nonresident permits substantially affects interstate commerce, including a proposal made by Scott Bales. The options were:

1. Squared bonus points for residents and nonresidents
2. Floating cap adjustment based on annual draw or application rates for hunts other than bull elk and deer north of the Colorado River (also including these hunts in the average)
3. Increase nonresident fees by hunt number based on nonresident demand (increase would be for trophy hunts)
4. Eliminate sale of parts and maintain cap
5. Make nonresident seasons shorter (for bull elk and deer north of the Colorado River)
6. Allow residents to hunt before nonresidents
7. Establish a 5% set-aside for nonresident allocation of deer and elk tags in currently capped hunts
8. Mandatory minimum one bonus point for participation in current capped hunts
9. Extra bonus points or bonus point preference for residents only (possibly doubling)
10. Limit Internet applications to residents only, with nonresidents applying manually
11. Award additional bonus points for continuous support (loyalty) applications (e.g., consistent applications for five years)
12. Proposal from Arizona Sportsmen for wildlife, which would create commercial and noncommercial tags (maintains 10% cap)

Mr. Odenkirk provided a legal analysis of the 12 options. There are two broad legal issues the Commission needed to consider. One has to do with the impact on nonresidents and the other deals with the constitutional barriers established under the Commerce Clause and whether or not an alternative actually addresses the constitutional problem and eliminates those barriers.

We are doing this today with the assumption the court will decide to invalidate the 10% cap and there will have to be an alternative to the cap.

The first issue deals with the impact on nonresident access to tags. If the alternative has the same effect as the 10% cap, there would be a legal problem. If it doesn't discriminate between residents and nonresidents, how effective is the alternative at maintaining resident opportunity. With the 10% cap, resident opportunity was somewhat maintained. We have defined in the litigation what a resident is and have tried to avoid defining resident opportunity as the total number of permits that residents get because it is not a real accurate reflection of opportunity. Opportunity is actually the number of residents that get to hunt. Therefore, opportunity has been redefined to be a percentage of residents who get drawn for tags. The percentage is overwhelmingly lower than the majority of tags assigned to residents.

Assuming the court will agree with the definition, our focus is to try to maintain resident opportunity and to try to maintain the percentage of residents who actually hunt each year.

When considering the alternatives, the following issues must be looked at:

1. The impact on the ability of residents to continue to access tags to hunt

If we are not able to resolve Commerce Clause concerns, the Commerce Clause does not prohibit some kind of discrimination against nonresidents. What the court has said is that if there is a regulation that does discriminate, the test is whether or not it is narrowly tailored. Does the regulation actually advance the interest of maintaining resident opportunity when there is no other alternative that can serve the purpose as well that would be less discriminatory than the 10% cap?

2. Examining the alternatives as to whether or not they eliminate constitutional barriers in the Commerce Clause

The 9th Circuit said the Commerce Clause is involved if the regulation has a substantial effect on interstate commerce. There are two ways the court has identified effect on commerce: 1) recreational hunting promotes interstate travel and movement of people and 2) it is affected by the sale of parts in commercial markets. Some of these alternatives attempt to eliminate the Commerce Clause barriers, but do they do so sufficiently enough to avoid a Commerce Clause challenge?

Mr. Odenkirk reviewed the alternatives and identified legal issues where he thought there were problems and concerns.

#1 – On the face, it is not discriminatory. Residents and nonresidents can participate in the program. The only regulation is to square bonus points, but we do not know statistically the effect it would have on residents and nonresidents and the application success rate. The question is the impact on resident opportunity.

#2 – On the face, it appears discriminatory because some quota was being established for residents and nonresidents. Nonresidents will be limited to a percentage of permits based upon overall application rates. It is discriminatory on a macro level in that the number of nonresidents is limited overall. It could be argued it is not discriminatory on the individual level because the allocation of permits is based upon percentage of the application pressure. It could be argued a resident and nonresident have the same level of success in the draw. The allocation does not change the chance of success.

#3 – Reference was made to the Baldwin case. It held that disparate fees between residents and nonresidents were permissible. The question will be why the fees were so disparate. Overall, it was a discriminatory alternative in that nonresidents are being treated differently. The discrimination was not the same as the 10% cap. Is the effect of a higher fee going to have the same result as the 10% cap, i.e., the same limitation on resident access to permits.

#4 – This addresses an attempt to have an alternative that is not in conflict with the Commerce Clause. By eliminating the sale of parts, the Department would have a separate case to make and another opportunity to show its regulation is not subject to the Commerce Clause. Another panel of the court would be able to address whether or not the movement of people in and of itself is sufficient to establish a Commerce Clause violation.

#5 & #6 – These are not limitations on the access to permits, but barriers to hunting opportunities. Would these barriers create an effect that is discriminatory that the Court would strike down?

#7 – It is still an allocation and gives nonresidents a fixed percentage of permits.

#8 – This is not going to benefit residents any more than nonresidents. The effects would have to be analyzed.

#9 – The concept is favorable and reference was made to the Michigan law school case. This alternative was to give extra bonus points to residents only. It would increase the chances for a person to get drawn, but was not an absolute guarantee. This alternative does not establish a quota but it still discriminates by giving preference to residents. The courts have stated some limited consideration for residents is permissible if necessary to maintain resident opportunity. The number of bonus points to residents could be adjusted.

#10 – This alternative was a barrier to the application process, but it doesn't limit permits. Nonresidents would have the same number of permits as residents.

#11 – The effect on resident opportunity was hard to determine.

#12 – This is an attempt to deal with the issue of eliminating the constitutional problems under the Commerce Clause. It was as discriminatory as the 10% cap.

Commissioner Melton asked if the Commission could wait to see what happened to the 10% issue. Mr. Odenkirk noted something needed to be in place next year. As for waiting, there was some advantage in getting guidance from the courts. He did not know when the court would render a decision. The Commission needed to look at some other preference that is less egregious as the 10% cap and to try and still maintain resident opportunity. If the Commission wanted to go the alternative approach and try to escape from the Commerce Clause hammer, it involves a separate alternative and a separate approach.

Mr. Odenkirk gave a few reasons as to why he believed universities were dealt with differently constitutionally than the Game and Fish Department. The Department was not a market participant; but regulates hunting and fishing. There is no competition with the Department in the state.

Mr. Odenkirk advised #7 should be taken off the table. The Commission could look at a combination and something that would eliminate Commerce Clause concerns. He suggested something with later season dates, to put some barriers on the application process, and then to select something along the lines of a preference bonus point system.

Mr. Ferrell advised taking #1 and #8 off the table. Item #9 should stay on the table for the time being.

Mr. Odenkirk noted the strict scrutiny standard was almost insurmountable and it would be difficult to sustain the regulation. The Commission should prepare for that possibility and should narrow where it wanted the Department to go. Further discussion occurred regarding individual commissioners preferences on the alternatives and timelines when rule or Commission Order changes would occur.

Mr. Odenkirk pointed out that addressing Commerce Clause issues was a different approach than looking at a regulation that is more even handed. The court may elaborate on why the 10% cap is a problem and state whatever options are available that are better than the 10% cap. He felt the court, in its analyses, would do something like that. The options dealing with Commerce Clause issues (sale of wildlife parts) could be dealt with immediately.

Mr. Ferrell reviewed the list of those alternatives the Commission did not want to further consider: 2, 3, 5, 6, 7, and 8. The Department would focus on and further refine the remaining alternatives (1, 4, 9-12).

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5. Proposal for New Terrestrial and Aquatic Research Projects

Presenter: James deVos, Research Branch Chief

The Department conducted a number of scoping meetings to determine priority research projects to be completed in the next cycle of research projects.

AQUATIC

Evaluation of the Department's aquatic weed harvesting program:

- Evaluate current approach to aquatic weed removal

- Determine most appropriate method to remove nuisance weed species

- Evaluate factors such as optimum season and removal strategies to be most effective in creating angling opportunities while minimizing costs associated with this activity

- Identify vegetative species being harvested in different lakes

- Develop lake specific recommendations by body of water to optimize

- Implementation of the new information developed from the study

TERRESTRIAL

Evaluate wildlife responses to ponderosa pine and pinon-juniper restoration treatments:

- Develop information on best practices to balance wildlife needs with forest restoration practices.

- Focus will be on an array of wildlife species representing different levels of mobility and data from these species will be used to represent a broader array of wildlife needs in forested habitats

Evaluate impacts associated with highway construction and development of methodologies to maintain highway permeability to wildlife:

- Research will focus on two current highway developments:

 - Highway 93 in proximity to Hoover Dam:

 - Species of primary concern: Bighorn sheep

 - Highway 260 in proximity to Christopher Creek and Heber

 - Species of primary concern: Elk and deer

Evaluate use of urban open space and movement corridors by wildlife:

- Develop further information on how an array of wildlife species use urban corridors and open spaces, and determine best practices to maintain wildlife viewing opportunities while minimizing human-wildlife conflicts

Develop methods to assess relative density and population trends for predators:

- Conduct a literature and predator expert review to determine methods most likely to provide estimates of population density and trends

- Conduct field experiments to determine appropriate techniques to collect data in a fashion that is feasible given economic and staffing restrictions

Determine the importance of free-standing wildlife waters to select wildlife species with emphasis on bighorn sheep and mule deer:

- Evaluate the physiological need desert bighorn sheep and mule deer have for free-standing waters

- Continue to evaluate the importance of free-standing waters as sources of increased predator use

- Evaluate importance of free-standing waters to avian species

Evaluate the role of free-standing waters on increasing the health risk due to the spread of diseases to wildlife species

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE INITIATION OF THESE RESEARCH PROJECTS AS OUTLINED.

Vote: Unanimous

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6. Comprehensive Wildlife Conservation Strategy-An Introduction

Presenter: Jeff A. Sorensen, Game and Fish Planner

A Powerpoint presentation was given on the Department-led effort to develop a Comprehensive Wildlife Conservation Strategy (CWCS).

The CWCS is a new 10-year strategic plan the Department is beginning to develop in coordination with numerous partners and with public input. All 50 states, U.S. territories, and the District of Columbia are producing CWCS plans as a unified effort under the new State Wildlife Grant (SWG) Program. To continue to be eligible for SWG funding, CWCS plans need to be completed by July 2005.

The Department's CWCS plan will outline the management needs and conservation actions for the full array of Arizona's fish, wildlife and natural habitats, with a focus on "species and habitats of greatest conservation need." Arizona's CWCS is anticipated to cover the wildlife and habitat conservation components of the upcoming "Wildlife 2012," not to replace or duplicate the Department's strategic plan.

Eight required elements in the CWCS are:

- Fish and wildlife species
- Habitats and their conditions
- Threats and info needs
- Conservation actions and objectives
- Monitoring and evaluation
- Review process
- Coordination with land management entities
- Broad public participation

The National Advisory Acceptance Team for the U.S. Fish and Wildlife Service will be evaluating all state CWCS plans for these eight elements. The CWCS will reference numerous operational plans, conservation agreements, recovery plans, safe harbor agreements, habitat conservation plans, etc., for specific details on the first five elements.

Arizona's CWCS plan will be based on a landscape level approach to address species and habitat conservation needs on various spatial scales. Advantages to this approach include improved communication and coordination with partner agencies, organizations and neighboring states on conservation issues and activities; scalable conservation efforts and potential funding opportunities and greater buy-in with all interested parties.

Anticipated CWCS targets in 2004:

- Inform AGFD staff and partners on CWCS development: Apr.-June
- Refine CWCS needs/goals using several “Ecoregion Workgroups”: July-Oct.
- Conduct a series of “Wildlife Summit” focus group surveys: Sept.-Oct.

The Department will invite representatives from various sportsmen’s groups, environmental and recreational organizations, special interests and local governments to participate in a series of “Wildlife Summit” workshops statewide. These meetings will provide directed feedback on wildlife and habitat conservation values, perceptions and priorities from a full range of diverse viewpoints. Commissioners are invited to attend.

- Begin writing a draft CWCS plan: Oct.-Dec. 2004 and into 2005

Anticipated CWCS targets in 2005:

- AGFD draft review: Mar. 16
- Public review: Mar. 25-Apr. 23
- Final draft due: May 15
- AGF Commission vote: June
- Submit for USFWS review: July 22

The Commission and public would be receiving an update at the December 2004 meeting. Commissioner Melton stated he would be happy to work with Mr. Sorensen on this. Director Shroufe stated the Department could provide written monthly updates to the Commission on what has occurred.

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7. Request to Approve a Notice of Docket Opening to Amend Article 2, Miscellaneous Licenses and Permits as Stated in the Five-Year Rules Review Report Approved by the Commission at its September 2003 Meeting

Presenter: Mark E. Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for September 5, 2003, page 22.

The Department asked for Commission approval of Notice of Rulemaking Docket Opening so the Department may amend Article 2 as prescribed in the Five-Year Rules Review Report approved by the Commission.

The Department will amend Article 2 rules as follows:

R12-4-201. Pioneer License – to give notification to individuals whose application for a pioneer license has been denied. The rule will also be amended to add language to inform applicants that if their application for a pioneer license is denied, they may appeal the decision. This change will make the rule consistent with Title 41.

R12-4-202. Disabled Veteran's License – to give notification to individuals whose application for a disabled veteran's license has been denied. The rule will also be amended to add language to information applicants that if their application for a disabled veteran's license is denied, they may appeal the decision. This change will make the rule consistent with Title 41.

R12-4-203. National Harvest Information Program (HIP) – to clarify language and for consistency.

R12-4-208. Guide License – to expand the requirements for a guide license.

- Applicants who have violated any law for which a hunting or fishing license may be revoked under ARS §17-340; have been convicted of any violation of ARS §17-341 within the previous five years of applying for a guide license; or have been convicted of any violation of ARS §17-309(A)(2) through (22) will be denied a guide license.
- The rule will be amended to included federal laws that, if violated, will disqualify an individual from obtaining a guide license.
- A new subsection (B)(6) will be added to give special consideration to guides who are convicted of a state or federal wildlife law violation that they themselves voluntarily reported.
- The rule will be amended to expand the Department's authority over individuals who act as guides, with or without a license. Subsection (H), which addresses individuals acting as guides without a license, will be amended to include additional activities the Department considers unlawful.

R12-4-216. Crossbow Permit – to clarify language and for consistency.

R12-4-217. Challenged Hunter Access/Mobility Permit (CHAMP) – to make the disability qualifications for a CHAMP clear, concise and understandable.

Anticipated effective date for the Article 2 rule amendments is in October 2005.

Motion: McLean moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF DOCKET OPENING TO AMEND ARTICLE 2, MISCELLANEOUS LICENSES AND PERMITS, AS STATED IN THE FIVE-YEAR RULES REVIEW REPORT APPROVED BY THE COMMISSION AT ITS SEPTEMBER 2003 MEETING, AND TO BE SUBMITTED TO THE SECRETARY OF STATE'S OFFICE FOR PUBLICATION IN THE *ARIZONA ADMINISTRATIVE REGISTER*.

Vote: Unanimous

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8. Request to Approve a Notice of Docket Opening to Amend Article 3, Taking and Handling of Wildlife as States in the Petition for Rule Submitted by the Arizona Deer Foundation and Approved by the Commission at its February 2004 Meeting

Presenter: Mark E. Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for February 13, 2004, pages 17-19.

The Department has not yet identified all of the specific rules that must be amended to implement the petitioned request. However, the Department intends to amend its Article 3 rules to be consistent with the intent of the rulemaking petition.

- The relevant rules will be amended to make unlawful the use of a spotlight or artificial light during any deer or elk hunting season, both rifle and archery.
- The rules will be amended to make it unlawful to use a spotlight to aid or assist the take of any big game. This means no individual may use a spotlight to locate wildlife at night and then return to the same location during allowable hunting hours.
- An individual shall not locate or assist in locating wildlife with the aid of spotlights or artificial lights beginning 48 hours before and during all open big game seasons, including any open deer or elk season.
- An individual possessing a special big game license tag for a special season or an individual assisting the license tag holder shall not use artificial light or spotlights to locate wildlife 48 hours before and during a Commission-ordered special season.

It is anticipated the Article 3 amendments would be effective in December 2005.

Motion: McLean moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF DOCKET OPENING TO AMEND ARTICLE 3, TAKING AND HANDLING OF WILDLIFE, AS STATED IN THE PETITION FOR RULE SUBMITTED BY THE ARIZONA DEER FOUNDATION AND APPROVED BY THE COMMISSION AT ITS FEBRUARY 2004 MEETING, TO BE SUBMITTED TO THE SECRETARY OF STATE'S OFFICE FOR PUBLICATION IN THE *ARIZONA ADMINISTRATIVE REGISTER*.

Vote: Unanimous

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9. Request to Approve a Notice of Docket Opening to Amend Article 4, Live Wildlife, as Stated in the Five-Year Rules Review Report Approved by the Commission at its September 2003 Meeting

Presenter: Mark E. Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for September 5, 2003, page 23.

The Department asked for Commission approval of Notice of Rulemaking Docket Opening so the Department may amend Article 4 as prescribed in the Five-Year Rules Review Report approved by the Commission.

Several amendments will be made to this article in general to make it more clear, concise, and understandable. Rules will be amended to replace and update terms referring to

wildlife in order to be consistent with modern biological terminology and to be understandable by the scientific community. Amendments will be made to clearly state photography of live wildlife is authorized within certain restrictions. Because there are so many laws and rules governing the use of live wildlife and because the number of additional regulations can be confusing to the public, rules will be amended to clearly make reference to other laws and rules that prescribe additional guidelines for the use of live wildlife. Rules will be amended to clearly state what licenses authorize commercial activities and which do not.

The Department will amend specific Article 4 rules as follows:

R12-4-401. Live Wildlife Definitions – to clarify definitions.

R12-4-402. Live Wildlife; Prohibited Acts – to prohibit export and exhibit of live wildlife except as authorized under statute or rule. A new subsection (B) allows the Department to seize, quarantine or hold lawfully possessed wildlife that poses a threat to wildlife populations or public health, safety or welfare.

R12-4-403. Escaped or Released Live Wildlife – to allow the Department to take any live wildlife that is likely to escape from an enclosure if the wildlife poses an actual or potential threat to native wildlife or to public health or safety.

R12-4-404. Possession of Live Wildlife Taken on an Arizona Hunting or Fishing License – to clearly state wildlife must be taken under a valid state hunting or fishing license and during a season authorized by Commission Order. The rule will be amended to clearly state photography of live wildlife taken under this rule is allowed. The rule will be amended to clearly state native wildlife and the offspring of native wildlife taken in Arizona may not be sold, bartered, or traded, and to clearly state native wildlife, except desert tortoises, may be exported, but not for commercial purposes. Because desert tortoises are a species of particular conservation concern, the rule will also be amended throughout to clearly state authorized activities related to desert tortoises. New subsections will be added regarding disposal of wildlife and to protect wildlife from potential abuse or harm should it become restricted.

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit – to clarify language.

R12-4-406. Restricted Live Wildlife – to clarify language and to update the scientific names of live wildlife species in order to be consistent with biological terminology and to add new species that could impact native wildlife populations.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife – to update terminology and make proper reference to other terms used in the rule. Other amendments will be made for clarification.

R12-4-408. Holding Wildlife for the Department – to clarify language.

R12-4-409. General Provisions and Penalties for Special Licenses – to clarify language. In order for the Department to be more reactive to situations that threaten wildlife or if

wildlife should pose a threat to the general public, the rule will be amended to authorize the Department to add criteria for an applicant for special license or renewal of license. The rule will also be amended to require special license holders to submit biological samples to the Department or its designee if disease or another emergency condition arises. The rule will be amended to prohibit an individual from holding, taking, or collecting wildlife under a special license if that individual has violated certain laws or has not met the reporting requirements for a special license. A new subsection will be added to clearly state special license holders are not exempt from other wildlife laws.

R12-4-410. Aquatic Wildlife Stocking Permit – to clarify language. The rule will be amended to require that applicants for an aquatic wildlife stocking permit include in their proposals any parasites anticipated to occur within the species for which the application is made.

R12-4-411. Minnow Dealer's License – to prohibit the take for sale, transport, or sale of native waterdogs under a live bait dealer's license. The rule will be amended to remove references to the take of waterdogs for sale.

R12-4-413. Private Game Farm License – to clarify language and for consistency. The rule will also be amended to change reporting requirements.

R12-4-414. Shooting Preserve License – to delete the grandfather clause. The rule will be amended to change reporting requirements.

R12-4-415. Field Trial License – to remove requirement that field trial training license specify dates to hold field trial event. The rule will be amended for clarification and to change reporting requirements.

R12-4-416. Field Trial Training Permit – to allow an applicant for a permit to designate an agent to apply on the applicant's behalf.

R12-4-417. Wildlife Holding License – to clarify language. Rule will be amended to require an applicant to clearly state what the applicant wishes to achieve with the license. A new subsection will be added to prohibit certain activities the Department has determined are inappropriate under a license. Rule will be amended to change reporting requirements to include additional information. A new subsection will be added to clearly state the Department has the authority to conduct reasonable inspections for facilities where wildlife is held. The rule will be amended to revoke a license when the primary purpose for the license no longer exists.

R12-4-418. Scientific Collecting Permit – to give the Department authority to deny or substitute the tax and/or number of specimens that may be taken under a permit if it becomes necessary for the interest of the wildlife. The rule will be amended to allow noncommercial photography of wildlife held under the license and to specify prohibited acts. Application procedures will be amended to make them more understandable. New requirements will be prescribed to ensure an individual who holds wildlife under a scientific collecting permit for educational purposes conducts activities to achieve those objectives. The rule will be amended to require a license holder report to the Department all the species collected or handled under the license, alive or dead.

R12-4-419. Wildlife Hobby License – to clarify language in order to prohibit the commercial use of wildlife held under this license. The rule will be amended to remove wildlife species that will become restricted under amendments to R12-4-406. The rule will be amended to allow a license holder to possess 50 instead of 25 game birds.

R12-4-420. Zoo License – to allow temporary exhibits to be held for up to 60 consecutive days in order to provide a more significant amount of time for exhibit. The rule will be amended to prescribe that wildlife be contained in such a manner to prevent its escape from the facilities specified on the license and prevents unauthorized individuals from entering. Reporting requirements will be amended. A new subsection will be added to allow a license holder to add species held under the license.

R12-4-421. Wildlife Service License – to clarify language regarding javelina. A new subsection will be added to require wildlife taken under this license must be released as soon as possible after capture in order to prohibit display or exhibition of wildlife. A new subsection will be added to prescribe procedures for appropriate release of live wildlife taken under this license in order to prevent harm to the wildlife and native species populations. The rule will be amended to change annual reporting requirements. The rule will be amended to clearly state other laws in statute prescribing guidelines for use of traps when taking live wildlife for removal.

R12-4-422. Sport Falconry License – to clarify language and definition of “sport falconry.” The rule will be amended to prescribe federal restrictions on the use of falcons.

R12-4-423. Wildlife Rehabilitation License – to make it consistent with federal guidelines. The rule will be amended to clearly state wildlife may not be possessed permanently under this license; permanent possession of wildlife is prescribed by another rule. Rule will be amended to require license holders to contact the Department within 24 hours of receiving an animal of a species for which there is no open season or is protected by federal law. Reporting requirements will be changed. A new subsection will be added to allow licensed noncommercial rehabilitators to accept donations to cover expenses for the care of wildlife or to provide materials or facilities essential to the licensed activity.

R12-4-424. White Amur Stocking License – to clarify language and for consistency. The rule will be amended to require that restocking white amur shall not exceed 20 days and shall not be done at any other time than during the dates stated on the license.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Prior to the Effective Date of Article 4 – to authorize the possession of restricted live wildlife if it was lawfully held before possession was prohibited by a later rule amendment. A new subsection will be added to clearly state wildlife held under this rule or their offspring that are exported from this state are not authorized to be imported back unless authorized by special license.

R12-4-426. Possession of Primates – to clearly state primates shall not be held in an area where they may come in contact with the general public. The rule will be amended to require that a veterinarian who examines a primate that bites, scratches or otherwise

exposes a human to pathogenic organisms shall report findings to the Director or to the Director's designee within 24 hours of receiving test results. The Department will then notify the Department of Health Services within 10 days of receiving the test results. The rule will be amended to authorize the Department to determine how a primate shall be disposed of if the primate is responsible for multiple incidents involving humans.

R12-4-427. Rehabilitation Exemption – to clearly state wildlife requiring significant medical care shall be transferred to a veterinarian or special license holder.

R12-4-428. Captivity Standards – to clarify language and for consistency.

R12-4-430. Importation, Handling and Possession of Cervids – to clarify language and for consistency.

The anticipated effective date for the Article 4 rule amendments is December 2005.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF DOCKET OPENING TO AMEND ARTICLE 4, LIVE WILDLIFE, AS STATED IN THE FIVE-YEAR RULES REVIEW REPORT APPROVED BY THE COMMISSION AT ITS SEPTEMBER 2003 MEETING, AND TO BE SUBMITTED TO THE SECRETARY OF STATE'S OFFICE FOR PUBLICATION IN THE ARIZONA ADMINISTRATIVE REGISTER.

Vote: Unanimous

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10. Reconsideration of the Amendment to R12-4-107 that Allows for the Purchase of Bonus Points

Presenter: Mark E. Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for September 5, 2004, pages 23-24, and October 9, 2003, pages 1-2.

Currently, the fee for a bonus point for a particular genus is the same as a hunt permit-tag for the same genus.

The rule has been in place since April and the Department has received a lot of complaints from customers due to the fact they have to pay up front the entire permit fee for a bonus point. The Department advised the public in writing. A change was made in the online process where a person cannot purchase a bonus point without contacting the agency. People submitting manual applications would be contacted by the Department to make sure they really intended to purchase a bonus point. People seemed to think monies would be refunded; it is a non-refundable fee.

Commissioner Gilstrap wanted to reconsider the fees. He felt they should be charged only for the application fee and license charges as opposed to the full cost of the tag to maintain or receive a bonus point.

Motion: Melton moved and Gilstrap seconded THAT THE PURCHASE PRICE FOR A BONUS POINT CONSIST OF THE APPLICATION FEE PLUS THE LICENSE FEE.

Mr. Naugle explained if the Commission approved the motion to further amend the rule, the timeframe would make it effective October 2005, which means the rule would not be effective until the fall 2006 draw. Mr. Odenkirk explained if the motion fails to pass, the rule would remain in effect as it currently is written.

Commissioner Golightly wanted to have public input before the Commission voted on changing the rule. Chairman Chilton understood that if the motion passed, the Department would develop an amendment to the rule. It would not mean there automatically would be a change to the rule. Mr. Naugle noted there would be ample time for public comment during the process.

Vote: Unanimous

Director Shroufe clarified the Commission instructed the Department to reopen the rule, put a public process in place that would bring back comments on the motion, which was to allow purchase of a bonus point with an application fee and the applicable resident or nonresident license. This rule would be put on an expedited schedule so it becomes effective in time for the fall 2005 draw.

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11. Landowner-Lessee/Sportsman Relations Committee Appointment

Presenter: Mark Weise, Development Branch Chief

The Commission was asked to approve the appointment of James O'Haco as new member of the Landowner-Lessee/Sportsman Relations Committee (LLSRC). His term would be for three years.

Motion: Gilstrap moved and Golightly seconded THAT THE COMMISSION APPROVE THE APPOINTMENT OF MR. JAMES O'HACO TO THE LANDOWNER-LESSEE/ SPORTSMAN RELATIONS COMMITTEE.

Vote: Unanimous

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12. Options for Elk Management in Areas Where Management Objectives Are to Keep Elk Numbers at the Lowest Possible Level

Presenter: Steve Ferrell, Deputy Director

For background information, see May 14, 2004, Commission meeting minutes, pages 6-9.

The Commission was asked to provide clarification to the Department regarding the direction it gave at the May 2004 Commission meeting (including direction for rulemaking timelines) concerning options to make elk tags more available in areas where

management objectives are to keep elk numbers at the lowest possible level, such as the North Kaibab in Unit 12A. It is the Department's understanding the Commission directed the Department to initiate rulemaking to implement Option E:

Modify existing Commission Rules to Allow for the Issuance of Elk Tags to Deer Hunters Exclusively. If Commission Rule R12-4-114 was modified, the Commission could establish greater limitations in issuing either 1) restricted non-permit tags through the hunter pool and population management hunts or 2) over-the-counter, non-permit tags only to hunters holding permit-tags in hunts for which dates and open areas completely overlapped. This option would require rulemaking to amend Article 1 rules.

Commissioner Gilstrap noted this should not be exclusive to the Kaibab Plateau. Mr. Ferrell noted this was never clear on the record. Director Shroufe stated the Commission never took a vote at the last meeting on this issue.

The Commission has two options concerning the timeline for the rulemaking:

1. Initiate in-cycle rulemaking with an effective date of October 2005, which would mean the rule change would be implemented for the fall 2006 big game season, or
2. Initiate out-of-cycle rulemaking with an effective date of April 2005, which would mean the rule change would be implemented for the fall 2005 big game seasons.

Motion: McLean moved and Golightly seconded THAT THE COMMISSION VOTE TO OPEN THE RULE FOLLOWING OPTION E AND PUT IT ON THE OUT-OF-CYCLE RULEMAKING PROCESS WITH AN EFFECTIVE DATE OF APRIL 2005.

Commissioner Gilstrap pointed out the motion in May was much broader. There was discussion, and he believed it to be relevant, that if the rule were to be opened, other elk free zones needed to be looked at and not have it exclusive to the Kaibab Plateau units. Mr. Ferrell noted the Commission memo used the North Kaibab only as an example. The rule would not be limited to the North Kaibab.

Vote: Unanimous

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13. Emergency Commission Order 40 Change for Williams Area – Santa Fe Lake

Presenter: Larry Riley, Fisheries Branch Chief

A fish die-off is expected at Santa Fe Lake in the Williams area later this year due to low water conditions. This situation is due to prevailing conditions at the end of last summer and the lack of significant precipitation thus far this year. To minimize the loss to the angler and waste of the resource, removal of bag limits and liberalization of methods of take is advisable pursuant to R12-4-317.C. Upon Commission action and public notice,

this modification of Commission Order 40 would go into effect July 6, 2004. The removal of bag limits and liberalization of methods of take will remain in effect for the remainder of the calendar year unless the Commission takes action to restore those regulations.

Motion: Melton moved and Gilstrap seconded THAT PER COMMISSION ORDER 40 AND R12-4-417.C., THE COMMISSION VOTE TO REMOVE BAG LIMITS ON TROUT AND OTHER SPORT FISHES AND TO DESIGNATE A SPECIAL SEASON ALLOWING FISH TO BE TAKEN BY HAND OR ANY HAND-HELD, NON-MOTORIZED IMPLEMENT THAT DOES NOT DISCHARGE A PROJECTILE, IN SANTA FE LAKE IN COCONINO COUNTY. THIS MODIFICATION OF COMMISSION ORDER 40 WILL GO INTO EFFECT JULY 6, 2004, AND WILL REMAIN IN EFFECT FOR THE REMAINDER OF THE CALENDAR YEAR UNLESS THE COMMISSION ACTS TO REINSTATE REGULATIONS.

Vote: Unanimous

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14. Call to the Public

A written blue slip was submitted from David Sipe regarding mandatory hunter survey reporting. The Department would prepare a written response.

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15. Future Agenda Items

Mr. Ferrell noted 13 action items; future agenda items were:

- 1) Work with the Arizona State Rifle and Pistol Association to draft a document for Commission approval to formalize the agreement for the Ben Avery Shooting Facility Shooting Range Fund.
- 2) Further develop the 10% cap alternatives 1, 4, and 9-12 to move towards a Department recommendation.
- 3) Develop a list of ideas that the Department would spend new revenues on if it were to seek a license fee increase.
- 4) Provide the Commission with a briefing at the August Commission meeting on BLM's National Monument Management Plans.

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Motion: Gilstrap moved and Golightly seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned at 1:52 p.m.

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