

Minutes of the Telephonic Meeting of the  
Arizona Game and Fish Commission  
Thursday, February 21, 2008  
Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, AZ 85086

PRESENT: (Commission)

(Director's Staff)

Via telephone:

Chairman William H. McLean  
Commissioner Robert D. Hernbrode  
Commissioner Jennifer L. Martin  
Commissioner Robert R. Woodhouse  
Commissioner Michael M. Golightly

In person:

Director Duane L. Shroufe  
Assistant Attorney General Shelley Cutts

Via telephone:

Assistant Attorney General Jim Odenkirk

Director Shroufe conducted roll call and all five Commissioners were present via telephone. Chairman McLean called the meeting to order at 10:00 a.m. Several Department staff members and one member of the public were present. The recently nominated new Commissioner, Norman Freeman, was present via telephone, but not in an official capacity. Deputy Director Steve Ferrell was not present. This meeting followed an agenda dated February 20, 2008.

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### 1. State and Federal Legislation

**Presenter:** Anthony Guiles, Legislative Liaison

Mr. Guiles briefed the Commission on the proposed bill, HCR 2037; constitutional rights; game and fish, that was introduced by the Arizona Citizens Defense League. Representative Jerry Weiers is the primary sponsor of the legislation, but there are a number of co-sponsors, and the National Rifle Association has been trying to get this legislation as a constitutional provision in all the states across the country. The bill was scheduled to be heard in the House Natural Resources Committee yesterday, but the Chairman of the committee agreed to hold the bill until next week so the Commission could review and discuss it. The Commission was previously provided with a copy of the bill, and an analysis of the bill by the Attorney General's Office, for review.

Ms. Cutts recommended that she provide the Commission with her comments on HCR 2037 in Executive Session because it was in the form of legal advice.

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### Executive Session

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

**Motion:** Martin moved and Hernbrode seconded THAT THE COMMISSION VOTE TO GO INTO EXECUTIVE SESSION.

**Vote:** Unanimous

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1. (continued) State and Federal Legislation

**Presenter:** Anthony Guiles, Legislative Liaison

Ms. Cutts outlined some of the concerns regarding HCR 2037. The bill proposes to create a new fundamental constitutional right to hunt, fish and trap in the State of Arizona. The creation of a constitutional right could have a multitude of adverse negative consequences on the ability of the Commission and the Department to manage wildlife in the State of Arizona. Right now hunting is a privilege and the Commission and Department's actions just need to be rational and related to a legitimate State interest. That could change with the passage of HCR 2037. Additionally, the Association of Fish and Wildlife Agencies prepared a white paper a few years ago regarding the right to hunt as a constitutional amendment and in that document they expressed concerns about the amendment and the negative impacts it may have on state fish and wildlife agencies to manage wildlife.

Mr. Odenkirk noted that the legislation refers to citizens, but this is not clear whether that means citizens of Arizona or all citizens of the United States. If it refers to all citizens, then any regulations on nonresidents would be subject to the constitutional standard of strict scrutiny and could create an impact on such things as nonresident caps and disparity between resident and nonresident hunting tag and license fees.

Ms Cutts added some additional specific impacts that HCR 2037 could have on the Commission and the Department as follows:

- It could have serious adverse consequences on the Commission's ability to revoke a person's hunting and fishing privileges
- It could have negative impacts on the State's ability to enforce and enact criminal laws as they relate to wildlife violations
- It could also adversely impact Commission decisions regarding tag, bag, and possession limits.

The Commission further discussed with Mr. Odenkirk that HCR 2037 presents a potential conflict with another constitutional right, the citizen's initiative. It wouldn't prevent the citizens from passing initiatives, but they would be subject to the same strict scrutiny standard of review.

Public Comment

Donald Begalke, representing himself, encouraged the Commission to oppose HCR 2037. This legislation could create all kinds of issues for the Commission and the Department in that it uses the word "right" to hunt and fish, and in that it usurps the Commission's authority to manage wildlife. Mr. Begalke, along with others, is prepared to fight the passing of this legislation.

Chairman McLean commented that anytime you tamper with the constitution there must be some very strong and compelling reasons to do so, and he did not see a need to elevate hunting and fishing to a constitutional right. The Commission system has protected hunting and fishing privileges in Arizona for 75 years and he is very hesitant to start a process that changes the current laws that the Commission looks to for guidance.

**Motion:** Martin moved and Hernbrode seconded THAT THE COMMISSION VOTE TO WORK WITH THE PROPONENTS AND SPONSORS OF HCR 2037 TO MAKE THE FOLLOWING CHANGES TO THE LANGUAGE: 1) THAT IT BE PROPOSED AS STATUTORY RATHER THAN A CONSTITUTIONAL AMENDMENT; 2) THAT THE WORD "LEGISLATURE" BE STRUCK AND THE WORD "COMMISSION" BE INSERTED; 3) THAT ANYWHERE THE WORD "RIGHT" TO HUNT AND FISH IS USED, THAT THE LANGUAGE BE SUBSTITUTED WITH "VALUED PRIVILEGE"; AND 4) THAT THE WORD "CITIZENS" BE SPECIFIED AS THE "CITIZENS OF ARIZONA"; AND FURTHER MOVE THAT IF THESE CHANGES ARE NOT ADOPTED, THAT THE COMMISSION OPPOSE HCR 2037.

Commissioner Woodhouse expressed concerns with the bill as a whole in that it could still damage the way the Commission and Department conducts its business.

Commissioner Golightly stated that the proposed changes in the language brings it back to the status quo making the bill redundant and unnecessary.

**Commissioner Hernbrode withdrew his second.**

**Motion failed for lack of second.**

**Motion:** Woodhouse moved and Golightly seconded THAT THE COMMISSION VOTE TO OPPOSE HCR 2037 DUE TO ADVERSE IMPACT ON THE STATE'S ABILITY TO MANAGE WILDLIFE AND CONDUCT LAW ENFORCEMENT ACTIVITIES.

**Vote:** Unanimous

On another item, Mr. Guiles briefed the Commission on actions taken by the Appropriations Committee on the budget. Both the House and the Senate have taken action this week on a budget proposal by the Republicans. This proposal has not been negotiated with the Democrats or the Governor's Office. The Commission was previously provided with a spreadsheet prepared by Funds and Planning that provides the impacts to the OHV Fund and the Watercraft Licensing Fund by a legislative fund sweep of \$1,150,000.

The Commission further discussed with Director Shroufe the efforts of the Department to protect Game and Fish Funds from legislative sweeps in accordance with Arizona statute and federal legislation.

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## 2. Call to the Public

Donald Begalke, representing himself, addressed the Commission regarding the Heritage Fund and stated that he and others are trying to protect it against legislative sweeps.

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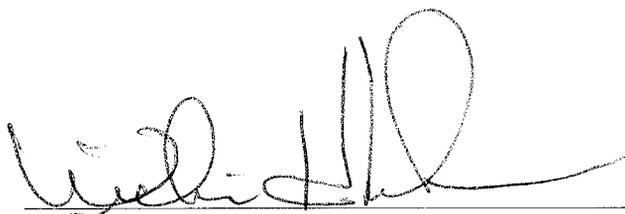
**Motion:** Martin moved and Hernbrode seconded THAT THE COMMISSION VOTE TO ADJOURN THIS MEETING.

**Vote:** Unanimous

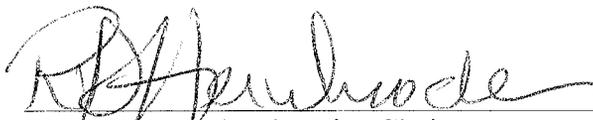
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Meeting adjourned at 11:35 a.m.

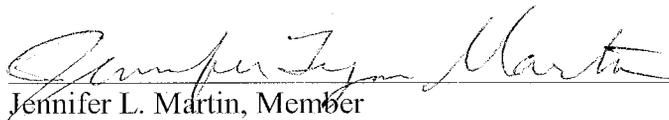
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William H. McLean, Chair



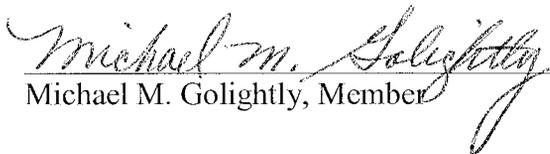
Robert D. Hernbrode, Vice Chair



Jennifer L. Martin, Member

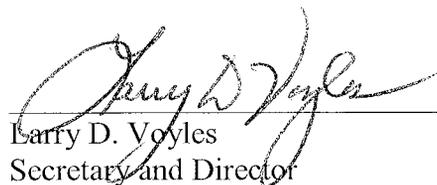


Robert R. Woodhouse, Member



Michael M. Golightly, Member

ATTEST:



Barry D. Voyles  
Secretary and Director