



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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October 21, 2009

Re: Hunter access to private and State Trust lands in GMU 2A, B and C

Dear Arizona Hunter:

Congratulations on your successful application for your big game hunt in Game Management Unit (GMU) 2A, B and C. The Arizona Game and Fish Department (Department) is sending you this letter to provide clarification and guidance on various laws and regulations relating to lawful access to State Trust and private lands in an effort to assist with your hunt planning and activity.

It is our understanding that you may have recently received a letter from the Jaralosa Cattle Company, LLC (Jaralosa) that outlines their position and accompanying expectations relating to accessing lands within the "Hinkson Ranch" property in GMU 2B. Jaralosa is the owner of the subject Hinkson Ranch property and has elected to close its private lands to hunting access and other public access. As with any other private landowner in state, Jaralosa has the lawful right to pursue this action, and there may be other private landowners in these GMUs that elect to close their private lands to hunting, as well.

As it relates specifically to the subject Hinkson Ranch property, we have enclosed a copy of a map of the immediate area to provide an accurate representation of land ownership status, which you will note is comprised of checker-boarded State Trust and private land sections, especially in the northern end of the subject Hinkson Ranch property. The attached map is provided to successfully drawn hunters as an aid to identify area land ownership boundaries and to otherwise assist with navigation around associated checker-boarded parcels. Within this area, you will also note large blocks of tribal lands to the north (salmon-colored sections) that are referred to as "Navajo New Lands," which are regulated by the Navajo Nation. Navajo managers have advised the Department that, due to criminal damage that has previously occurred on portions of the Navajo New Lands that border the subject Hinkson Ranch, **NO ACCESS** will be granted to hunters through these Navajo New Lands to access the referenced State Trust sections. We will be working with these managers to determine if hunter access can be granted in future years.

In addition to this map, the Department is also attaching copies of relevant laws and regulations involving State/private land access and trespass (A.R.S. Title 17-304, Arizona Game and Fish Commission [Commission] Rule R12-4-110 and A.R.S. Title 13-1502). The Department strongly encourages you to review these documents and take them and the map with you in the field, especially if you are considering outings in/around this area given the access/trespass complexities that accompany these checker-boarded lands.

The Department recognizes the rights of private property owners to regulate access to their properties, and routinely takes an active role in communicating and enforcing associated trespass/access regulations and laws with Arizona sportsmen and women. The Department equally recognizes the rights of sportsmen and women to gain lawful access to Arizona lands for hunting and other recreational activities. The Department understands your desire to optimize access to hunting areas in GMU 2A, B and C, and we offer the following clarification and guidance as it relates to lawful access to private lands and to State land parcels:

- An individual that is hunting, fishing or trapping shall not trespass on private land if that land is properly posted, per A.R.S. Title 17-304. If an individual does enter onto private land which has not been posted per A.R.S. Title 17-304, and remains on the private land after a reasonable notice to leave has been given by the landowner, then that individual is trespassing. Department officers will respond to complaints of trespass from landowners or lessees on individuals who are hunting, fishing or trapping wildlife on private land if the private land has been properly posted in accordance with A.R.S. Title 17-304.
- The Jaralosa September 21, 2009, letter that was sent to hunters drawn for GMU 2A, B and 2C, does not serve as an enforceable substitute for properly posting private land (as required within A.R.S. Title 17-304) against trespass of individuals who are hunting, fishing or trapping.
- Under Commission Rule R12-4-110, it is clear that no individual shall lock a gate, construct a fence, place an obstacle or otherwise commit an act that denies legal access to or use of any existing road upon State Trust lands by persons lawfully taking or retrieving wildlife. Additionally, Commission Rule R12-4-110 is also clear in that it does not grant any person the right to trespass upon private property to gain access to State Trust lands. If an individual knows that lawful access to State Trust lands is being denied by a locked gate or obstacle, they are encouraged to contact the Department.
- A.R.S. Title 13-1502 describes criminal trespass as: knowingly entering or remaining unlawfully on any real property after reasonable notice prohibiting entry is provided.
- To the extent that lawful access through adjoining private lands is provided to adjacent State Trust parcels/sections, it is unlawful for any individual to take any action that prevents such lawful access to those State Trust parcels/sections.
- Any private landowner that elects to not allow an individual access to State Trust land through their private property, and believes they have been trespassed upon, will be encouraged to report such violations to the Apache County Sheriff's Office.
- The Department does not encourage hunters to access interior State Trust parcels (interior to the subject Hinkson Ranch property or any other comparable checker-boarded property) via "butterfly access" (i.e., attempting to cross State Trust sections that are within private sections at the corners), as the Department feels the law on this is unclear and that any related activity on the part of individuals should, accordingly, not be unduly influenced by the Department.

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As with any sporting activity, the Department encourages a “model behavior” that every sportsman and woman should aspire to achieve, which includes practicing appropriate respect for the rights of private property owners. With this in mind, we hope this information assists in clarifying the regulations and is helpful in planning your upcoming hunt in GMU 2A, B and C. Congratulations again on your successful application, and best of luck to you for a safe and enjoyable hunting experience.

Please feel free to contact me if you have any questions.

Sincerely,

Joel Weiss
Wildlife Manager GMU 2A, B and C
Arizona Game and Fish Department

JW:jcc

cc: Mark Reeb, Jaralosa Cattle Company, LLC
Jim Odenkirk, Assistant Attorney General
Leonard Ordway, Assistant Director, Field Operations Division
Gary Hovatter, Deputy Director FOD/IEED
Joseph Dedman, Apache County Sheriff
Jon Cooley, Region I Supervisor
Mike Godwin, Region I Wildlife Manager Supervisor
Dan Dymond, Region I Law Program Manager
Arizona Game and Fish Commission

Two attachments

R12-4-110. Posting and Access to State Land

- A. For the purpose of this Section:
1. "Corrals," "feed lots," or "holding pens" mean completely fenced areas used to contain livestock for purposes other than grazing, including feeding, roundup, branding, doctoring, and other related purposes.
 2. "Existing road" means any maintained or unmaintained road, way, highway, trail or path that has been used for motorized vehicular travel and clearly shows or has a history of established vehicle use.
 3. "State lands" means all land owned or held in trust by the state that is managed by the State Land Department and lands that are owned or managed by the Game and Fish Commission.
- B. In addition to those prohibitions against posting in A.R.S. § 17-304, an individual shall not lock a gate, construct a fence, place an obstacle or otherwise commit an act that denies legally available access to or use of any existing road upon state lands by persons lawfully taking or retrieving wildlife. An individual in violation of this Section shall take immediate corrective action to remove any lock, fence, or other obstacle that unlawfully blocks access to state lands. If immediate corrective action is not taken, a representative of the Department may remove any unlawful posting and remove any lock, fence, or other obstacle that unlawfully blocks access to state lands. In addition, the Department may take appropriate legal action to recover expenses incurred in the removal of any unlawful posting or obstacle that blocks access to state land.
- C. The provisions of this Section do not allow any individual to trespass upon private land to gain access to any state land.
- D. An individual may post state lands within 1/4 mile of any occupied residence, cabin, lodge, or other building and lands within corrals, feed lots, or holding pens containing concentrations of livestock other than for grazing purposes as closed to hunting, fishing, or trapping without further action by the Commission.
- E. An individual may post state lands other than those referred to in subsection (D) as closed to hunting, fishing, or trapping only if the individual has obtained a permit from the Commission, and the Commission determines that the closing is necessary:
1. Because the taking of wildlife constitutes an unusual hazard to permitted users;
 2. To prevent unreasonable destruction of plant life or habitat; or
 3. For proper resource conservation, use, or protection, including but not limited to high fire danger, excessive interference with mineral development, developed agricultural land, or timber or livestock operations.
- F. An individual shall submit an application for posting state land to prohibit hunting, fishing, or trapping under subsection (E), or to close an existing road under subsection (J), as required by R12-4-610. If an application to close state land to hunting, fishing, or trapping is made by an individual other than the state land lessee, the Department shall provide notice to the lessee and the State Land Commissioner before the Commission considers the application. The state land lessee or the State Land Commissioner shall file any objections in writing within 30 days after receipt of notice, after which the matter shall be submitted to the Commission for determination.
- G. An individual may use a vehicle on or off a road to pick up lawfully taken big game animals.
- H. The closing of state land to hunting, fishing, or trapping shall not restrict any other permitted use of the land.
- I. State trust land may be posted with signs that read "State Land No Trespassing" but such posting shall not prohibit access to such land by any individual lawfully taking or retrieving wildlife.
- J. The Commission may grant permission to lock or obliterate a gate or close a road or trail that provides legally available access to state lands for licensed hunters and fishermen if access to such lands is provided by a reasonable alternate route. Under R12-4-610, the Director may grant a permit to a state land lessee to temporarily lock a gate or close an existing road that provides access to state lands if the taking of wildlife will cause unreasonable interference during a critical livestock or commercial operation. This permit shall not exceed 30 days. Applications for permits for more than 30 days shall be submitted to the Commission for approval. If a permit is issued to temporarily close a road or gate, a copy of the permit shall be posted at the point of the closure during the period of the closure.
- K. When hunting, fishing, or trapping on state land, a license holder shall not:
1. Break or remove any lock or cut any fence to gain access to state land;
 2. Open and not immediately close a gate;
 3. Intentionally or wantonly destroy, deface, injure, remove, or disturb any building, sign, equipment, marker, or other property;
 4. Harvest or remove any vegetative or mineral resources or object of archaeological, historic, or scientific interest;
 5. Appropriately, mutilate, deface, or destroy any natural feature, object of natural beauty, antiquity, or other public or private property;
 6. Dig, remove, or destroy any tree or shrub;
 7. Gather or collect renewable or non-renewable resources for the purpose of sale or barter unless specifically permitted or authorized by law; or
 8. Frighten or chase domestic livestock or wildlife, or endanger the lives or safety of others when using a motorized vehicle or other means.

A.R.S. Title 17-304. Prohibition by landowner upon hunting; posting; exception

A. Landowners or lessees of private land who desire to prohibit hunting, fishing or trapping on their lands without their written permission shall post such lands closed to hunting, fishing or trapping using notices or signboards.

B. State or federal lands including those under lease may not be posted except by consent of the commission.

C. The notices or signboards shall meet all of the following criteria:

1. Be not less than eight inches by eleven inches with plainly legible wording in capital and bold-faced lettering at least one inch high.

2. Contain the words "no hunting", "no trapping" or "no fishing" either as a single phrase or in any combination.

3. Be conspicuously placed on a structure or post at least four feet above ground level at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary, except that a post with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire aboveground surface of the post facing outward and on both lateral sides from the closed area.

D. The entry of any person for the taking of wildlife shall not be grounds for an action for trespassing unless the land has been posted pursuant to this section.

A.R.S. Title 13-1502. Criminal trespass in the third degree; classification

A. A person commits criminal trespass in the third degree by:

1. Knowingly entering or remaining unlawfully on any real property after a reasonable request to leave by the owner or any other person having lawful control over such property, or reasonable notice prohibiting entry.

2. Knowingly entering or remaining unlawfully on the right-of-way for tracks, or the storage or switching yards or rolling stock of a railroad company.

B. Criminal trespass in the third degree is a class 3 misdemeanor.