

Minutes of the Meeting of the  
Arizona Game and Fish Commission  
Friday, May 17, 2002 – 9:00 a.m.  
Saturday, May 18, 2002 – 8:00 a.m.  
Best Western Innsuites  
6201 N. Oracle Road, Tucson, Arizona

PRESENT: (Commission)

(Director's Staff)

Chairman Michael M. Golightly  
Commissioner Joe Carter  
Commissioner Sue Chilton  
Commissioner W. Hays Gilstrap  
Commissioner Joe Melton

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

Chairman Golightly called the meeting to order at 9:00 a.m. The commissioners introduced themselves and Chairman Golightly introduced Director's staff. The meeting followed an addendum dated May 10, 2002.

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### 1. Litigation Report

- a. *Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 02-0402-PHX-FJM; *Conservation Force v. Shroufe*, CIV 998-0239 PHX RCB; *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 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)

A copy of the update, which was provided to the Commission prior to today's meeting, is included as part of these minutes. Mr. Odenkirk stated he had a lot to talk about regarding the Page Springs Hatchery litigation. No further information was given in public session under this item.

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### 2. Executive Session

- a. Legal Counsel

*Forest Guardians v. APHIS*, CIV 99-61-TUC-WDB; *State of Arizona v. Norton*, CIV 02-0402-PHX-ROS; *Conservation Force v. Shroufe*, CIV 998-0239 PHX RCB; *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 and *Defenders of Wildlife et al. v. United States Fish and Wildlife Service*, CIV01-934 (HA) (U.S.D.C. Ore.)

This item was postponed until later in the day.

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

**Presenter:** John Kennedy, 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.

Mr. Kennedy gave an update on the proposed development activities on State Trust lands in Apache County. The individual who was cooperating with Johnson, the developer, decided to move the location of the proposed zoo to Highway 261 near Big Lake. On May 2, Apache County Planning and Zoning voted in favor of a conditional use permit for that facility off Highway 261. This County support should not be confused with support or any comments that pertain to the original project area near the Commission's Grasslands Wildlife Area and the Little Colorado River.

Commissioner Carter asked for clarification regarding the Sheep Driveway noted under Apache-Sitgreaves (A-S) National Forests/Tonto National Forest and why the permittees did not accept the offer made by the Arizona Bighorn Sheep Society (ADBSS) to pay for the trucking of the sheep. Mr. Kennedy stated the Department talked with the Tonto National Forest who met with Mr. Dobson and the ADBSS. According to the Tonto, there was a written stipulation in ADBSS's offer to Mr. Dobson that they would pay for the trucking of the sheep only if he would not use the lower part of the driveway during the bighorn sheep rut (he historically used it in the fall). Mr. Dobson would not agree to that stipulation.

Commissioner Carter asked about the update regarding the Bureau of Land Management's (BLM) Tucson Field Office and the Empire Cienega project to construct water catchments and future management of those facilities. He asked why BLM was not noted as a full partner in the construction and maintenance. Mr. Kennedy stated BLM was a full partner in the project; the Department was proceeding with funding and full maintenance. The BLM did express concern with inadequate funds.

Commissioner Chilton noted the Department was involved in the NEPA process for the recovery of the Apache trout on the A-S.

**Motion:** Chilton moved THAT THE DEPARTMENT PREPARE A LETTER TO THE U.S. FISH AND WILDLIFE SERVICE STATING THE FOLLOWING: THE GOALS OF THE APACHE TROUT RECOVERY EFFORT ARE TO RECOVER THE SPECIES AND ACHIEVE DELISTING. ACHIEVING THIS GOAL WILL SOLIDIFY THE COMMISSION'S SPORTFISH MANAGEMENT PROGRAM IN THE WHITE MOUNTAINS OF ARIZONA AND ACHIEVE A MILESTONE IN THE CONSERVATION OF NATIVE WILDLIFE IN ARIZONA.

THE DEPARTMENT BELIEVES THAT THESE GOALS CAN BE ACHIEVED WITHOUT ANY CHANGE IN LAND RESOURCE USE ADJACENT TO STREAMS TARGETED FOR APACHE TROUT REPATRIATION. THE DEPARTMENT HAS CONCLUDED THAT PRESENT USES AUTHORIZED IN ALREADY COMPLETED MANAGEMENT PLANS FOR THOSE AREAS ARE COMPATIBLE WITH

RECOVERY OF THE APACHE TROUT, WHEN THOSE USES ARE CARRIED OUT WITHIN THE APPROVED GUIDELINES. THUS, WHEN SECTION 7 CONSULTATIONS ARE CONDUCTED ON ALLOTMENT PLANS FOR THE AREAS IN WHICH APACHE TROUT REPATRIATION IS PROPOSED, THE DEPARTMENT WILL NOT RECOMMEND CHANGES IN LIVESTOCK NUMBERS OR SEASONS FOR USE TO ACCOMMODATE REPATRIATION.

THE DEPARTMENT RECOGNIZES AND APPRECIATES THE COOPERATION AND COLLABORATION OF ARIZONA CITIZENS IN RURAL COMMUNITIES WHO EARN THEIR LIVING FROM THESE ADJACENT LANDS MANAGED BY THE FOREST SERVICE. WE ARE PLEASED THAT THE RE-ESTABLISHMENT OF THIS STELLAR EXAMPLE OF ARIZONA'S NATIVE WILDLIFE WILL ALSO CONTRIBUTE TO PRESERVING ARIZONA'S RURAL HERITAGE.

THE DEPARTMENT IS FURTHER COMMITTED, SHOULD FENCING BE DEEMED NECESSARY ON REPATRIATED APACHE TROUT STREAMS TO ACHIEVE RECOVERY GOALS, TO USE ITS OWN FUNDS AND/OR SECURE ADDITIONAL FUNDS TO MINIMIZE THE IMPACTS OF ANY USE RESTRICTIONS ON PERMITTEES.

Chairman Golightly asked the Commission to defer on taking any action on this item until tomorrow's meeting after agenda item 5. This was to give time for the Commission and Department to analyze the new language substituted for the draft language previously provided. Commissioner Chilton noted the changes in wording constituted three words. One was the substitution of the word, "re-establishment" for the word, "preservation" in the third paragraph. "Such fencing" would be deleted in the last paragraph and substituted with "impacts of any use restrictions". Chairman Golightly thought those to be significant word changes. Commissioner Chilton agreed to defer taking action until tomorrow. Commissioner Carter asked the Department to provide copies of the motion in its entirety today in order to dispose of the various versions that the Commission now had. Mr. Odenkirk stated it should be understood that the Commission was not tabling the motion only but was postponing the agenda item until tomorrow. The briefing for Apache trout (Item #5) has no action associated with it. Chairman Golightly noted this item would be considered tomorrow after presentation of Item 5.

**Motion:** Carter moved and Chilton seconded THAT THE COMMISSION VOTE TO TABLE THE UPDATE ON CURRENT ISSUES PLANNING EFFORTS ON STATE AND FEDERAL LANDS, AGENDA ITEM #3, UNTIL TOMORROW.

**Vote:** Unanimous

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4. Request for the Commission to Approve a Resolution Supporting the National Forest County Partnership Restoration Program and Associated Activities on the Apache-Sitgreaves National Forests

**Presenter:** John Kennedy, Habitat Branch Chief

The latest version of the draft resolution was distributed to the Commission. Mr. Kennedy stated the public had not seen any versions of the draft resolution. Copies of the resolution would be made available to the public. While copies were being made, Mr. Kennedy proceeded with presentations of agenda items 5 and 6.

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5. Request for the Commission to Approve the Acquisition of the 10-Acre Greer Allotment Base Property, Apache County, Arizona

**Presenter:** John Kennedy, Habitat Branch Chief

Copies of a map of the area were provided to the Commission.

The Commission acquired the Cross L Ranch portion of the Grasslands Wildlife Area in 1999 from the Baker's through the Rocky Mountain Elk Foundation (RMEF). In addition to the deeded parcels, the acquisition included State grazing leases and a federal permit for livestock grazing. The Department can legally hold a State grazing lease if it subleases the lands to a bona fide livestock operator, which has been accomplished; however, the Department cannot legally hold a federal grazing permit. The RMEF, who can legally hold a federal grazing permit, agreed to acquire the Greer Allotment and other associated parcels. The Commission's agreement with the RMEF and the escrow instructions require the RMEF to convey the Baker's deeded lands (except for the 10-acre base property associated with the Greer Allotment) and all of the State grazing leases to the Commission.

The RMEF controlled the Greer Allotment and worked with the Forest Service and Department to develop a long-term grazing plan for the allotment. With the long-term plan in place, the RMEF transferred the Greer Allotment back to the Forest Service.

To complete the acquisition of the Cross L Ranch, the RMEF is selling the 10-acre Greer Allotment base property to the Commission. This acquisition was evaluated as part of the Department's Cross L Ranch Feasibility Report. Along with the previous acquisitions of the Cross L and Ocote Ranches, as well as the State grazing lease lands, the base property will be managed as part of the Commission's Grasslands Wildlife Area.

**Motion:** Carter moved and Chilton seconded THAT THE COMMISSION VOTE TO APPROVE THE ACQUISITION OF THE 10-ACRE GREER ALLOTMENT BASE PROPERTY, APACHE COUNTY, ARIZONA, TO BE MANAGED AS PART OF THE COMMISSION'S GRASSLANDS WILDLIFE AREA. IN ACCORDANCE WITH ARS §27-241.A., THIS ACQUISITION IS SUBJECT TO THE APPROVAL OF THE GOVERNOR.

**Vote:** Unanimous

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6. Request for the Commission to Approve the Use of Heritage IIPAM Funds to Create and Cost-Share a Three-Year Limited Position, with the Bureau of Land Management, to Coordinate the Department's Role in the Interim and Future Management of Arizona's Five New National Monuments

**Presenter:** John Kennedy, Habitat Branch Chief

In 2000-2001, five national monuments were established in Arizona through Presidential Proclamations: Grand Canyon-Parashant, Vermilion Cliffs, Agua Fria, Ironwood Forest and Sonoran Desert National Monuments. Except for part of the Grand Canyon-Parashant National Monument, the Bureau of Land Management (BLM) is responsible for managing these lands. The National Park Service will continue to have primary management authority of the portion of the national monument within the Lake Mead National Recreation Area.

During the past few months, the Department has worked cooperatively with BLM to establish a Game and Fish Department position dedicated to working on the national monuments. The purpose of this position will be to coordinate the Department's role in the interim and future management of the national monuments. The person in this position will coordinate with all Department work units and work cooperatively with BLM to ensure that the new management plans fully address the Department's interests.

**Motion:** Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE USE OF HERITAGE IIPAM FUNDS TO CREATE AND COST-SHARE A THREE-YEAR LIMITED POSITION WITH THE BUREAU OF LAND MANAGEMENT TO COORDINATE THE DEPARTMENT'S ROLE IN THE INTERIM AND FUTURE MANAGEMENT OF ARIZONA'S FIVE NEW NATIONAL MONUMENTS.

Mr. Kennedy noted it was a three-year limited position; total funding would be \$163,000. The Department would fund half of the amount (\$81,500) for three years. There would be opportunities to look at the position after three years to decide if changes should be made or to continue the position. The position would be based out of the BLM State office in Phoenix and would allow the Department to stay informed on management plans. The person in the position would be doing a lot of in-state travel. This position will function as a liaison between the Department and BLM, but would not be making decisions on behalf of the Department or the Commission.

**Vote:** Unanimous

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4. Request for the Commission to Approve a Resolution Supporting the National Forest County Partnership Restoration Program and Associated Activities on the Apache-Sitgreaves National Forests – cont'd.

**Presenter:** John Kennedy, Habitat Branch Chief

Copies of the latest draft resolution were made available to the public.

The National Forest County Partnership Restoration Program focuses on restoring landscapes and watersheds to more desirable and sustainable conditions on three pilot forests in Arizona, Colorado and New Mexico.

Specific to Arizona, the proposal promotes a co-lead partnership by the Apache-Sitgreaves (A-S) National Forests and Navajo, Apache, Greenlee, Gila and Graham Counties in an effort to represent a diversity of landscapes and communities to address the complex issues associated with public land management and community sustainability.

This program has been developed in response to the growing interest of local governments to be more involved, in a more meaningful way, in defining future landscape conditions and appropriate actions to achieve desired outcomes. The program addresses ecosystem health, threats from wildfire and other factors contributing to ecological, social and economic impacts within the forests and surrounding areas.

A community-based collaborative process will be utilized to engage interested stakeholders, including local, county and tribal representatives, interest groups and the Forest Service. This process will facilitate dialogue on the complex interrelationships between public land management and community sustainability. The relationships between natural resources and community values will be identified, and historic, current and possible future landscape conditions will be described in a setting that promotes mutual learning and understanding. This collaborative effort will identify a range of desirable, feasible, and viable management options. Scientific assessments will describe ecological, social and economic components of the landscapes. Outcomes of the collaborative process will be integrated with scientific assessments to formulate proposed actions that will be analyzed in full compliance with the National Environmental Policy Act and other laws.

This program responds to growing concerns of Congress, land managers, scientists, local communities and other stakeholders regarding conditions on national forests and the corresponding effects on local communities.

The Commission and Department support the National Forest County Partnership Restoration Program and community-based and collaborative efforts to address forest health and community sustainability. This program is consistent with requests from Congress and the Western Governors' Association for new local government/federal agency forest restoration partnerships. The program is also consistent with the National Fire Plan and the Governor's Forest Health/Fire Plan Advisory Committee's work on the Comprehensive Plan for Reducing Wildfire Risk and Restoring Ecosystems.

The Commission's Resolution supports the National Forest County Partnership Restoration Program and associated forest restoration projects within the A-S National Forests that incorporate wildlife resource needs and wildlife-based monitoring and research. The Resolution also affirms the Commission's support for full funding to develop and implement this program. A copy of the draft resolution has been made a part of these meeting minutes.

**Motion:** Chilton moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE A RESOLUTION SUPPORTING THE NATIONAL FOREST COUNTY PARTNERSHIP RESTORATION PROGRAM AND ASSOCIATED ACTIVITIES ON THE APACHE-SITGREAVES NATIONAL FORESTS.

**Vote:** Unanimous

Copies of the resolution would be sent to members of the Congressional delegation, Governor, Secretary of Agriculture, regional forest supervisor, the A-S supervisor, Eastern Counties Organization, President of the Arizona Senate and Speaker of the Arizona House.

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Meeting recessed at 9:48 a.m.

Meeting reconvened at 10:08 a.m.

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### 7. Consent Agenda

a. Request for the Commission to Approve the Memorandum of Agreement between the U.S. Army Corps of Engineers and the Commission to Facilitate the Implementation of the Department's Project Mitigation-Habitat Restoration Trust Account and Mitigation Projects. Department recommendation: That the Commission vote to approve the Memorandum of Agreement between the U.S. Army Corps of Engineers and the Commission to facilitate the implementation of the Department's Project Mitigation-Habitat Restoration Trust Account and Mitigation Projects and to authorize the Director to execute the agreement as attached or as approved by the Office of the Attorney General. This item was pulled for further discussion.

b. Request for the Commission to Approve the Agreement (Right-of-Way) with Arizona Public Service for the Purpose of Continuing Service for Construction, Operation, and Maintenance of Electric Poles and Lines That Provide Electricity to the Page Springs Fish Hatchery, Yavapai County, Arizona. Department recommendation: That the Commission vote to approve the agreement (Right-of-Way) with Arizona Public Service for the purpose of continuing service for construction, operation and maintenance of electric poles and lines that provide electricity to the Page Springs Fish Hatchery, Yavapai, County, Arizona, and execute the agreement as attached or as recommended or approved by the Office of the Attorney General. In accordance with ARS §17-241B., this agreement is subject to the approval of the Governor and State Land Commissioner.

c. Renewal of the Forage Resource Study Group Road Closures on State Trust Lands, Coconino County, Arizona. Department recommendation: That the Commission vote to approve a five-year renewal of the road closures originally petitioned by the Forage Resource Study Group within Game Management Units 5A and 5B for the protection of wildlife habitat.

d. Tres Alamos Ranch Road Closure Renewal on State Trust Lands, Yavapai County. Department recommendation: That the Commission vote to approve a five-year renewal of the two road closures in the Tres Alamos spring drainage for the protection of wildlife habitat.

e. Statewide Shooting Ranges Grant Request. Department recommendation: That the Commission vote to allocate \$41,601 of unallocated Statewide Shooting Ranges Grant funds to the FY 03 allocation and approve all grants submitted with Department stipulations.

f. Request for the Commission to Authorize the Director to Extend the Department's Participation with the Fish Management Plan for the Glen Canyon National Recreational Area Utah/Arizona. Department recommendation: That the Commission vote to authorize the Director to renew and execute and cooperative agreement with Utah Division of Wildlife Resources and the Glen Canyon National Recreation Area (National Park Service) concerning management of the Lake Powell fishery.

**Motion:** Gilstrap moved and Chilton seconded THAT THE COMMISSION VOTE TO ACCEPT THE CONSENT AGENDA ITEMS 7.B THROUGH F.

**Vote:** Unanimous

7.a. Request for the Commission to Approve the Memorandum of Agreement between the U.S. Army Corps of Engineers and the Commission to Facilitate the Implementation of the Department's Project Mitigation-Habitat Restoration Trust Account and Mitigation Projects

**Presenter:** John Kennedy, Habitat Branch Chief

The U.S. Army Corps of Engineers (Corps) is the federal regulatory agency responsible for administering permits under Section 404 of the Clean Water Act. In accordance with this Act, the Fish and Wildlife Coordination Act and the National Environmental Policy Act, the Department reviews Section 404 applications and permits and provides recommendations to the Corps for avoiding, minimizing or mitigating adverse impacts to fish and wildlife resources. The Department seeks appropriate project-specific mitigation that is consistent with the Wildlife Habitat Compensation Policy. The Department evaluates impacts and works with the Corps to develop mitigation measures that address unavoidable habitat losses. Mitigation and compensation action can include on-site or off-site projects and/or payment of in-lieu fees for restoration. Payment of in-lieu fees is an option that will occur only when other mitigation actions are not feasible or appropriate. The Corps has determined that in those cases when on-site mitigation is not feasible and would not adequately address habitat losses, in-lieu fee payment to fund appropriate off-site mitigation efforts will be pursued. The Corps has requested direct Department involvement, when appropriate, in the administration of the in-lieu fee mitigation process and implementation of mitigation projects.

The Department established a Project Mitigation-Habitat Restoration, Enhancement and Protection Trust Account and developed a process by which it evaluates projects, develops a mitigation plan to address unavoidable impacts to wildlife habitats, and accepts in-lieu fee donations (as determined by the Corps) for off-site mitigation activities. If the Corps requires in-lieu fees to address unavoidable habitat losses, the Department will initiate its Trust Account process and, if appropriate, develop a mitigation plan for the Corps' review and approval. If the mitigation plan is compatible with the Department's project evaluation goals and objectives, and is approved by the

Corps, fees will be deposited into the Trust Account and used to fund the mitigation project.

The Corps and the Department have worked cooperatively to develop the Memorandum of Agreement to facilitate the implementation of the Department's Project Mitigation-Habitat Restoration Trust Account and mitigation projects to address unavoidable adverse impacts to fish and wildlife resources.

Mr. Kennedy noted the process has been in place for a year and a MOA is a requirement by the Corps. The Department supported formalizing the process. The MOA at this point may not include some of the state's standard clauses that are contained in all of the Department's agreements because this was the Corps' template. The Department will work on the MOA to ensure it contains the required state clauses.

**Motion:** Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE MEMORANDUM OF AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND THE COMMISSION TO FACILITATE THE IMPLEMENTATION OF THE DEPARTMENT'S PROJECT MITIGATION-HABITAT RESTORATION TRUST ACCOUNT AND MITIGATION PROJECTS AND TO AUTHORIZE THE DIRECTOR TO EXECUTE THE AGREEMENT AS ATTACHED OR AS APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Mr. Kennedy stated the amount of the in-lieu payments for mitigation are negotiated between the project proponent and the Corps. The MOA, Trust Account and Department work with the Corps on mitigation do not involve any Department project. Large development projects are involved in this matter, e.g., proposed marina on the Colorado River where a developer would seek a Section 404 permit from the Corps and other permits and it has been determined that the level of unavoidable impacts to natural resources are significant. In those cases, prior to the issuance of the 404, the developer would be required to coordinate with the Department and the U.S. Fish and Wildlife Service on other compliance issues. There is a rigorous process associated with development of a mitigation plan and the Department is involved in providing wildlife expertise into this process. If the developer cannot mitigate on site for those projects, then discussions are entered into with the Corps that involve in-lieu fees to complete an off-site mitigation project so the developer can proceed with the project after securing a 404 permit.

Commissioner Carter was concerned with some aspects in the MOA. He offered changes. On page 2, Section 4.1.2, "environmental" should be changed to "conservation". Since this was a template, the final MOA should contain an indemnity or hold harmless provision that protects the Commission, Department and State of Arizona. Mr. Kennedy would meet with Mr. Adkins on the indemnification issue. Mr. Odenkirk anticipated that the Corps would resist having an indemnification clause in the agreement. Mr. Adkins stated indemnification was a sensitive, complicated concept. Just as the state cannot indemnify other parties except in unusual circumstances, neither can the federal government indemnify the state or other parties. The Department was still in negotiations with the Corps regarding contents of the MOA. The Department could attempt to have an indemnification clause inserted in it but the Corps may not be very receptive.

Mr. Kennedy noted the MOA was critical to the Corps being able to work on these types of projects. Proactive or reactive planning by the Corps was not involved; this was environmental compliance specific for developers completing the Section 404 process per the Clean Water Act. This is an on-going compliance issue with the Corps and would delay the Corps' ability to do these types of projects.

Commissioner Carter stated the Commission has pushed for these components within every document it has. It was a matter of regular public agency business that those documents contain indemnification or hold harmless language. If there were no such language, the project would not end because it has been an on-going process and the Commission was now formalizing it. It was not important to do it today; however, it was critical that it be done. It would be all right if the Department wanted to work for an indemnity except for neglect of its principles.

Mr. Odenkirk gave the reasons why the Corps would object to this. The whole concept of the federal government assuming liability for any action that occurs relates to the United States sovereign immunity. Historically, the United States government has refused to accept responsibility for claims, injuries, and negligence under that immunity. Years ago Congress passed the Federal Tort Claim Act. Under this Act, the federal government could be liable for certain types of injuries. Anything beyond this Act, the United States asserts its sovereign immunity. The federal agencies cannot go beyond what this Act allows for because only Congress can abrogate the sovereign immunity of the United States. For the Corps to agree to assume liability beyond the Federal Tort Claim Act would be exceeding Congress's authority over sovereign immunity. The Department of Justice would prevent them from agreeing to the immunity provision.

Commissioner Chilton appreciated Commissioner Carter's comments. She asked what activities would be engaged in under this agreement that would lead to causes of actions against the Commission. Mr. Kennedy gave the following example. A developer proposes to develop a bridge and facility along the Gila River. As a part of going through the compliance process of the Clean Water Act for the project with the Corps, because of the Department's jurisdictional responsibilities and responsibilities to NEPA, the Clean Water Act, and the Fish and Wildlife Coordination Act, it becomes involved in the analysis of impacts and development of mitigation for that project. The Department provides comments to the Corps for its consideration in its working with the developer for the project. If the Corps determines that the developer's proposed mitigation is inappropriate, e.g., restoration of cottonwood trees along the river; however, it would not offset the impacts because now there was a road going over it that could disturb the wildlife in the area, a mitigation project needs to be done off-site from disturbances and create habitat someplace else. The Corps notifies the Department and asks if there is interest in developing a proposal that would offset those impacts. The Department would go through an internal process to determine appropriateness of and involvement in the project. If the Department determines it can do something, a proposal is developed that goes through a vigorous internal process. This is supplied to the Corps. If they agree, modifications can be made to the proposal and they work out cost issues on their part. The Department tells the Corps what it could do to offset the impacts. This is the Department's involvement throughout the process. If the Corps and developer agree on a proposal, the Department can accept and the Corps would be willing to provide fees to the Department to deposit into its Trust Account to be used to create those habitats

elsewhere. It is the Department's normal project evaluation and impact assessment involvement that it has on all land and water projects in the state. The Department was responsible for managing money in its account and completing the mitigation project per the Corps' guidance.

Commissioner Carter asked what would happen if there was a third party who disagrees with the Corps and Department in terms of mitigation planning. Mr. Odenkirk stated if an organization was not happy with the proposed permit and the mitigation associated with it, it would sue the federal agency who is charged with enforcing the Clean Water Act. He did not see the Department or Commission being named in that type of suit. It would be a federal suit. A court would determine whether or not the mitigation the Corps accepted would be sufficient under the Clean Water Act. The Corps would have another alternative. It could use the money to contract with a private entity to do the work and he did not see a private entity being subject to a suit because it entered into a contractual relationship to do some type of mitigation work as part of a permitting process. He could not say for certain that the Department would not be embroiled in litigation, but it was a remote possibility. He was not sure an indemnity provision would help.

Commissioner Carter withdrew his recommendation for indemnity but asked that research be done on the use of consistent boilerplate indemnity clauses in documents that federal agencies have signed, where each party is responsible for its own actions but not the actions to the other parties in the agreement. Mr. Odenkirk stated that was not an indemnity provision; it would occur in the absence of any indemnity language. In the absence of indemnity language, each side would accept responsibility for its acts and omissions. The term, "hold harmless" may be the opposite of an indemnity. He felt the Corps would not have any problem with language in the agreement that stated each party would accept responsibility for its own acts and omissions in fulfilling its obligations in the agreement.

Commissioner Carter stated an amendment could be offered to the motion to 1) make the one word change from "environmental" to "conservation" and 2) direct legal counsel to incorporate a hold harmless clause within the document.

**Motion:** Gilstrap amended his motion TO INCLUDE THE WORD CONSERVATION ON PAGE 2, SECTION 4.1.2. Commissioner Carter agreed.

Commissioner Gilstrap asked Commissioner Carter to follow up with the second part of the amended motion.

**Vote on amended motion:** Unanimous

**Motion:** Carter moved and Chilton seconded THAT THE COMMISSION DIRECT THE DEPARTMENT THAT IN ANY AGREEMENTS IT HAS THAT WE INCORPORATE AS APPROPRIATE EITHER AN INDEMNITY OR HOLD HARMLESS CLAUSE THAT SEEKS TO CLARIFY THE RELATIONSHIP AND CODIFY IT WITHIN THE DOCUMENT UNDER ONE OF THOSE PROVISIONS.

Chairman Golightly thought the Commission was involving a state's right issue and sovereignty was already established in courts. He asked Commissioner Carter for clarification on his direction to the Department. Commissioner Carter stated a hold harmless clause was doable and one Mr. Odenkirk believed the federal government would accept in this case. Mr. Odenkirk reiterated the Corps would not accept responsibility for acts that the Department might be involved in constructing the mitigation project and vice versa; i.e., each party would be responsible for its own acts and omissions.

**Vote on amended motion:** Carter, Chilton, Gilstrap and Melton – Aye  
Chair voted Nay  
Motion carried 4 to 1

Mr. Odenkirk stated the Department would come up with language consistent to the tone of this discussion. He added that with regard to agreements generally. Whether or not an agreement was entered into with a city, county, non-profit organization, in every instance that the Department feels it can legally include a hold harmless or indemnity provision, it would do that and in that context, liability would be shifted to the other entity; i.e., the State of Arizona would accept no responsibility for any act, even its own act and omissions. This could be done in some agreements, but when it comes to the federal government, there would be problems. The best solution with the federal government was for each party to agree to accept its own responsibility.

Director Shroufe noted the document would be moved forward with the two changes. If an agreement cannot be consummated per Commission direction, it will either die or be brought back again.

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## 8. State and Federal Legislation

**Presenter:** Duane L. Shroufe, Director

The key bill status report as of May 17 was distributed and discussed.

HCR 2012 (Lottery continuation) - Now that this was a referendum, the Department will not be able to do anything on the issue except answer questions.

S 1008 (Shooting ranges) – The Department was unsure of the outcome; there was a meeting on Tuesday with the Governor. Even though the bill passed out of the House and Senate, the Governor may veto the bill.

The budget would probably go to the Governor next week; the Legislature may sine die next Friday. As of last night in the Senate version, the proposal for the Heritage Fund monies to be transferred into the general fund was removed.

Commissioner Gilstrap stated the Commission should be supportive of the lottery continuation initiative (HCR 2012). The lottery continuation subcommittee met and established a budget for the campaign to perpetuate the lottery. Members of the Commission and its constituency are encouraged to assist in every way possible in the

perpetuation of the lottery for the good of the Heritage Fund. The subcommittee's objective was to continue the funding that the lottery is strictly the vehicle of.

**Motion:** Gilstrap moved and Melton seconded THAT A PUBLIC VOTE IN 1980 CREATED THE STATE LOTTERY AND A NEW WAY OF FUNDING PUBLIC PROGRAMS THROUGH VOLUNTARY CONTRIBUTIONS RATHER THAN TAXES. IN 1990 THE VOTERS DEDICATED \$10 MILLION OF THE ANNUAL LOTTERY REVENUES TO THE ARIZONA GAME AND FISH COMMISSION HERITAGE FUND TO BE USED FOR MANAGEMENT AND PROTECTION OF THE HABITAT FOR NONGAME WILDLIFE SPECIES. IN 1998 VOTERS ONCE AGAIN OVERWHELMINGLY REAUTHORIZED THE STATE LOTTERY. PRIOR TO HERITAGE FUNDING, HUNTING AND FISHING LICENSE FEES WERE THE PRIMARY SOURCE OF REVENUE FOR MANAGING ALL OF THE STATE'S WILDLIFE. HERITAGE FUND LOTTERY REVENUES HAVE ALLOWED THE STATE GAME AND FISH DEPARTMENT TO PROVIDE MORE WILDLIFE CONSERVATION, ACCESS, ENVIRONMENTAL EDUCATION, HABITAT PROTECTION AND ACQUISITION. OVER \$10 MILLION IN HERITAGE GRANTS HAVE BEEN AWARDED FOR WILDLIFE-RELATED PROJECTS STATEWIDE. THE FUTURE AND WELL BEING OF ARIZONA'S WILDLIFE DEPENDS ON THE CONTINUED FUNDING OF THE ARIZONA GAME AND FISH HERITAGE FUND. WE ASK YOU TO PLEASE VOTE "YES" ON THE PROPOSITION, WHICH WILL BE NUMBERED LATER.

Commissioner Carter noted the initiative underway relative to Indian gaming that would add another dimension to wildlife programs in a manner consistent with the present revenue stream coming from lottery dollars. The Commission may want to support this initiative as well.

**Vote:** Unanimous

Director Shroufe noted the Commission voted on the lottery continuation and input into the voter pamphlet.

Director Shroufe gave an update on the President's \$60 million proposal to Congress to fund state wildlife grants in fiscal '03. Commissioner Carter and he met with Congressman Kolbe to try to convince him, as a member of the House Appropriations panel, to try to increase the amount to \$100 million. The full Senate passed S 990. There will be an attempt to meld S 990 and the grant appropriation together. S 990 is the old Title 8 in CARA, which gives authority for Congress to fund that portion of CARA up to \$350 million. If those two were combined, the states would be getting more than \$60 million.

Commissioner Gilstrap noted S 1008 was a shooting range protection bill and may be in jeopardy and the Commission may want to pursue an override if, in fact, there was a veto. Additional constituents are weighing in also.

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## 9. Statewide Shooting Range Project Update

**Presenter:** Kerry Baldwin, Acting Assistant Director, Information and Education

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

Commission Carter referenced the NEPA/Special Use Permit/Land Exchange for the Bellemont Shooting Range in the written summary and that activities may occur by June 2002. The Commission had been presented with a list of properties to be considered for exchange; there have been concerns about the properties involved and whether or not all of the properties were intended to be a part of the exchange package. Some of the properties on the list need to be looked at again. Mr. Baldwin stated the actual properties were put on the list to keep the process going. Before any final action occurred, complete discussion would have to happen with the Commission on actual land exchange values. Those values were dependent upon the appraisals the Department would be getting from the Forest Service. The Department would come before the Commission to state what was actually needed. The Commission would then decide what lands it would make available; at present the Commission has not decided that all of those properties would be available in the exchange.

The Forest Service would not issue a special use permit until the Commission signed an agreement to initiate a land exchange. This has been done. The liability language has been resolved. The Department is in a transition and the requirements have been met for a special use permit. At the same time, the Department has been proceeding with the land exchange. The connection between the two was that the Department would sign an agreement to initiate a land exchange and resolve liability. A special use permit could be issued irrespective of what was happening with the final documentation on the land exchange. The Department was finalizing a management plan. A June date was noted in a letter from Senator McCain but the Forest Service was not sure what that meant and the Department did not have anything from the Forest Service stating it was ready to go back to the Department. Director Shroufe stated an attempt was being made to contact Senator McCain's staff to determine where they got this information. There would be no special use permit issued for the range until the Forest Service was assured that a land exchange would go forward. Commissioner Carter considered having the Department notice a special Commission meeting to address the issue of land exchange properties if it could not be accommodated at the June meeting.

Mr. Baldwin gave an update on the inter-agency shooting range group. About 80,000 acres were closed to recreational shooting on the Tonto National Forest several months ago. The Department was investigating opportunities to open some of those lands. Criteria of evaluation of property for potential informal shooting sites have been created. The forest supervisor is holding firm that any forest lands that could be improved would require a special use permit with the forest. However, now they were willing to identify areas in the closed area that were legitimate shooting sites that could continue to be used in the current format. Some of those areas would be taken out of the closure and opened. The Forest Service did not want to designate them because to do so would assume a higher liability, which they did not want on that particular site. The Department was working with several shooting clubs in that there may be some sites in the closed area

that might be used in a way similar to the sign-in/sign-out for the ranching community. A recreational shooter could stop at the forest office and pick up a key or get a combination to a lock to use these informal areas.

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#### 10. Call to the Public

Shannan Marty, President of the Board of Directors of the Sonoran Sea Aquarium, appreciated the Commission and Department support of the marine biology project and creating educational opportunities for children. She looked forward to a continued relationship. A site image plan of a project was distributed to the Commission.

Bill Branan of the Audubon Research Ranch stated the Ryan Fire recently burned about 90% of the research ranch. It was a historic fire. It was a high wind, fast moving fire that covered a large area. The burned area offered a great research opportunity, e.g., impact and regrowth of vegetation on quail populations.

Bill Berlat, representing self, stressed the importance of the duties of field personnel and office personnel in the Department. He suggested that the Commission occasionally visit a regional office to find out what was happening and to ask questions. He also stressed the importance of the Department having its own personnel system. There was no reason why Department law enforcement personnel should not be on parity pay-wise with every other law enforcement agency in the state, and wildlife and research biologists should be on parity in that field generally. Emphasis should be placed on getting parity on the pay subject. The gubernatorial candidates should be contacted as well to determine where they stand on the issue.

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#### 11. Department Processes and Procedures Associated with Default License Dealers

**Presenter:** Linda Kuryl, Finance and Accounting Branch Chief

There are several statutes and Department rules governing the processes associated with collection of license dealer fees. Pursuant to ARS §17-338 and R12-4-105, license dealers are required to transmit all license or permit fees collected for the prior month by the 10<sup>th</sup> day of each month to the Department. R12-4-105 also requires the Department to provide written notice of suspension and a demand to return all inventory within five calendar days to any license dealer who fails to comply with the provisions of 17-338, or who issues the Department more than one check with insufficient funds during a calendar year or who fails to comply with any part of R12-4-105.

If a license dealer has not remitted monies due to the Department by the 15<sup>th</sup> day of each month, the Department contacts the license dealer by phone and advises them that their report and monies are due to the Department within five calendar days. Failure to provide a report and all monies owed within this time frame results in a certified letter being sent to the dealer advising them that their license has been suspended and demanding all inventory be returned within five calendar days. If inventories are not received within this time frame, the wildlife manager assigned to the area is directed to pick up the inventory.

A final audit is then completed by the Department and sent via Certified Mail to the license dealer advising them of the final amount owed the Department. Failure to respond results in additional correspondence being sent during the following 10-day period advising them to remit the monies owed the Department. If the license dealer still fails to respond within five days, a final audit demand letter is sent by Certified Mail advising the dealer that if the monies due the Department are not received within five calendar days, their file will be turned over to the Attorney General's Office if the dealer owes more than \$500 or to Credit Data Southwest if less than \$500 for collection.

Currently, the Department is owed \$25,284.72 that has been reported to the Attorney General's Office for collection. Of this amount \$22,000 is owed by a dealer the Attorney General's Office is unable to locate. It is believed this person is residing on an Indian reservation where there is no jurisdiction for the state to serve notice. The other \$3,000 is owed by a family whose business owner passed away. When the widow and son tried to find the Department's licenses, they could not find them. The Attorney General's Office was attempting to get a payment program with the family. The amount turned over the Credit Data Southwest is \$396.

The bonding requirement for license dealers has been discontinued. The cost of a bond is 5% of the dollar value of the inventory given to a license dealer. The value of the inventory is at "high dollar". The minimum inventory is \$9,000; the largest is \$213,000 (high dollar value). When bonding was discontinued, it was because the license dealers were not making any money even with a 5% commission because not all licenses are sold at the high dollar value.

Ms. Kuryn noted that what the Attorney General's Office was trying to collect was not monies but actual inventories not returned to the Department.

Ms. Kuryn described the process for establishing a new license dealer.

Ms. Kuryn stated the problem was with the collection of the inventory and businesses that close overnight.

Commissioner Gilstrap noted procedures have been implemented and were effective. Potential loss was minimal.

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Meeting recessed at 12:00 p.m.

Meeting reconvened at 1:28 p.m.

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## 12. Hearings on license revocations for violation of Game and Fish codes and civil assessments for the illegal taking an/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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13. Rehearing request regarding previous license revocation/civil assessment action by the Commission

**Presenter:** Leonard Ordway, Law Enforcement Branch Chief

**Motion:** Carter moved and Gilstrap seconded THAT THE COMMISSION TAKE JURISDICTION IN THIS CASE.

**Vote:** Unanimous

See Proceedings for February 22, 2002, pages 1-3 for additional background information.

Dustin P. Sciacca requested that the Commission schedule a rehearing regarding action taken on February 22, 2002, revoking his licenses for a period of three years, invoking a civil assessment of \$426.24 and further requiring him to complete a Hunter Education course before obtaining any licenses to hunt in Arizona. Mr. Sciacca was present at today's meeting.

Mr. Ordway referenced Rule R12-4-607, Rehearing or Review of Commission Decisions. Mr. Sciacca believed that the decision to revoke his license was made without obtaining all the information, and cited D.3. of the rule (Accident or surprise which could not have been prevented by ordinary prudence) as cause for a rehearing.

Mr. Odenkirk explained what this meant to the request for a rehearing. D.3 relates to an event or action that may have occurred during the hearing process before the Commission. Mr. Sciacca stated in his petition that when he was involved in the events that led up to his citation that he experienced accident or surprise by the events of the individual who was hunting with him. The basis must not refer to events that led to his conviction under Title 17.

The Commission could allow Mr. Sciacca to amend his petition for a rehearing. He may want to pursue the petition based on existing arguments. This modification could be done today or Mr. Sciacca could resubmit a written petition to have this continued to a later date.

Mr. Sciacca modified his petition to D.5 (Excessive or insufficient penalties). He stated he had little involvement in the incident. Hunting was important to him since it was something he did with his father. He did not think it was fair to have his license revoked for three years. The other persons were guiltier but received the same license revocation period and civil assessment.

Mr. Odenkirk reminded the Commission it needed to decide whether or not it wanted to reauthorize a rehearing. If so, the Commission could proceed today with the rehearing.

Mr. Sciacca asked to proceed with the rehearing today since he would be leaving for Utah on Sunday.

Commissioner Melton thought the Commission was lenient in that one-third of the civil assessment of the deer was charged on each individual and each received a three-year

license revocation. The Commission should not re-open the case with what it had to work with.

**Motion:** Melton moved and Gilstrap seconded THAT THE COMMISSION NOT REOPEN THE CASE.

**Vote:** Unanimous

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14. Off-Highway Vehicle Funding for Dispatch Personnel Services/Employee Related Expenses (PS./ERE)

**Presenter:** Leonard Ordway, Law Enforcement Branch Chief

Current PS/ERE approved funding for the Communications Center is approximately \$380,000, of which 74% is Game and Fish funds; 10%, Heritage funds; 8%, federal (USCG only) funds; 8%, Wildlife Theft Prevention funds, 0%, Watercraft funds and 0%, OHV funds. Whereas the Department's overall PS/ERE approved funding is comprised of approximately 39% Game and Fish; 24%, Heritage, 30%, federal; < 1%, Wildlife Theft Prevention, 5%, Watercraft and 2%, OHV.

In February 2002 the Commission approved the FY 2003 USCG budget authorizing the Department to increase PS/ERE funding for dispatch services by the amount equal to an additional ½ FTE. If authorized, the ½ FTE (~\$16,000) of OHV PS/ERE funds will be coupled with the already approved USCG funds to restore the previously lost dispatcher position.

Mr. Ordway noted that no OHV funds to this point (about \$700,000) have been dedicated to dispatch services. The OHV activity contains a substantial amount of law enforcement.

**Motion:** Chilton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE USE OF OHV FUNDS IN FY 2003 AND BEYOND TO SUPPORT A ½ FTE FOR DISPATCH SERVICES.

**Vote:** Unanimous

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15. Presentation from Wildlife-Oriented, Non-governmental Organizations

**Presenter:** Bruce Taubert, Assistant Director, Wildlife Management

An organization whose mission includes the conservation or restoration of wildlife populations and/or ecosystems made a presentation.

Don Swann, President of the Tucson Herpetology Society (THS) made a presentation at this meeting. A brief slide presentation was given. The volunteer organization was formed in 1988, with 140 dues paying members. The THS was interested in the conservation, education and research of reptiles and amphibians in Arizona.

## 16. Presentation from Wildlife-Oriented, Non-governmental Organizations

**Presenter:** Bruce Taubert, Assistant Director, Wildlife Management

Under this item, an organization whose mission includes the conservation and consumptive use (sport harvest) of wildlife resources made a presentation.

Randy Burcham, past President of the Arizona Falconry Association (AFA), made a presentation at this meeting. The AFA mission statement was read. The AFA had a long history of working with the Commission and Department. Educational programs are important and the AFA has worked with the Adobe Mountain Wildlife Rehabilitation Center. The AFA has donated equipment and money to the Department.

The AFA promotes conservation, but not falconry. The AFA has donated money to the North American Falconers Association (NAFA) for its effort to develop a video regarding electrocution of raptors to donate to power companies and government agencies to convince the power companies to protect power poles. Of note, the AFA started the Arizona Raptor Study Committee, which was a short-term project to gather data specifically on the goshawk and prairie falcon because the Commission had no data on which to base legalization of the birds for falconry. This data was also beneficial to the Department.

John Swift talked briefly about the NAFA and peregrine falcons. The biggest problems were the loss of raptor habitat and prey species.

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## 17. Substantive Policy Statement – Heritage Expenditure Guidelines

**Presenter:** Steve Ferrell, Deputy Director

In its May 9, 2001, audit report of the Department's Heritage Fund, the Auditor General recommended:

*The Commission should develop and adopt administrative rules or other formal criteria, such as substantive policy statements, to interpret Heritage Fund statutes and describe how the Department will expend Heritage Fund monies. The Heritage Fund Public Advisory Committee could be involved in developing formal expenditure criteria.*

In its response to the report, the Department disagreed that additional rules or policy were necessary but nonetheless agreed to implement the Auditor General's recommendation.

A process improvement team was formed to draft the substantive policy statement. The Heritage Public Advisory Committee (HPAC) was briefed on the development of this policy statement at its August 17, 2001 meeting, and again at its meeting January 19, 2002. The draft policy statement was forwarded to tenured HPAC members on April 5, 2002, and was introduced to new HPAC members at their orientation on April 8, 2002.

The HPAC discussed the draft substantive policy statement and formulated a recommendation to the Commission at its May 10 meeting; the HPAC voted unanimously to ask the Commission to adopt the substantive policy statement as written.

The draft substantive policy statement reflects current operations and it was the Department's intention to treat them the same as Commission policies and have this on two consecutive agendas. The draft substantive policy statement would be brought again to the Commission at its June meeting.

**Motion:** Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE SUBSTANTIVE POLICY STATEMENT FOR THE HERITAGE FUND PROGRAM EXPENDITURE POLICY.

**Vote:** Unanimous

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#### 18. Call to the Public

There were no comments.

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#### 19. Director's and Chairman's Reports

Chairman Golightly attended a National Rifle Association banquet in Flagstaff and worked on bison issues.

Director Shroufe noted that updates were provided to the Commission from the divisions.

Director Shroufe attended a Colorado River Fish and Wildlife Council meeting. He and Commissioner Carter met with Congressman Kolbe.

Director Shroufe attended a Governor's Growing Smarter Oversight Council meeting. He gave a keynote address at a banquet in Scottsdale. He attended a meeting with Dale Hall (FWS) and Larry Bell (New Mexico Department of Game and Fish) in Albuquerque.

Director Shroufe noted the year's Performance Incentive Pay Plan (PIPP) results for covered employees. There was another PIPP before the Department of Administration for approval for the upcoming year.

Director Shroufe noted Harve Forsgren would be the new Regional Forester starting in July. Jim Gladden, the current Deputy Forester, accepted a position in Washington, D.C. as the Division Leader of Wildlife, Plants and Water.

The following 2001-2002 Heritage Grant Awards were announced:

**Environmental Education** received three applications. The amount available is \$32,000. The following two education programs were awarded EE grants:

Applicant	Project Title	Grant Award Amount
Deer Valley Unified School District (Deer Valley HS)	Monitoring Urban Lakes (Deer Valley)-A Student Experience	\$ 5,753.00
Tempe Union HS District Corona Del Sol HS	Monitoring Urban Lakes (Tempe)-A Student Experience	\$ 9,128.50

**Schoolyard Habitat** received six applications. The amount available is \$48,000. The following four schools were awarded grants:

Applicant	Project Title	Grant Award Amount
Amphitheater Public School Harelson Elem. School	Harelson's Nocturnal Pollinator Habitat	\$10,000.00
Juniper Tree Academy Charter School	Heritage Outdoor Learning Lab	\$10,000.00
Tucson Unified School Dist Rogers Elem. School	Rogers School/Neighborhood Urban Project	\$10,000.00
Washington School Dist. Royal Palm Mid. School	Royal Palm Middle School	\$ 4,997.16

**Urban** received six applications. The amount available is \$196,000. The following seven agencies were awarded grants:

Applicant	Project Title	Grant Award Amount
Avra Valley Fire Dept.	Murray/Halberg Park Wildlife Habitat Project	\$20,565.85
University of Arizona	Effectiveness of 'Bird Guard' on Power Poles	\$19,203.00
Univ. of AZ Sponsored Projects	Native & Exotic Bird Use of Transplanted Saguaros	\$34,144.22
Univ. of AZ	Mycoplasma agassizii in Desert Tortoises	\$49,291.00
Univ. of AZ	Burrowing Owl Demography in Urban Tucson	\$28,754.00
City of Willcox	Cochise Lake Bird Watching Area	\$26,000.00
Univ. of AZ	Designing Created Spaces: Assessing Existing Park & Prescribing Design Guidelines for Future Parks in Tucson	\$13,841.00

**Public Access** received five applications. The amount available is \$160,000. The following three agencies were awarded grants:

Applicant	Project Title	Grant Award Amount
Cochise Co.-Highway & Floodplain Dept.	Turkey Creek Rd.	\$20,800.00
USDA-Coronado NF	Riggs Lake Fishing Pier Extension	\$67,000.00
Bullhead City School Dist. #15-Diamondback Elem.	Diamondback Nature Trail Improvement Project	\$ 4,820.00

**IIPAM** received 12 applications. The amount available is \$320,000. The following eight agencies were awarded grants:

Applicant	Project Title	Grant Award Amount
ASU Office of Research & Sponsored Projects	Distribution & Status of the Arizona Whiptail	\$28,162.00
NAU, Bd. of Regents	A survey of the aquatic community at Fossil Creek	\$62,664.00
Univ. of AZ Sponsored Projects	Band-tailed Pigeon Survey Method Evaluation	\$31,900.00
ASU Office of Research & Sponsored Projects	Nutritional Concerns of Pronghorn Antelope on Anderson Mesa	\$23,100.00
ASU-Office of Research & Sponsored Projects	Host-pathogen Community Ecology in Frogs	\$30,806.00
Univ. of AZ Sponsored Projects	Analysis of the Suitability of Potential Habitat for the Black-tailed Prairie Dog	\$42,678.94
NAU Bd. of Regents	Suppression of Populations & Reproduction in a Non-native Fish	\$14,752.20
ASU Bd. of Regents	Shell Dyskeratosis in Sonoran Desert Tortoise: Genetic Causes & Population Effects	\$41,063.00

Total dollars awarded were \$609,423. This money was combined with matched donations; on-the-ground projects amount to \$1.2 million.

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## 20. Commissioners' Reports

Commissioner Gilstrap spent most of his time at the Legislature.

Commissioner Chilton was involved with the Altar Valley Conservation Alliance, which was working with the U.S. Fish and Wildlife Service to develop a HCP for proposed reintroduction of the Chiricahua frog. She was involved with the Sonoran Desert Conservation Plan Steering Committee. She attended a Public Lands Council meeting in Washington, D.C. While there she met with the Chief of Operations of the National Interagency Fire Center. She discussed Mount Graham issues and the difficulty to get agencies to eliminate the insect infestation and potential fire danger on Mount Graham.

Commissioner Carter met with Commissioner Gilstrap, Director Shroufe and representatives from the Governor’s Office regarding issues on the Pima County-Sonoran Desert Plan. Gerry Perry and he met with the Pima County Board of Supervisors on access issues. He attended the Mexican Wolf Interagency meeting in Reserve, New Mexico. Director Shroufe and he met with Congressman Kolbe with respect to funding increases for the states’ wildlife grant programs. Richard Remington and he met with the Eagar Town Council to discuss the proposed rule changes and the elk management plan. He chaired the Heritage Public Advisory Committee meeting in Yuma, and also spent time on legislative issues.

Commissioner Melton trapped coyotes on the Barry M. Goldwater Range. Seven coyotes were captured and outfitted with GPS collars. He helped work on a ramada at Mitrtry Lake. This project was done solely with volunteers and donated money.

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21. Approval of Minutes

**Motion:** Carter moved and Chilton seconded THAT THE MINUTES FOR APRIL 12-13, 2002 BE APPROVED.

**Vote:** Unanimous

The minutes for March 8, 2002 and March 15, 2002 were signed.

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

**Vote:** Unanimous

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Meeting recessed at 3:15 p.m.  
Meeting reconvened at 4:10 p.m.

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**Motion:** Gilstrap moved and Carter seconded THAT THE MEETING RECESS.

**Vote:** Unanimous

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Meeting adjourned 4:10 p.m.

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Saturday, May 18, 2002 – 8:00 a.m.

Chairman Golightly called the meeting to order at 8:00 a.m. The commissioners introduced themselves and Chairman Golightly introduced Director's staff. The meeting followed an addendum dated May 10, 2002.

1. Request to Close the Rulemaking Record for Docket O, Boating and Water Sports and to Approve the Final Rulemaking Package for R12-4-501, R12-4-502, R12-4-503, R12-4-505, R12-4-506, R12-4-507, R2-4-511, R12-4-512, R12-4-513, R12-4-517, R12-4-520, R12-4-522, R12-4-523, R12-4-524 and R12-4-525

**Presenter:** Mark Naugle, Manager, Rules and Risk Management

(For background information, see Commission meeting minutes for March 15, 2002, pages 15-16.)

**Motion:** Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO CLOSE THE RULEMAKING RECORD FOR DOCKET O AND APPROVE THE NOTICE OF FINAL RULEMAKING; THE ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENTS AND THE CONCISE EXPLANATORY STATEMENTS FOR BOATING AND WATER SPORTS RULES R12-4-501, R12-4-502, R12-4-503, R12-4-505, R12-4-506, R12-4-507, R2-4-511, R12-4-512, R12-4-513, R12-4-517, R12-4-520, R12-4-522, R12-4-523, R12-4-524 AND R12-4-525 FOR FILING WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL.

**Vote:** Unanimous

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2. a. Request to Approve a Notice of Emergency Rulemaking for the Adoption of New Rule R12-4-429 to Address Issues Associated with Chronic Wasting Disease

**Presenter:** Mark Naugle, Manager, Rules and Risk Management

The purpose of the proposed emergency rulemaking is to preclude the movement of captive cervids (all members of the deer family *cervidae* defined as restricted live wildlife in R12-4-406(A)(9)(b) into Arizona to protect against the introduction of chronic wasting disease (CWD) to free-ranging or captive wildlife.

There is more information needed to better understand the disease. At this time, however, the most effective management approach has been to take measures to ensure, to the greatest extent possible, the disease does not enter into Arizona. If it does, there will be a substantial financial impact to the Department and to the industry supported in part by hunting.

At this time, the only groups affected by the proposed rulemaking would be anyone maintaining cervids under the auspice of a game farm permit or a zoo permit issued by the Department. This is a very small number of permittees. The proposed rule will not preclude operation of any zoo or game farm as is currently being done with the exception

of being able to import new animals. Continued breeding and marketing of progeny or parts thereof will not be precluded.

The proposed new rule will include the following specific requirements related to CWD in cervids:

1. No cervid designated as restricted live wildlife in R12-4-406(A)(9)(b) can be imported into Arizona.
2. All cervids currently in Arizona under the authority of a Department issued game farm or zoo license shall be required to be permanently marked with either a tattoo or a microchip at the time this proposed rule is enacted.
3. Game farm and zoo license operators shall be required to submit the head of any cervid that dies on their premises or under their control to the Arizona Vet Diagnostic Lab for analysis for CWD.
4. All facilities that maintain cervids under a game farm or zoo license shall be required to keep records of animals moved onto or off the facility and to provide these reports to the Department by a specific date.

The Department asked the Commission to approve a Notice of Emergency Rulemaking for the adoption of new Rule R12-4-429 to address issues associated with CWD.

Under the emergency rulemaking provisions of ARS §41-1026, the agency's proposed emergency rulemaking to address CWD will be reviewed by the Attorney General and, if approved, will become law for a period of 180 days, with the option of a single 180-day renewal period. During the effective period of the emergency rule, the agency will need to pursue regular rulemaking to permanently establish the provisions of the rule. The regular rulemaking process will include a public outreach campaign that will give the public the opportunity to provide input to the Department and the Commission on the proposed rule language, including input on the economic impact of the proposed rule.

If approved by the Commission, the Notice of Emergency Rulemaking will be filed with the Office of the Attorney General by May 24, 2002, for review and, if approved, will be filed with the Secretary of State for publication. The emergency rulemaking will then become effective for a period of 180 days.

**Motion:** Chilton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF EMERGENCY RULEMAKING FOR THE ADOPTION OF NEW RULE R12-4-429 TO ADDRESS ISSUES ASSOCIATED WITH CHRONIC WASTING DISEASE AND ALSO TO DELEGATE AUTHORITY TO THE DEPARTMENT TO MAKE ANY NECESSARY CHANGES TO THE TEXT OF THE RULE FOR THE PURPOSE OF MAKING THE RULE MORE CLEAR, CONCISE AND UNDERSTANDABLE WITHOUT CHANGING THE PURPOSE, INTENT OR MEANING OF THE RULE.

Jim deVos, Research Branch Chief, noted there was no known import of an animal into Arizona that would have come with any traced-back history to the farm in Colorado where there were disease-infected animals. One of the purposes of the rule was to help the Department gain better control on the movement of elk into Arizona.

**Vote:** Unanimous

Commissioner Gilstrap asked the Director to clarify the authority he has to take immediate action as related to CWD.

Director Shroufe stated under R12-4-409(G), the Department and its attorneys feel he had the authority to ban importation immediately. He wanted to come before the Commission to get some indication on how to proceed. The action taken today by the Commission would reinforce that authority and permanent rulemaking process would start.

**Motion:** Gilstrap moved and Carter seconded THAT THE COMMISSION SANCTION THE AUTHORITY NOTED.

**Vote:** Unanimous

2. b. Request to Approve a Notice of Rulemaking Docket Opening for the Adoption of New Rule R12-4-429 to Address Issues Associated with Chronic Wasting Disease

**Presenter:** Mark Naugle, Manager, Rules and Risk Management

The proposed rulemaking will impose regulations on cervids designated as restricted live wildlife in R12-4-406(A)(9)(b), including a ban on their importation into Arizona to prevent the introduction of CWD to free-ranging or captive wildlife in the state.

The Department asked the Commission to approve a Notice of Rulemaking Docket Opening for the adoption of new rule R12-4-429 to permanently address issues associated with CWD.

The Commission will have the opportunity to approve, reject or modify the new rule as part of the Proposed and Final Rulemaking process. If approved by the Commission, the Notice of Rulemaking Docket Opening will be filed with the Secretary of State by May 24, 2002, for publication by June 14, 2002.

**Motion:** Carter moved and Chilton seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF RULEMAKING DOCKET OPENING FOR THE ADOPTION OF NEW RULE R12-4-429 TO ADDRESS ISSUES ASSOCIATED WITH CHRONIC WASTING DISEASE.

**Vote:** Unanimous

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3. Request to Terminate the Proposal for Establishing a Night-Hunting, Limited-Weapon Shotgun Shooting Shot Season for Predatory and Fur-bearing Mammals (including the Public Review and Statewide Outreach Portion of the Plan)

**Presenter:** Mark Naugle, Manager, Rules and Risk Management

(For background information, see Commission meeting minutes for February 22, 2002, pages 20-22.)

The Commission was briefed on the analysis and summary of employee oral comments solicited at regional open forum meetings, written internal comments, the results of the Department's benchmarking data with other states, along with a tally of unsolicited public comments received at this time.

Ninety percent of the employee comments received on the proposal at regional open forums were negative. All 13 of the written employee comments opposed the concept of the night hunting proposal.

The Department's Rule Review Team sent out a survey questionnaire to all 50 states and Canadian provinces. The benchmarking efforts resulted in a 42% response rate from 19 states and two provinces. Of the states responding, all but two allow some form of night hunting. Eleven had no data on participation rates and more than half answered no or unknown when asked if they were achieving management goals with night hunting.

The Department received 430 unsolicited written comments, faxes, emails and/or phone calls from the public. Of these, 315 were in a chain letter format outlining seven major points. Also, the Department received a total of 115 unique written comments. Of the 430 comments received, only four were in favor of the night hunting proposal.

The Department asked the Commission to terminate the proposal because of overwhelming opposition.

**Motion:** Melton moved and Carter seconded THAT THE COMMISSION VOTE TO TERMINATE THE PROPOSAL FOR ESTABLISHING A NIGHT-HUNTING, LIMITED WEAPON, SHOTGUN SHOOTING SHOT SEASON FOR PREDATORY AND FUR-BEARING MAMMALS (INCLUDING THE PUBLIC REVIEW AND STATEWIDE OUTREACH PORTION OF THE PLAN).

**Public comment**

Jon Fugate, representing the Yuma Valley Rod and Gun Club, advocated support for the Department's recommendation to terminate the proposal for establishing a night hunting season for predatory and furbearing mammals. It was evident this would not be an efficient predator management tool. The Club appreciated the Department allowing public input and suggestions and appreciated the time and effort spent on this issue. The Club voted almost unanimously at its last meeting to terminate rulemaking.

Stephanie Nichols Young, representing the Animal Defense League of Arizona, supported the Department's recommendation. The main concern was with safety.

Commissioner Chilton stated the Department should have necessary management tools for proper management of wildlife. The goal of the Department in this case was to help survival of antelope fawns; however, she supported the Department's recommendation because of safety concerns.

**Vote:** Unanimous

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4. Vote to Initiate Research Projects under the Federal Aid to Wildlife Restoration Project W-78-R

**Presenter:** Jim deVos, Research Branch Chief

Three projects were summarized:

- 1) Bighorn sheep habitat use and movements in the Silverbell Mountains and the Ironwood Forest National Monument

This herd is one of the last interior populations of bighorns that have not been re-established through reintroduction efforts; it is an endemic herd. It is one of the last populations of bighorn sheep residing in close proximity to a metropolitan area in the western United States.

The proposal, which was developed in collaboration with BLM, Arizona Desert Bighorn Sheep Society, ASARCO and several other groups, calls for placing GPS collars on bighorn and monitoring their movements for two years.

There have been contributions for the project from ASARCO, BLM, Coalition for Sonoran Desert Preservation, Desert Watch and The Phoenix Zoo; anticipated funding and support is expected from Tucson Power and Electric and the Foundation for North American Wild Sheep.

Total cost of the project is approximately \$200,000. The request for Department funding is \$60,000, with a ratio of Department to non-Department funding of \$60,000:\$140,000.

- 2) Elk movements and use of bypass structures in association with the newly realigned Highway 260 east of Payson

The Arizona Department of Transportation (ADOT) is in the process of redeveloping and decreasing turns on Highway 260. As a result of this road-straightening project, vehicle speeds will increase. There are concerns to minimize the potential of collisions between elk and vehicles. There were a number of elk-excluding devices. The Department wanted to evaluate the effectiveness of those tools in keeping elk off the highway. The Department also wanted to evaluate the effectiveness of some of the underpasses ADOT developed to move elk across the highway.

The Department requested an annual budget for this three-year project in the amount of \$22,000. Partnerships for this project include the Forest Service and ADOT; their contributions in total are \$250,000.

## 3) Tassel-eared squirrel landscape scale habitat use patterns

The Commission approved this project three years ago. There was a tremendous amount of variation in weather conditions; this brings an increased amount of variation in the data the Department has. With one additional year, the Department feels it could reduce the variance in data and allow making meaningful recommendations for forest managers to implement strategic plans that will facilitate squirrel populations surviving and allow a forest treatment prescription that is best.

The Department requested an additional \$22,000 to complete the project.

**Motion:** Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE INITIATION OF THE THREE RESEARCH PROJECTS DISCUSSED.

Commissioner Carter asked how the Department was working with BLM to sustain access into the areas and resolution of the boundaries. Gerry Perry, Region V (Tucson) Supervisor, stated the Department continues to work with BLM on issues on the Ironwood. Commission action taken yesterday will allow the Department to participate in the planning of the monuments. There are significant issues related to indiscriminant uses of ATCs; the Department will work with BLM to address those. The Department is still working on resolution on the boundary issue of the mine with regard to alleged trespass.

**Public comment**

Brian Dolan, representing the Arizona Desert Bighorn Sheep Society, was concerned about the monuments in Arizona and would work with the Department on the bighorn sheep study. It was critical to ensure a baseline is established, especially with regard as to how the sheep population is doing before the monument becomes popular. He hoped the study would create an adaptive management plan that will allow the Department to react to any kind of impacts that may be brought upon by creation of the monument.

**Vote:** Unanimous

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5. A Review of the Apache Trout Delisting Efforts, Past and Future

**Presenters:** Larry Riley, Fisheries Branch Chief

The sites proposed for restoration of Apache trout provide suitable habitat. The streams in question currently support Apache trout or a surrogate nonnative trout. It is believed implementation of proposed actions will meet the requirements necessary to delist the species; a commitment is needed for long-term monitoring and management of Apache trout within its historic range. When the Apache trout has been successfully delisted, one element of complexity will be reduced regarding land management decisions. The Forest Service and the Department support policy direction regarding multiple use on public lands and seek to accommodate both land use and species restoration.

At this point, compliance is nearing completion. Comment has been received on the Environmental Assessment (EA) and Biological Opinion on the process of barrier construction. The reintroduction has been conducted and is currently being responded to. Compliance will result in a Forest Service decision that will include barrier constructions necessary to complete sites required for delisting, which will include renovations of streams and restocking of streams with Apache trout.

Long-term monitoring and management and enhancement planning are being prepared for delisting.

A letter was received from the Arizona State Council of Trout Unlimited (AZTU) (signed by Fred Fillmore) last night. Mr. Riley read the lengthy letter into the record. The letter was the AZTU response to comments prepared by the Arizona Cattle Growers Association (ACGA), et al. with regard to the EA prepared on the Apache Sitgreaves National Forests.

Commissioner Chilton was concerned that the Commission was not supplied the material to which the AZTU letter was a reply. The contentions in the letter need to be answered. She was aware of the ACGA and she noted several discrepancies in AZTU's letter.

Commissioner Chilton stated the habitat, as it currently exists, already supports Apache and related trout and was in fine ecological condition; any contention that the cattle growers do not want the fish there was erroneous. The issues raised refer to the fact that a 4.d. rule was obtained for anglers at the time of delisting to allow for state-regulated harvest. The ACGA was concerned that even though anglers were protected from the downlisting process, adjacent land users were not. The process for protecting them was a 10 j. rule (non-essential/experimental designation). It would take several years to get a 10 j. rule compliance and she had a hard time understanding the biological imperative that requires haste. A letter from the U.S. Fish and Wildlife Service (FWS) attempts to address the fact that the rural public of Arizona feels there was a lot of collateral damage to actions taken by the Game and Fish Department. Collateral damage brings along responsibility. She read the letter she drafted to the FWS that addressed those responsibilities.

*The goals of the Apache trout recovery effort are to recover the species and achieve delisting. Achieving this goal will solidify the Commission's sportfish management program in the White Mountains and achieve a milestone in the conservation of native wildlife in Arizona.*

*The Department believes that these goals can be achieved without any change in land resource use adjacent to streams targeted for Apache trout repatriation. The Department has concluded that present uses authorized in already completed management plans for those areas are compatible with recovery of the Apache trout, when those uses are carried out within the approved guidelines. Thus, when Section 7 consultations are conducted on allotment plans for the areas in which Apache trout repatriation is proposed, the Department will not recommend changes in livestock numbers or seasons of use to accommodate the repatriation.*

*The Department recognizes and appreciates the cooperation and collaboration of Arizona citizens in rural communities who earn their living from these adjacent lands managed by the Forest Service. We are pleased re-establishment of this stellar example of Arizona's native wildlife will also contribute to preserving Arizona's heritage.*

*The Department, as in other reintroduction efforts, is further committed to doing its utmost to negate the impacts on permittees and recreationists of use restrictions resulting from consultations.*

With regard to the 4.d. rule, established in 1975, Mr. Riley explained state and tribal regulations allow flexible restrictions on fishing, which includes sites established as closed to fishing. It establishes restrictive regulations in those areas where some limited fishing-related mortality is acceptable and will not threaten the population. Some other sites are enhancement sites where flexible regulations allow for harvest. There were other factors on public lands that may be compatible with the restoration of Apache trout.

Commissioner Gilstrap stated this was a positive example of collaborative work and relationships between private individuals, not-for-profit organizations, permittees, federal and state agencies, etc., for one positive objective. He would be disappointed to know of a conflict that hinders that collaborative effort. He asked that these two groups discuss issues and asked that the Department assist so that there was not a conflict and there was continuation of a positive relationship.

Mr. Riley stated momentum has been built with Apache trout and Gila trout. The Department was striving for a similar approach with Gila trout, which is still endangered. Restoration efforts for Gila trout in Arizona have begun. These things could be assets to Arizona. The Department must work with all stakeholders. Opportunities can be created to add to value and to reduce complexity of compliance issues as progress is made towards recovery of these species.

Commissioner Carter supported the reintroduction program. Balanced input was needed from all people regarding wildlife recreation and the AZTU was one sided. The Commission and the Department have created expectations of opportunities for the continuance of rainbow and brown trout fishing in eastern Arizona. Those opportunities were declining at an alarming rate for a combination of reasons. One was the effort to deal with native species. He asked the Department to be sensitive to lost opportunities and to continue to look for opportunities for those who want to enjoy them as well.

Commissioner Chilton agreed with Commissioner Carter's statements. The concern of rural Arizona is that the Commission has given consideration to its 12-step reintroduction procedure and if people who live on lands adjacent to reintroduction effort have concerns, that a 10 j. rule would be pursued. The concern expressed by cattle growers was that the Department did not follow its own rule and try to get the 10 j. rule. She tried to address that concern in the letter read earlier. She asked if the 10 j. rule would be pursued in the delisting of Gila trout. Mr. Riley stated the Department needed to look at how 10 j. populations can be utilized as counting towards recovery. It can be a complex issue. There were opportunities for providing reassurance to people and providing support to make these types of restorations proceed without impediments upon people.

Chairman Golightly stated within the 12-step process, there was no provision for a 10 j rule. Those were requests of the federal government by the Commission on certain programs in which it wanted to participate, e.g., Mexican wolf recovery. The 10 j. rule was not available when the management plan was written for the Apache trout.

Commissioner Chilton understood the Department was closely involved in the writing of recovery plans. She requested something be used that works to conserve multiple uses, including recreation, angling, and productive economic uses of the land on which people rely for their livelihoods. The Department should be assertive in insuring protection of the multiple use concept and Arizona's residents.

### **Public comment**

Thomas Beaham, representing the Old Pueblo Chapter of Trout Unlimited, did not know about the ACGA and AZTU letters. Stream enhancement would do much in enhancing recovery efforts of Apache and Gila trout.

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Meeting recessed at 9:35 a.m.

Meeting reconvened 9:50 a.m.

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

This was brought off the table from the Friday meeting. It was tabled to have further discussion on Commissioner Chilton's draft letter to the FWS.

Copies of the draft letter were available to the public. Mr. Riley re-read the draft letter. (see pages 30-31 of these meeting minutes).

Commissioner Carter offered a deletion of the last paragraph and a modification of it: *The Commission and the Department, as in other reintroduction programs in which we partner, are committed to doing their utmost to negate the impacts on permittees and recreational use restrictions resulting from consultations.*

Terry Johnson, Nongame Branch Chief, stated all wildlife reintroductions in Arizona ultimately involve the Department. The level of partnering varies on the reintroduction.

**Motion:** Chilton moved and Carter seconded THAT THE LETTER ACCEPT THE LETTER AS READ BY MR. RILEY AND AMENDED BY COMMISSIONER CARTER.

**Vote:** Unanimous

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## 6. Scientific Collecting Permit Process and Guidelines for Issuance, Reporting, Renewals, and Denials

**Presenter:** Terry Johnson, Nongame Branch Chief

The Department is involved in administration of R12-4-418, which is for Scientific Collecting Permits, to academics and other people conducting research in Arizona for wildlife management, educational or conservation purposes. Each year the Department issues 300-425 permits. Over the past four years the process has been modified and improved. Time and people involved in the application process have been greatly reduced. Customer satisfaction is high. There is no fee charged for this permit.

A high number of permittees fail to send in a report each year as required by law. Permittee compliance reached an all-time low for the 2001 reporting year.

Mr. Johnson described the materials sent to each permittee in October. A reminder is sent to permittees the end of November or first part of December stating the new year brings a reporting obligation. In early January, when reports are not received, reminders are sent to those people who have not yet reported. Later in January a second reminder is sent; in early February, a third reminder is sent.

The Department owns the administrative process for the rule as well as the issuance of the permits and the process for evaluating the information. The Commission owns the appeal process. The process being followed could result in appeals. People failing to report have been given two messages: 1) the Department was serious in not issuing a permit for this calendar year but the permittee may apply for a new permit next year without any restrictions as a result of this action and 2) a follow up letter is sent stating the same information as before.

There were no appeals brought before the Commission at this time but the Department wanted to let the Commission know of the potential for appeals. He asked the Commission to affirm the Department's process.

The Commission felt the Department went beyond what was expected to make people comply with the rule.

**Motion:** Carter moved and Gilstrap seconded THAT THE COMMISSION AFFIRM THE CURRENT NOTIFICATION PROCESS THAT IS IN PLACE AND HAS BEEN ESTABLISHED BY THE DEPARTMENT AND TAKE WHATEVER STEPS ARE NECESSARY, INCLUDING THE NOTICE TO THE RIGHT TO APPEAL, AND TO DEAL WITH IT AS IT COMES ABOUT ON AN INDIVIDUAL BASIS.

**Vote:** Unanimous

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## 7. Kaibab Stamp Requirement for Archery Deer Hunters

**Presenter:** Tice Supplee, Game Branch Chief

(For further background information, see Commission meeting minutes for Commission Order 2, April 13, 2002, pages 25-34.)

The archery community was very concerned about the Department proposal to place the North Kaibab archery deer hunt into the permit draw system. A recommendation from a number of individuals was that archery deer hunters be required to purchase the Kaibab stamp and thereby validate their non-permit archery tag for hunting in Unit 12A.

The Kaibab North special deer hunting permit fee is established in Commission rule R12-4-102, Fees for licenses, tags, stamps, and permits. The Commission's authority to levy this fee is through the federal Sikes Act. The expenditure of funds is approved through a cooperative agreement with the Kaibab National Forest and annual approval of the Commission.

There are no instructions as to how a hunter with a non-permit tag, e.g., archery tag, would purchase this deer hunting permit for the North Kaibab. It has never been historically required of archery deer hunters.

The best way for the Department to implement the fee requirement to archery deer hunters would be to sell it as a validating stamp, similar to the state migratory bird stamp. The Department would have names and addresses for a unit specific archery deer hunt questionnaire and a count on individuals who might hunt on the North Kaibab. Purchase of the stamp could be through Department offices, license dealers or on-line.

It was felt administration of this stamp exists with no Commission Rule changes. The Department has decided to defer the implementation until the 2003 hunting season because the hunt regulations are printed and it would be difficult now to notify the general hunting public of the requirement. Also, by waiting, the Department would have the opportunity to print the stamp and develop instructions, particularly to license dealers.

### **Public Comment**

Dick King, representing the Arizona Bowhunters Association (ABA), supported the stamp program.

Dave Selden, Board Member of the Metro Region West ABA, supported the stamp. He asked if there would be a fee. Ms. Supplee stated the fee was regulated through the Commission Order and was currently \$5. The rule would be opening soon for review and the Commission has directed the Department to look into increasing the fee.

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### **8. Call to the Public**

Dee Y. Jessop, curator of FMJ Zoo, noted the zoo was the only zoo between Salt Lake City and Phoenix. He thanked the Department in helping them get wildlife for the zoo. Elk are alternated between two pastures. They were looking for solutions with regard to chronic wasting disease (CWD).

Mr. Shroufe noted the zoo facility was in Arizona and Utah, and there was concern about animals going from pasture to pasture. The Department would help them regarding CWD.

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9. Future Agenda Items

A budget work session will be held for the Commission on Thursday afternoon, June 20, 2002.

The Department would come up with a clause in future documents that would speak to the relative liabilities of parties so that they are responsible for their own actions. This would be included on the June agenda if the Department could not make that happen on the MOU with the Army Corps of Engineers.

If a land exchange agreement appears imminent for the Bellemont Shooting Range property and a regularly scheduled Commission meeting is not timely to address it, a special meeting would be scheduled to discuss the terms of the agreement, including Department lands to be offered.

Present "second read" of the Heritage Expenditures Substantive Policy at the June Commission meeting.

A presentation would be given under the federal lands update, regarding the Willow Beach National Fish Hatchery issues and the U.S. Fish and Wildlife Service's response to a letter the Department would be sending expressing the importance of the hatchery and asking for the hatchery's continued operation. The Director, on his own initiative, might send a letter to the Arizona congressional delegation. The Commission would be sent copies of the letters.

In June's federal lands update, a presentation would be given describing plans for protecting natural resources and facilities on Mount Graham from the potential for wildfire.

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**Motion:** Carter moved and Gilstrap seconded THAT THE MEETING ADJOURN.

**Vote:** Unanimous

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Meeting adjourned 10:40 a.m.

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