

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Wednesday, September 22, 2004 – 8:00 am
Arizona Game and Fish Department
2222 W. Greenway Road
Phoenix, Arizona 85023

PRESENT – On Site: (Commission)

(Director's Staff)

W. Hays Gilstrap, Commissioner

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell

PRESENT – Phone

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

Assistant. A.G. Jim Odenkirk

Chairman Chilton called the meeting to order at 8:00 a.m. The meeting followed an agenda dated September 20, 2004 for a special meeting of the Commission. Roll call was taken and all Commissioners were present. Other Department staff present were: Marty Macurak, IED Assistant Director; Bruce Taubert, WMD Assistant Director; Richard Rico, SSD Assistant Director; Mike Senn, FOD Assistant Director; Dana Yost, Executive Staff Assistant; Tony Guiles, Legislative Liaison.

Director Duane Shroufe asked if everyone received the rule packet. Director Shroufe stated he would turn the meeting over to Deputy Director Ferrell to go over the three items that are noticed on the agenda. For record I will state those three items and then I'll ask Mr. Ferrell to work through them.

The first item is the consideration of revisions made to the notices of proposed rulemaking that were approved at the September 17, 2004, Commission meeting to create a conservation bonus point and a loyalty bonus point, and to increase the bonus point pass percentage from 10% to 20%.

Item two is the consideration of revisions made to the notice of proposed rulemaking that was approved at the September 17, 2004 Commission meeting to require all big game permit applicants to purchase a hunting license to apply for the draw.

Item three is the consideration of a notice of proposed rulemaking to create a 10% nonresident set-aside for bighorn sheep.

1. Consideration Of Revisions Made To The Notices Of Proposed Rulemaking That Were Approved At The September 17, 2004 Commission Meeting To Create A Conservation Bonus Point And A Loyalty Bonus Point, and To Increase The Bonus Point Pass Percentage From 10% To 20%.

Presenter: Steve K. Ferrell

Deputy Director Ferrell stated each of these items, by the way, will need to have some discussion on the actual rule language text; so, hopefully, you have that document in front of you. That's the copy that was faxed to you on Monday.

On W1, this is the loyalty bonus point and the bonus point percentage pass from 10 to 20%. You probably noticed that this package also contains the change in rule language to affect the Commission's intentions on the purchased bonus point, which you already approved at a previous meeting. If you go to page 8 of the rule language, I want to draw your attention to paragraph D2, which is on the top quarter of the page. There is a change that needs to be made to that sentence. If you were to read paragraph D on its own, the reader doesn't draw the conclusion that a hunting license number or the fees to obtain a hunting license through the draw, are prerequisite to being able to purchase a bonus point. You do draw that conclusion if you read paragraph C and D in concert. We would like to clarify D so that it is obvious that that is a requirement so the reader doesn't also have to read paragraph C to draw that conclusion. What we would like to do is change sentence 2 to read the following: "Include with the application, payment for the permit application fee, and if the applicant has not purchased a license for the season for which the application is being made, a fee for the license; and." Are there any questions on that change? That makes it clear to the reader, by only reading D, that the license is required. He gets that conclusion if he reads D with C without that change, but we think it's better to clarify it in D also. Deputy Director Ferrell stated he is asking the Commission to approve the rule language with amendments in this presentation. Any questions?

Commissioner Melton replied he has a comment. I agree with Steve. I think we needed this as clear as we can to eliminate any confusion on exactly what's happening. This does clarify it really well and I think we need to be very clear and to the point to avoid any more confusion than we have to. You guys have done an excellent job.

Commissioner Golightly asked why only go back to 2001 to begin this? Why wouldn't you go back 5 years so that everyone would start off with a point. Deputy Director Ferrell answered this will give everyone their 5th year at the fall 2005 draw. So it will be in effect as soon as the rule is effective in April. The draw that occurs next June and July would allow for the loyalty bonus point because that would be the 5th year. We wanted it to be effective at the earliest possible draw. This is based on calendar year not fiscal. Commissioner Golightly asked why would you lose it if didn't apply? Deputy Director Ferrell replied that was purposeful, the thought being that it would encourage people to continue their string of consecutive applications. For example, let's say there is a tendency for people who burned a large number of bonus by being successful in a draw thinking, "Well it took me 12 bonus points to draw that tag and maybe I'll sit it out for a couple of years." This would provide them with some incentive to continue their string of applications. It is our belief that this specific address would favor residents. Commissioner Golightly stated the loyalty point would count if you put in for a bonus point only draw, right? Deputy Director Ferrell replied that was correct.

Motion: Melton moved and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE REVISED AND COMBINED NOTICE OF PROPOSED RULEMAKING TO CREATE A CONSERVATION BONUS POINT AND A LOYALTY BONUS POINT AND TO INCREASE THE BONUS POINT PASS PERCENTAGE FOR THE BIG GAME DRAWING FROM 10% TO 20% AS AMENDED IN TODAY'S PRESENTATION.

Further discussion:

Commissioner Golightly said he voted no on this at the Commission meeting and the reason I would have liked to have them separated because I do want the 20% pass through, but they are combined. What does this do to new recruits coming into the system like youth? Doesn't it put them behind? Commissioner Chilton replied they will get there, it will take time. Deputy Director Ferrell stated he is assuming you are referring to the loyalty point. That is the point I believe Don Farmer raised. Obviously, if they are too young to have had 5 consecutive draws prior to 2005, they wouldn't be able to acquire it until such time that they had those 5 consecutive applications. So, it would affect them I guess for a short while. Commissioner Golightly asked what is short to you. Deputy Director Ferrell answered 4 years, 5 years maximum.

Commissioner McLean called for the question.

Vote: Aye: Chilton, McLean, Melton, Gilstrap
Nay: Golightly

Motion carried.

2. Consideration Of Revisions Made To The Notice Of Proposed Rulemaking That Was Approved At The September 17, 2004 Commission Meeting To Require All Big Game Applicants To Purchase A Hunting License To Apply For The Draw.

Presenter: Steve K. Ferrell

Deputy Director Ferrell brought the Commission's attention to W2. This is the consideration for revisions made for the purpose of requiring all big game permit applicants to purchase a license to apply for the draw. If the Commission will look at the rule language on page 5, paragraph D4, there is a typographical error in the copy you have before you. On the second line immediately following that underlined text a license by, the following word should be "completing" instead of "complete." On page 10, at the very top of the page, starts out "its authorized agent:" In number 1 after the word name, we would like to insert the words "home mailing" in front of word "address." Those are the only changes to this package.

Commissioner Chilton if there were any further comments. Commissioner McLean stated on other pages it says "applicants name," just for consistency do you want it the exact same way? Deputy Director Ferrell replied that is a good idea.

Motion: Melton move and McLean seconded THAT THE COMMISSION VOTE TO APPROVE THE DEPARTMENT'S RECOMMENDATION.

Vote: Aye: Chilton, Gilstrap, Melton, McLean
Nay: Golightly

Motion carried.

Deputy Director Ferrell stated that for the record that W2 passed as amended by today's presentation.

3. Consideration Of A Notice Of Proposed Rulemaking To Create A 10% Nonresident Set-Aside For Bighorn Sheep.

Presenter: Steve K. Ferrell

W3 is the item that would change proposed rulemaking to create a 10% nonresident set-aside for bighorn sheep. This rule language doesn't require any wordsmithing, but I would like to make sure the Commission has a conversation, if necessary, regarding Paragraph E on page 7. Presently, the way we've worded this, as you can see there, is the Department shall set aside 10% of the total available bighorn sheep hunt permit tags in any calendar year rounded to the nearest whole number to be issued to nonresidents and ensure no more than 50%, or no more than 2 bighorn sheep hunt permit tags of the total available in any hunt number are issued to nonresidents. The issue I want to talk about is the percentage there, the 10%. As we talked on Friday evening, we agreed that this 10% should be inserted there. In the event that the analysis of those draw numbers would cause it to exceed 10%, the rule language would have to be pulled for the fall of 2005. I ask the Commission to discuss the merits of putting a range of no less than 10% and no more than 15% of the total available bighorn sheep hunt permit tags, in the event that our analysis would indicate that the nonresident impact is somewhere between 10 and 15%. If we don't do that, let's say it turns out to be 12 or 13%, then you will have to pull this rule package and run the 2005 sheep draw without any nonresident restrictions. The other side of the coin is putting 10 to 15% in there could cause a point of debate or discussion with members of the public, or, perhaps, GRRC, and if you are concerned about that, I would ask Asst. Atty. General Jim Odenkirk to offer you some discussion as to whether that is a real concern or not.

Commissioner Melton stated that he thinks that is exactly what Brian Dolan was talking about, and that's the question I ask. I would probably suggest that we change that language to not greater than 15% of the total available. That way, anything below that, we come down with our documentation would be fine with sitting at that number, If we had said not greater than 15% of the total available bighorn sheep tags.

Commissioner Gilstrap, as I remember in that discussion when Commissioner McLean made the original motion and discussed about pulling it, the 10% was if it exceeds that, we can pull it. I don't think there is anything that said we have to pull it. Commissioner Chilton said we don't want to leave any doubt in anybody's mind. Commissioner Gilstrap, but if it went to 11%, we could choose to pull it or not pull it, is that correct? Commissioner McLean stated his original motion and original intent was to use a specific percentage with the understanding that if the statistics that are going to be gathered, that there simply would be a bit of a gray area in there. I have to tell you, if Jim Odenkirk can bless Commissioner Melton's idea, I think that is a better solution than a gray area, simply because that would allow us, if numbers come back 8%, use 8. If the numbers come back 12 or 13%, then use that. I simply would have to defer to the wisdom of Jim Odenkirk as to whether we could do that and in final rule, use a finite number rather than a range.

Asst. Atty. General Odenkirk replied he thought that would be a better approach for purposes of rule making under Title 41. If you had it at 10% and statistics came back and said that it should have been at 8% or 12%, you would have to go back and supplement your rule making to reflect that change. That would cause a 30 day delay in the process. But if you inform public upfront in

your first notice of proposed rulemaking that it may be as high as 15% or something less than 15%, so when the information does come forward and you have a more definitive answers to where that percentage should be placed at, the public has already been put on adequate notice that it is going to be within that range. I don't think you need to then go back and do supplemental rulemaking because I don't think it would constitute a substantive change to the rule. You could eliminate the range at the point you determine what that number should be, and actually plug that number in before you finally adopt this rule and before it goes to GRRC. I am comfortable with the range concept.

Commissioner McLean added that if Mr. Odenkirk was comfortable with that range, he would certainly go with Commissioner Melton's suggestion. Joe, that is an excellent idea. Commissioner Melton stated he thinks Brian Dolan was right at that area; he was unsatisfied with 30%, but the 15% would be fine. If we have to pull it above 15%, or we can't document 15%, then I don't know what we are going to do after that. It will go for whatever, but I think with requiring license fees up front, I think we are going to reduce that pool quite substantially.

Motion: Melton moved and McLean seconded TO CHANGE THE LANGUAGE FROM "TO NOT GREATER THAN 15%."

Vote: Unanimous

Commissioner Chilton stated that we have changed language there. Any questions about issue? Commissioner Melton asked about the legal part of it and the letter that went to the Attorney General's office. Jim, what's the time frame on that, are we within the frame that if something comes back negative and they are not going to defend us on that, I think with this 15% we have really opened the door up to where we are trying to fix it. If the 10% cap is illegal, we are talking about 15% now, so we are trying to modify this law and I think we have a lot better defense of this issue now.

Mr. Odenkirk replied yes, and that is going to have to be reviewed by the lawyers that represent Risk Management, but you have quite a bit of flexibility here that if, for any reason, the Attorney General's office says you are not going to be covered, you can decide to not enforce the rule, just like you did this year with the buffalo rule for the spring hunt. So, you have some time and flexibility to respond to anything that the Attorney General's office says on this issue. I concur with your sentiment that the effort that you are making here is an attempt to be in compliance with the court order and not to do something unconstitutional. I would suspect that the Attorney General's office would defend your actions.

Commissioner McLean, my only question still goes to D. It appears as though we are going to leave a 10% cap on bison? Deputy Director Ferrell replied that is correct. The way your motion read at the end of Friday evening was to only defer the bison cap for spring of '05. In order to make that happen, but not extend that beyond spring of '05, you have to leave it alone, and then let the Commission decide to not enforce that provision because if you were to change the rule language for spring '05, you couldn't possibly get it back as an option to enforce for fall of '05. Commissioner McLean said he now understands. Deputy Director Ferrell said that the intent is that the Commission wouldn't enforce their cap on bison for the spring of '05. Commissioner McLean asked if we wanted to change in future, we can do that? Deputy Director Ferrell said that is correct. I think your options after this is either to enforce the cap, depending on whether

the analysis of the numbers justifies that, again, defer enforcement of the cap for another point in time, or eliminate the cap by a rule change at some other period of time.

Commissioner Gilstrap asked a point of clarification. I just want to make sure that in Commissioner Melton's motion that his motion was to include item W3, create a 10% nonresident set-aside with the revised language and not just a change in the language. Would that be correct? Commissioner Melton replied yes. We are not talking about a 10% anymore, we are talking about a not greater than 15%. Commissioner Melton just moved the language in E, but if we need to correct it, we need to do that also, if there are other statements in there talking about a 10% instead of a 15% cap.

Motion: Gilstrap moved and Melton seconded a motion TO APPROVE NOTICE OF PROPOSED RULEMAKING TO CREATE A NONRESIDENT SET-ASIDE FOR BIGHORN SHEEP.

Vote: Unanimous.

Motion: Melton move and McLean seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned at 8:29 a.m.

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Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

William H. McLean, Member

ATTEST:

Duane L. Shroufe
Secretary and Director