

Minutes of the Meeting of the
Arizona Game and Fish Commission
Friday, February 13, 2004 – 8:00 a.m.
Old City Hall, 180 W. First Street
Yuma, Arizona

PRESENT: (Commission)

(Director's Staff)

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

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

Chairman Chilton called the meeting to order at 8:00 a.m.

1. Executive Session

- a. Sale or Lease of Real Property
- b. Legal Counsel. *State of Arizona v. Norton*, CIV 02-0402-PHX-FJM; *Montoya v. Manning*, 301. F.3d 985 (9th Cir. 2002); *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754; *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313; *Ameduri and Yee et al. v. U.S. Forest Service et al.*, U.S. District Court No. CIV 02-2495 PCT FJM; *Bar D Cattle Co. v. Shroufe*, CIV2002-0872; in the matter of *Search Warrant No. CR 2002-2395SW*; *The Fund for Animals et al. v. Norton et al.*; USDC D.C. 1:30-CV-00892 (RJL); and *Phelps Dodge v. Arizona Dept. of Water Resources*, LC2003-000243-001DT.

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

Vote: Unanimous

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Meeting recessed at 8:02 a.m.

Meeting reconvened at 9:12 a.m.

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Chairman Chilton called the meeting to order at 9:12 a.m. The commissioners introduced themselves and Chairman Chilton introduced the Director's staff. The meeting followed a revision dated February 9, 2004.

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2. Presentation by Charles Flynn, Executive Director of the Yuma Crossing National Heritage Area

Presenter: Larry Voyles, Region IV Supervisor

Mr. Voyles gave opening comments and introduced Charles Flynn who gave the Commission a briefing of the Yuma East and West Wetlands Projects. The Commission did not take any action on this item.

The Yuma Crossing National Heritage Area (YCNHA) is a grassroots effort. The designation was approved by Congress in 2000, and up to \$1 million is provided in matching funds to do projects that will conserve, interpret, and enhance the area's natural, cultural and history resources. Planning and projects are based on voluntary efforts.

Handouts were provided to the Commission. Seven districts are within the plan, but focus was on two. The West Wetlands, a major urban park, was described. The Commission gave the first grant of \$25,000 for a bird observation area in 1998.

Emphasis was placed on progress on the East Wetlands project. The YCNHA expected to receive \$3 million in appropriations this year. The total cost of the project would be approximately \$20 million. It was hoped the Commission and Department would continue as partners in the effort.

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Former commissioner Larry Taylor was present and introduced by Chairman Chilton.

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3. Litigation Report

State of Arizona v. Norton, CIV 02-0402-PHX-FJM; *Montoya v. Manning*, 301 F.3d 985 (9th Cir. 2002); *In Re General Stream Adjudication for the Little Colorado River and Gila River*; *Mark Boge v. Arizona Game and Fish Commission & Shroufe*, CIV 2000-020754; *Mary R. LLC, et al. v. Arizona Game and Fish Commission*, CIV 2001-015313; *Ameduri and Yee et al. v. U.S. Forest Service et al.*, U.S. District Court No. CIV 02-2495 PCT FJM; *Bar D Cattle Co. v. Shroufe*, CIV2002-0872; in the matter of *Search Warrant No. CR 2002-2395SW*; *The Fund for Animals et al. v. Norton et al.*; USDC D.C. 1:30-CV-00892 (RJL); and *Phelps Dodge v. Arizona Dept. of Water Resources*, LC2003-000243-001DT, and issues associated with potential litigation over the status of black-tailed prairie dogs and mountain plovers, and Mexican garter snake.

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

Mr. Odenkirk noted there were actions to be taken as a result of discussion in executive session. The actions involved settlement agreements.

The first settlement agreement involved litigation regarding the *State of Arizona v. Norton* on Alamo Lake and burro management issues. Modifications had been resolved and were offered for formal approval by the Commission.

Motion: Carter moved and Melton seconded THAT THE COMMISSION APPROVE THE SETTLEMENT AGREEMENT AS PROPOSED AND DISCUSSED IN EXECUTIVE SESSION.

Vote: Unanimous

Mr. Odenkirk stated the other matter involved Page Springs Hatchery (*Mary R. LLC, et al. v. Arizona Game and Fish Commission*). He summarized the agreement's main points.

The agreement will provide for a resolution of all claims in the litigation the plaintiffs have made against the Commission with regards to the allocation and distribution of water from the Page Springs source. The Commission would agree to a 50/50 split with the plaintiffs of the water source. This is the status quo. The Commission would make a financial contribution of \$15,000 to be used for renovation of the ditch below the hatchery property and to repair appreciable leaks on the ditch to allow for more efficiency. The agreement will resolve the claims and will require the plaintiffs to dismiss the case and prohibit them from filing further related action unless it is brought up in the course of the general stream adjudication, which is intended to resolve all claims by all water users in that watershed.

Motion: Carter moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THIS AGREEMENT AS PRESENTED DURING EXECUTIVE SESSION.

Vote: Unanimous

In the matter of *Search Warrant No. CR 2002-2395SW*, Mr. Odenkirk noted there was a modification in the report. The petitioner's counsel (Tom Baker) has filed a motion to continue the evidentiary hearing because of a scheduling conflict. The matter would be continued to a later date, but it is currently not scheduled.

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

Presenter: Bob Broschied, Acting Habitat Branch Chief

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

Commissioner Carter was pleased to report the Frye Mesa road project was underway.

Additional information was provided regarding livestock grazing in bighorn sheep habitat on the Big Ranch A allotment in Unit 15C. Mr. Broschied stated the Department participated in a meeting with the Bureau of Land Management (BLM) on the evaluation of the allotment. The Department had concerns with the evaluation because it lacked sufficient data to analyze impacts on wildlife. The Department was working with BLM

on these concerns. The Department was currently drafting monitoring protocol. A written monthly update would be provided to the Commission on this issue.

Commissioner Melton spoke about the Barry Goldwater Range and the Integrated Resource Management Plan. The Commission commended the work done by Region IV personnel on keeping 70% of the roads accessible.

Commissioner Carter referenced page 5 of the report (Coronado National Forest) and development of the Mount Graham Sky Island Demonstration Project proposal by the Environmental Economic Communities Organization (EECO) and current forest treatment efforts. He stated after all the meetings with the county supervisor and the EECO and all the actions taken with regard to the assessments of the sites that were included in the proposal, Senator Kyl's office stated mark-up on appropriations for the Department of Agriculture will be underway next month. This involves appropriation of \$1 million and is a priority of the Senator's. This would be in addition to what the U.S. Forest Service (USFS) has already committed. The County Board of Supervisors will be meeting with the new Forest Supervisor within the next two weeks. He urged the Commission and Department to support the project and work with the USFS in advancing this particular forest demonstration project. This particular grant application is well documented and it was disappointing that the USFS, which has an opportunity to receive additional funds, is saying they were not interested. Senator Kyl and Congressmen Kolbe and Renzi were supportive of an appropriation. About 2000 acres out of 200,000 acres on Mount Graham would be affected. About 3000 acres of spruce forest on top of Mount Graham were dead. This was a critical habitat area for a number of species.

Commissioner Carter asked the Commission to direct the Director to convey to the Regional Forester and the Forest Supervisor the Commission's affirmation of support for the project and to accept additional resources to deal with the problem. Director Shroufe believed personal contact with the new Forest Supervisor and the Regional Forester would be more beneficial than a letter. Commissioner Carter agreed.

Commissioner Carter asked the Department to investigate why BLM does not favor the posting of signs at the corrals on the McEwan Ranch in Unit 28 to get to areas north of the river in the Fort Thomas area.

Commissioner Melton referenced wildlife water catchments on the Sonoran Desert National Monument. For the next meeting in Tucson, he wanted the Department to provide more information on the people appealing those water developments.

Mr. Adkins gave information on a recent court decision on wilderness and the reintroduction of fishes from hatcheries. The decision was made by the 9th Circuit Court involving the State of Alaska conducting a fish stocking program in a wilderness area. The Court determined this to be a commercial enterprise that was not allowed under the Wilderness Act. The opinion is being scrutinized by the State of Alaska. Alaska was not a party to the lawsuit, which was against the U.S. Fish and Wildlife Service (FWS). The State of Alaska was asking the Department of Justice to seek a writ of certiorari in the case to take it to the Supreme Court. The court's interpretation of the term commercial

enterprise is counter to years of practice by wildlife agencies. If the ruling stands, it could have an effect on activities the Arizona Game and Fish Department is carrying out on wilderness areas.

Director Shroufe gave an update on public lands issues. Several weeks ago he met with the State Land Department regarding the current map of the Petrified Forest National Monument. The map of the expansion has been refined to address access issues. We are addressing the issue in legislation of being able to maintain livestock waters as wildlife waters in cooperation with the National Park Service (NPS).

Another issue is bison being on the Grand Canyon National Park. As a result of a meeting with Senator McCain in December, Park Superintendent Joe Alston sent a letter to the Senator's office. The Department received a letter from Senator McCain stating the Department should be working on the issue. Recently it was alleged the Governor's Office was setting up a meeting between all entities on February 25 to discuss the bison issue. The Department did not receive any word of this meeting. He contacted the Governor's liaison and she was unaware of any meeting being scheduled.

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club (YVRGC), stated BLM prepared an Environmental Assessment (EA) for the Sonoran Desert National Monument that concluded the maintenance and upgrading of 16 existing catchments within the monument would not significantly affect the environment; therefore, an Environmental Impact Statement was unnecessary. The appellants requested a stay of BLM's decision claiming irreparable harm if maintenance and redevelopment of the existing catchments were to proceed and that the EA was inadequate and unresponsive. The Interior Board of Land Appeals (IBLA) deputy chief administrative judge granted the appeal on August 15, 2002. The YVRGC and several other groups summoned assistance to try to get jurisdiction from the Secretary of the Interior.

Key legal issues in the case are:

- Does the proposed action by BLM to maintain and redevelop the 16 catchments in the monument comply with the purpose for which the monument was established? The attorney (Bill Horn) stated yes.
- Does the proposed maintenance and redevelopment of these catchments impose irreparable harm on the appellants sufficient to justify and sustain a stay? No
- Does the proposed actions in the EA satisfy NEPA? Yes

The Secretary read the document and sent it to BLM. Kathleen Clark, Director of BLM, wrote a letter to Bill Horn of the U.S. Sportsmen's Alliance. Jim Hughes, BLM Deputy Director for Policy, concluded that according to IBLA the water catchments were operational, and while not at desired capacity or design, they provide water to wildlife. Due to this fact, the current process would continue the Secretary would not be asked to assume jurisdiction of this case.

The catchments upgraded in the 1990s were in wilderness areas and have nothing to do with this EA. According to Mr. Horn, the process was at a standstill and assistance should be requested from the Game and Fish Department to formally object to this mistaken assertion. He asked the Commission to direct Messrs. Adkins and Odenkirk to contact Mr. Horn to ask what was needed to further pursue and resolve this issue.

Director Shroufe noted for the record it was important that in bringing this to the attention of BLM and the attention of the Secretary, the letter was in error. This is a big issue as well with the Western Association of Fish and Wildlife Agencies and the International Association of Fish and Wildlife Agencies.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION DIRECT THE DEPARTMENT AND ITS LEGAL COUNSEL TO PREPARE NECESSARY WORK TO CONVEY IN A FORMAL SETTING FOR THE RECORD OUR POSITION IN THIS MATTER.

Mr. Adkins stated the Department intervened in this case when it was first appealed. We were allowed to do that by IBLA. The BLM did not oppose the stay order at the time. Based on that, IBLA stated the real party did not oppose the stay so the stay was ordered. It was determined what the Department was doing was permissible under the stay order. The Department and BLM asked for clarification by IBLA; IBLA gave what it thought was clarification. It was clear, however, nothing had been shown to persuade them to expedite this appeal. The stay may be running the last stage and the IBLA may be on the verge of issuing a final order.

Commissioner Carter stated the Department should meet with Mr. Horn to reaffirm its position that there needs to be a decision by IBLA or to pursue the Secretary taking jurisdiction.

Commissioner Melton noted there was an ongoing process to redevelop all waters into a permanent source so as not to haul water. The new underground systems are reliable but many need to be done. They are very compatible for use in national monuments. Documentation should be provided to show what has been done. A statement should be made that we cannot continue with the process until some resolution is made on the issue. Chairman Chilton reemphasized that the IBLA was halting a process that would permit the water provision to be more environmentally sensitive and have less impact. The point should be made these water developments cause less of an impact than hauling water. We could provide maps showing catchments redeveloped in the 1990s and the ones that are at issue in the EA.

The motion was reiterated.

Motion: Carter moved and Melton seconded THAT THE COMMISSION DIRECT THE DEPARTMENT THROUGH ITS LEGAL COUNSEL TO WORK WITH MR. HORN IN REAFFIRMING OUR POSITION OR REQUEST FOR THE SECRETARY TO TAKE JURISDICTION ON THIS ISSUE OR FOR THE IBLA TO MOVE FORWARD WITH A DECISION.

Vote: Unanimous

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club (YVRGC), referenced the Tumacacori Wilderness proposal. He quoted from the interim management policy for monuments, "The state's responsibilities and authorities regarding wildlife management, including fishing and hunting, within the national monuments are unaffected by legislation or proclamation." The Arizona Desert Wilderness Act states that and much more. It was not the area being designated but it was the implementation of the word, "wilderness" after Congress stated that was what it was going to be. Congressional intent was different from what it was intended to be. A good wilderness bill cannot be written.

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4.1. Policy Statement in Support of H.R. 1904, the Healthy Forests Restoration Act of 2003

Presenter: Bob Broschied, Acting Habitat Branch Chief

(For additional information, see Commission meeting minutes for January 16, 2004.)

Commissioner Carter offered the following alternative: The practice has been that when the Commission takes a policy position, it is usually heard at two Commission meetings. Previously, the Commission adopted two resolutions related to healthy forest needs. One done in March 2001 focused on the need for planning efforts and projects associated with forest health and forest restoration. It included a long-term plan that was consistent with the position taken by the Western Governors' Association. Another was a resolution to the President regarding the Health Forests Initiative. The Commission has made clear where it stands on the issue. He asked the Commission give consideration to reaffirming its position on healthy forests initiatives and resolutions that were adopted and conveyed to the Arizona congressional delegation and the Governor's Office. He asked the Director to convey by letter copies of the previous resolutions and the agency's commitment to be involved in the planning process and implementation related to wildlife habitat. This should be looked at in a broad perspective rather than a single issue.

Motion: Carter moved THAT THE COMMISSION DIRECT THE DEPARTMENT TO CONVEY IN WRITING THE TRANSMITTAL OF COPIES OF THE TWO PREVIOUS RESOLUTIONS THAT WERE ADOPTED AND TO CONVEY OUR COMMITMENT TO BE INVOLVED IN THE PLANNING PROCESS AND THE IMPLEMENTATION PROCESS WHERE APPROPRIATE WITH RESPECT TO THE FOREST HEALTH INITIATIVE, AS THEY AFFECT WILDLIFE RECREATION. THIS SHOULD BE SPECIFICALLY CONVEYED TO A NUMBER OF LAND MANAGEMENT AGENCIES: BUREAU OF LAND MANAGEMENT, U.S. FOREST SERVICE, U.S. FISH AND WILDLIFE SERVICE AND STATE LAND DEPARTMENT.

Commissioner Gilstrap stated he would second if the motion would include the Secretary of the Interior and the Secretary of Agriculture. They were included.

Chairman Chilton commented the point was the Commission wanted its policy on habitat health to be the real picture, not a single species focus. There were impediments to the implementation of forest health measures.

Vote: Unanimous

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5. Request for the Commission to Approve a Memorandum of Understanding Between the Arizona Game and Fish Commission, Arizona State Parks, City of Scottsdale, The Nature Conservancy, U.S. Army Corps of Engineers, Bureau of Land Management, Bureau of Reclamation, and the U.S. Fish and Wildlife Service Regarding Cooperation within the Bill Williams River Watershed in Southwest Arizona

Presenter: Bob Broschied, Acting Habitat Branch Chief

The purpose of the Memorandum of Understanding (MOU) between the Commission and Arizona State Parks, City of Scottsdale, The Nature Conservancy, U.S. Army Corps of Engineers, Bureau of Land Management, Bureau of Reclamation, and the U.S. Fish and Wildlife Service is to form a partnership to facilitate and implement an adaptive approach to water resource management and watershed health in the Bill Williams River watershed. This partnership would focus on the operation of Alamo Dam. Under the terms of the MOU, the Department will participate in the Bill Williams River Corridor Steering Committee. The Steering Committee will provide a collaborative, science-based framework that can inform decision-making and lead to the conservation and enhancement of this riparian ecosystem in the Lower Colorado River corridor.

Motion: Gilstrap moved and Golightly seconded THAT THE COMMISSION VOTE TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE ARIZONA GAME AND FISH COMMISSION, ARIZONA STATE PARKS, CITY OF SCOTTSDALE, THE NATURE CONSERVANCY, U.S. ARMY CORPS OF ENGINEERS, BUREAU OF LAND MANAGEMENT, BUREAU OF RECLAMATION, AND THE U.S. FISH AND WILDLIFE SERVICE REGARDING COOPERATION WITHIN THE BILL WILLIAMS RIVER WATERSHED IN SOUTHWEST ARIZONA, AND AUTHORIZE THE DIRECTOR TO EXECUTE THE AGREEMENT AS ATTACHED OR APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Gilstrap and Golightly – Aye
Chair voted Aye
Melton and Carter – Absent for Vote

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Meeting recessed at 10:46 a.m.

Meeting reconvened 11:00 a.m.

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6. Request for Commission Approval to Renew a 10-year Right-of-Way, No. 18-54247 and Right-of-Way in Perpetuity for Access Across State Trust Land to the Commission-leasued Sierra Vista Public Shooting Range

Presenter: Bob Broschied, Acting Habitat Branch Chief

In March 1995, the Commission approved a 10-year Right-of-Way (ROW) from the State Land Department for roadway access into the Sierra Vista Shooting Range.

This ROW expires on April 17, 2004. The Department requested Commission approval for a renewal application for a 10-year lease to continue public access to the range. The Department anticipated the Commission's Recreation and Public Purposes lease for the range would receive a patent in December 2004. In preparation for receiving the patent from the Bureau of Land Management, the Department recommended the Commission also approve the submittal of a ROW application for maintaining public access to the Range in perpetuity.

Motion: Gilstrap moved and Golightly seconded THAT THE COMMISSION VOTE TO APPROVE THE RENEWAL OF A 10-YEAR RIGHT-OF-WAY NO. 18-54247 AND RIGHT-OF-WAY IN PERPETUITY FOR CONTINUED ACCESS ACROSS STATE TRUST LANDS INTO THE COMMISSION LEASED SIERRA VISTA PUBLIC SHOOTING RANGE IN SIERRA VISTA, ARIZONA.

Vote: Gilstrap, Melton, and Golightly – Aye
Chair voted Aye
Carter – Absent for Vote

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7. Statewide Shooting Range Project Update

Presenter: Kerry Baldwin, Education Branch Chief

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

Commissioner Melton asked about the Tri-State Shooting Center. Mr. Baldwin stated there was concern from members of one of the tribes regarding noise. A sound survey was done and the range was within standard. The issue was being dealt with at the local level. It could possibly add another 30-60 days to the overall EA process to deal with this tribal issue.

Commissioner Golightly asked how the money was accounted for from vendors and concessionaires at the Ben Avery Shooting Facility. He asked the financial status be provided to the Commission by the end of next week. Mr. Baldwin stated there were two situations currently ongoing at Ben Avery. One is a historic understanding we have with the Arizona State Rifle and Pistol Association (ASRPA). The Ben Avery fund was created and managed by ASRPA to support projects at the range. The Department collects the funds and split them at the end of the day. The other situations are vendors

who pay daily user fees to sell at the Range. Except for one group, there has been no interest expressed to be at the Range on a continuing basis.

Commissioner Golightly asked if sales adhere to the Administrative Procedures Act. Mr. Baldwin thought the relationship with ASRPA should be formalized in a written document; procedures dealing with daily vendor fees were okay. Commissioner Golightly stated it was important for the Department to be accountable and follow state accepted procedures in handling money. Mr. Baldwin noted the Department's collection of fees goes through the accounting system and the Department's internal auditor conducts an audit annually. Commissioner Golightly was interested in seeing the Ben Avery Fund on paper, including the split. Commissioner Gilstrap agreed with Commissioner Golightly. He stated some clubs maintain they make sizeable contributions to Ben Avery and the Department, when actually they serve as a conduit for money that belongs to the facility. He suggested looking at plans and money-making processes to see where the Department might be its own conduit and to allow for more cash flow into the facility or reduce the subsidy as it is. Mr. Baldwin stressed the importance of looking at profit centers. All of the money generated stays and gets used at the shooting facility. The Commission would be provided with an overview to determine money sources.

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7.1. Substantive Policy: Arizona Wildlife Conservation Fund Expenditures

Presenter: Kerry Baldwin, Education Branch Chief

For additional information, see Commission meeting minutes for January 16, 2004, pages 14-18 and 20-21.

This was the first hearing of the substantive policy to clarify the Commission's interpretation of language in the initiative of the Arizona Wildlife Conservation Fund (WCF) about how and where monies may be expended in the conservation enhancement and restoration of Arizona's diverse wildlife resources and habitats for present and future generations. This was not an overall substantive policy on all of the expenditures that might occur under the WCF or other interpretations, but was specifically on the shooting sports.

Two versions were provided to the Commission for further discussion. Mr. Baldwin pointed out that the last line in the second paragraph in Version B should read "...historically part of our ...". Shooting sports are a part of the wildlife management program, and not an allied part of.

Relating to use of funds being generated, Commissioner Golightly was concerned "habitat acquisition" was deleted in #1 in Version B.

Mr. Baldwin felt the role of hunters was limited in #2. It was focused on hunters assisting the Department to reach harvest objectives and doesn't reference the importance of hunters' revenue, political support and volunteer time to the agency.

Mr. Baldwin noted #3 in Version B, “identified as integral to the wildlife management duties of the Commission.” Training and safe legal handling of firearms may not be integral as it is an option for the Commission. He preferred that legal counsel rewrite the paragraph.

Mr. Baldwin had a question on #5 in Version B relating to the closure of forest recreation areas. He was unable to think of an example of a closure being a direct result of not having ranges. While public lands may be a concern, there may not be a place for it in this particular policy. The policy should explain why the Commission believed shooting sports were an important part to the wildlife conservation program and its relationship to it.

Commissioner Carter thought there was too much emphasis on a single issue; there should not be a lot of single pieces about why the Commission needed to do this. The more there was in the policy, the more it opened the door to challenges.

The Commission consensus was that Messrs. Baldwin and Odenkirk rewrite the policy and present it after lunch.

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8. State and Federal Legislation

Presenter: Anthony Guiles, Legislative Liaison

The deadline for bills to be introduced in the House was this past Monday. There are currently about 1200 bills.

Mr. Guiles referenced a memo dated January 23, 2004, previously sent to the Commission regarding definitions of legislative positions. There are four positions the Commission currently takes: Support, Oppose, Monitor Closely and Monitor. The Department recommended three positions: Support, Oppose and Monitor. There has been confusion regarding opposition to certain provisions of a bill. For clarification, the Commission could oppose a bill until changed and then the Commission could take a formal position to support it. Commission consensus was to go with the Department’s recommendation.

Mr. Guiles and Director Shroufe would use their discretion to call the designated commissioners (Gilstrap and Golightly) on emergency amendments to bills on the floor of either the House or Senate.

H 2179 (Hunting; transfer of permit) – Commission *consensus was to support the bill in its present form.* The bill passed the House this week and was on the way to the Senate.

H 2158 (Shooting Range Preservation) – This bill is designed for the Ben Avery Shooting Facility. Attention was given to one provision on the last page of the bill, stating the Commission cannot close the facility without a joint resolution of the Legislature and an Executive Order signed by the Governor. The Department was working to kill the bill in its current form. *The Commission did not support the bill in its current form.* If the amendment were removed, the Department would have to come back and ask for a formal opinion from the commissioners.

SCR 1014 (Lottery monies; reallocation, raffles) – This bill was held on the calendar and was not scheduled for a hearing this upcoming week. The *Department would continue to monitor this bill.*

H 2137 (Game and Fish Commission members) – This bill would limit the term of a member of the state Game and Fish Commission to three full terms. The length of term is reduced to 4 years from 5 years. Current terms of members are not affected by the change in term length. The Commission *consensus was to oppose the bill in its current form.*

H 2244 (Water rights; Zuni settlement) – The Commission *position was to support this legislation.*

H 2307 (Fire Districts; Lake Improvement Funds) – A provision within the bill would limit SLIF monies to only those bodies of water that allow gasoline-powered engines. The Department receives monies through the SLIF Program and this would severely limit the ability for us to do lake improvements. Commission *consensus was to oppose the bill.*

H 2549 (Healthy forest/pilot program) – The Commission *position was to support the legislation.* The bill would require the state forester to identify areas, including deep forest and the “urban interface,” for pilot programs to promote forest health and to explore public/private partnerships; work with federal agencies, etc.

H 2647 (Watercraft; DUI) – This bill would alleviate some of the problems from the last legislative session on making penalties higher for people who refused to submit to a test to determine blood alcohol content. Last year the Legislature approved a surcharge on DUI and OUI fines but failed to put a surcharge on the refusal. This bill would add the surcharge on the refusal. It would eliminate the provision that any amount over \$290,000 goes into education; the Commission would now be able to spend the money where appropriate. It would also authorize \$100,000 to be spent out of the Watercraft Fund for the establishment of an OUI database and staff necessary to maintain it. Commission *consensus was to support the bill.*

HCR 2016 (Tax increase by initiative, vote) – This bill would require a 2/3 vote for any increase in revenue to the state. Commission *consensus was to monitor the bill.*

HCR 2001 (Federal monies; state agency reports) – Federal monies received and applied for would have to be documented to JLBC. Most of the information is already available on the state agency accounting system. Commission *consensus was to monitor the bill.*

S 1279 (Lobbyists; state funded) – This bill would not allow an employee of a state agency, board or commission to lobby; the director only would be responsible to answer questions made by the Legislature and would be the only representative of these bodies. Commission *consensus was to oppose the bill.*

S 1347 (Immunity; public entities) – This bill would grant absolute immunity from any action or damage caused by wildlife. The Department recommendation was to support; Chairman Chilton opposed the legislation. She preferred to monitor the bill until we find

out what it implies. Mr. Odenkirk stated he reviewed the bill. The problem with the bill's language is whether or not it would be effective at establishing immunity in the future for vehicular injuries caused by wildlife. A court could easily interpret this legislation as saying that in those types of situations the injury was not caused by wildlife but by an agency failing to maintain safe roadways. If Game and Fish did something to relocate wildlife or to interact with wildlife to make it cause damage, the court may state the damage was not the fault of the wildlife but by the Department's act of intervention on the wildlife. The intent was to try to address these issues in cases in which there was some allegation of human failure associated with acts of wildlife, but he felt the legislation was not sufficient to adequately deal with the problem. The legislation would deal with cases in which wildlife has acted without any kind of human interference or human act or omission. On the issue of wildlife depredation, the Commission formerly took a position that the state was not legally responsible to pay damages for depredation. This bill would be used in the future as a defense for depredation claims. Whether or not a court would agree the immunity extends to those kinds of claims is uncertain. The courts do not look favorably on immunity statutes and will try to interpret these provisions as narrowly as possible to the extent that there are other causes for damages other than just wildlife.

Motion: Golightly moved THAT THE COMMISSION SUPPORT THE LEGISLATION.

The pros and cons of the bill were further discussed.

Mr. Odenkirk pointed out if the state wants to be absolutely immune from any acts caused by or that involve wildlife, the bill should be amended to be more broadly stated so that it does include human failure that causes injuries involving wildlife.

Commissioner Carter believed if the Commission supported this legislation, it would be another tool that could be used as a part of a defense. In that case, the Commission should support the bill in its present form.

Mr. Odenkirk stated there was some concern that if absolute immunity were established, claims would be eliminated based on negligence. The issue is whether or not the state should avoid that kind of responsibility. There are other examples under qualified immunity where the state essentially is not liable for acts of negligence but is responsible for acts of gross negligence or reckless behavior.

Chairman Chilton felt this legislation should be looked at carefully before the Commission took a position of opposing or supporting.

Commissioner Golightly withdrew his motion. Commission *consensus was to monitor the bill.*

H 2693 (Forest health & fire safety) – This legislation came out of the Governor's Healthy Forest Council. The Department was involved in this process. The Department recommended that the Commission support. This legislation would give the State Forester a Cabinet level position and create his own independent agency to work with the State Land Department. Director Shroufe noted the State Forester is the State Land

Commissioner now and this bill's intent would separate the two and elevate the Forester. The forestry aspect in the state had been neglected. Commission *consensus was to support the bill*.

Mr. Guiles referenced a document recently provided to the Commission that may result in legislation related to ranching for wildlife. At this point, there has been no introduced legislation. This language may be introduced as a striker or it could get a special dispensation from the Speaker to be introduced. Mr. Guiles stated it would be beneficial for the Department to do an analysis of the document and to study the impacts of it. If the bill does come up with language, the Department would be prepared to make a recommendation to the Commission.

Commissioner Gilstrap noted the Commission has historically been on record of not supporting landowner tags. If this is a bill to do that, the Department may not have to do very much research. Director Shroufe pointed out the Department's constituents would be concerned if the Commission did not take a similar position as it had in the past on similar legislation. The Commission should make a statement if it was opposed.

Motion: Gilstrap moved and Golightly seconded THAT THE INDICATION OF THIS WAS IT WAS ANOTHER ATTEMPT TO PROVIDE LANDOWNER BIG GAME TAGS AND HISTORICALLY THE COMMISSION HAS BEEN ADAMANTLY OPPOSED TO THAT AND IF, IN FACT, THIS DOES EVOLVE AS A RECOMMENDATION IN SOME FORM FOR LANDOWNER TAGS, THE COMMISSION SHOULD AGGRESSIVELY OPPOSE IT.

Chairman Chilton opposed the motion and wanted to see what was really meant before she opposed or supported the bill. She was concerned about the juxtaposition of the last two subjects discussed, i.e., the Commission not being responsible for depredation or harm caused by wildlife. The next thing the Commission does is state it did not want to look at the concerns of people who are undergoing harm from wildlife. It was not a good message to send to people from whom we were trying to gain access and build relationships to continue hunting opportunities.

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

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Meeting recessed at 12:40 p.m.

Meeting reconvened at 1:15 p.m.

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Documents related to the budget were discussed. The first was the Watercraft Fund. The Governor's recommendation was for a \$750,000 transfer from this fund to use for General Fund purposes. The Governor's policy advisor and budget advisor have been apprised of the situation and impacts to the Department. The Watercraft Fund would go into a deficit December 2004, which could severely restrict the Department's ability to do law enforcement. The Department would continue to keep the Governor's Office informed.

Commissioner Gilstrap believed this transfer would not only be a program issue but a safety issue.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION SUPPORT THE BUDGET AS APPROVED, INCLUDING THE WATERCRAFT FUND.

Vote: Unanimous

There were two proposals for the OHV Fund. One was from OSPB, which would take \$692,000 off the top of the Department’s revenue portion (70/30 Game and Fish and State Parks), and then allocate the money accordingly. This would put us in a deficit in December 2004, since we would be getting only \$120,000 in revenue, compared to \$800,000.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION ESTABLISHED A BUDGET AND WENT THROUGH A GREAT OF DETAIL IN ESTABLISHING THAT BUDGET AND THAT THE COMMISSION CONTINUE TO SUPPORT THAT BUDGET, SPECIFICALLY, THE OHV FUND.

Vote: Unanimous

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7.1. Substantive Policy: Arizona Wildlife Conservation Fund Expenditures

The redrafted substantive policy (made part of these minutes) was discussed.

Motion: Commissioner Melton moved and Carter seconded THAT THE FOLLOWING WORDS BE ADDED AT THE END OF THE LAST SENTENCE IN THE LAST PARAGRAPH, “...IN ORDER TO MAINTAIN A BALANCE BETWEEN WILDLIFE POPULATIONS AND HABITAT CAPABILITIES.”

Vote: Unanimous

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16. Hearings on License Revocations for Violations of Game and Fish Codes and Civil Assessments for the Illegal Taking and/or Possession or 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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14. Request for Commission Approval of the Program Narrative for U.S. Coast Guard Boating Safety Funds (Federal FY 2004/State FY 2005)

Presenter: Leonard Ordway, Law Enforcement Branch Chief

The grant period would be from October 1, 2003 to September 30, 2004. Funds will be used in the State FY 2005 budget to supplement the Department's watercraft efforts in areas of law enforcement, administration, information, education, aids to navigation, and watercraft registration.

Motion: Carter moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THE PORTION OF THE DEPARTMENT'S WATERCRAFT SAFETY PROGRAM FUNDED BY U.S. COAST GUARD MONIES PURSUANT TO THE FEDERAL BOATING SAFETY ACT OF 1971 FOR STATE FY 2005.

Vote: Unanimous

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9. Request to Approve Notice of Proposed Rulemaking and the Preliminary Economic, Small Business, and Consumer Impact Statement for Amendments to R12-4-102, Fees for Licenses, Tags, Stamps and Permits, to Increase Fees Where Applicable to the Maximum Allowed by Statute

Presenter: Mark Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for October 17, 2003, pages 14-15.

In December 2003, the Department conducted public meetings at all regional offices to inform the general public and obtain feedback on the rulemaking.

The Department did not recommend increases to the following fees:

- The fees for all trapping and guide licenses will remain the same as directed by the Commission at the October meeting
- The public objected to the potential increase of the two-pole stamp. Internal Department comments supported this opinion and stated the fee increase to the two-pole stamp was unwarranted at this time.
- External comments stated the increase for license dealers was unjustified. A fee increase may cause several small businesses to discontinue their roles as dealers, thus impacting customer service.
- Colorado River Special Use Stamp fees should remain the same to be consistent with other fees for stamps that authorize fishing on bodies of water shared with other states.
- The Department proposed the resident hunt permit-tag fee for mountain lion be reduced to \$10 as stated in the five-year review for Article 1 and approved by the Commission at the October 2003 meeting.

Also, the Department received comments from the public who were apprehensive about the proposed increase to the White Amur Stocking License fee. However, the Department recommended with proceeding with the proposed fee increase.

The anticipated effective date for the amendments to R12-4-102 will be August 2004.

Motion: Gilstrap moved and Carter seconded THAT THE COMMISSION VOTE TO APPROVE THE NOTICE OF PROPOSED RULEMAKING AND THE PRELIMINARY ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT FOR AMENDMENTS TO R12-4-102, FEES FOR LICENSES, TAGS, STAMPS AND PERMITS, TO INCREASE FEES WHERE APPLICABLE TO THE MAXIMUM ALLOWED BY STATUTE, AND TO BE FILED WITH THE SECRETARY OF STATE.

Vote: Unanimous

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10. Request for Consideration of the Arizona Deer Association's Petition to Adopt a New Rule in Article III, Spotlighting at Night During Big Game Season

Presenter: Mark Naugle, Rules and Risk Manager

The Arizona Deer Association (ADA) drafted and presented proposed rule language that would further and more succinctly restrict the use of spotlights during big game seasons.

The Department reviewed the petition and agreed the intent of recommended rule language would address some issues associated with spotlighting. If the Commission provided direction to the Department to pursue rulemaking in accordance with the petition, rather than adopting a new rule, it would be more appropriate to adopt and add new language to existing rule AAC R12-4-303, Unlawful Methods, Devices, and Ammunition. The intent of the rule language suggested by the ADA could be drafted into new section(s) for R12-4-303. Given the relationship of this matter to both ARS Title 17 and Article III rules, significant internal and external review will be necessary to ensure all concerns and issues are addressed in deriving final rule language.

ARS §17-304(A) makes it unlawful for a person to take any wildlife at night with the aid of a spotlight, except as permitted by the Commission. Through rule, the Commission has only made allowances for the use of lights at night for the take of aquatic wildlife, raccoons, nongame mammals and birds, and reptiles, provided the light is not attached to or operated from a vehicle (except for aquatic wildlife).

There is little likelihood an individual would be convicted when the use of the spotlight is temporarily distant from the eventual take (i.e., the activities emphasized by the petitioner) because of all the defensible variables associated with the activity.

There is internal customer support within the Department for additional regulatory language regarding the use of spotlights. More restrictive and definitive regulations for spotlighting would assist and reinforce enforcement efforts. The use of spotlights for "recreational" purposes in relation to big game seasons has increased tremendously over the years. This activity is very prevalent during deer season on the Arizona Strip in Region II.

Other states' regulations range from being similar to our current loosely defined restrictions to the total yearlong ban on the use of spotlights to locate wildlife. Most states restrict the use of spotlights as an aid to the take of big game, and several states

further restrict the use of a spotlight for any wildlife-related purpose during their fall big game season timeframes. The petitioner's intent and request of the Commission are consistent with the spotlighting regulatory direction of several other states.

As defined in ARS §41-1026, there are no criteria to support an emergency rulemaking process for this issue. Given the existing rulemaking workload, the Department did not see this rule being accommodated outside of the normal cycle for Article III. The next normal five-year review for Article III rules will commence in January 2006. At that time, the Department would be able to adequately staff and address, within the entire Article III structure, all of the issues regarding spotlighting, including those presented by the petitioner. The rule would have a potential effective date of May or June 2008.

If the Commission proceeded out-of-cycle, at a minimum, the effective date would be eight or nine months from now.

Commissioner Melton thought this was a serious issue that deserved the time to be scrutinized by everyone in the state; he preferred to pursue a possible rule change in the normal cycle.

Leonard Ordway, Law Enforcement Branch Chief, noted Department comment would not lie exclusively with his branch but would also encompass other rules related to wildlife management.

Public comment

Kevin Harris, board member of the ADA, thought this issue was important and needed to be addressed.

Steve Chevront, member of the ADA, stated some hunters were chasing elk and deer all night. Deer populations were down. Four years to change the rule was too long to wait. This unethical practice would continue; it was not fair chase. If people were aware that a rule change was in progress, it would significantly reduce the number practicing spotlighting of big game animals. Making spotlighting illegal for big game would give the animals some rest and would be welcomed by the anti-hunting public. He favored some kind of accelerated schedule.

Motion: Golightly moved and Carter seconded THAT THE COMMISSION VOTE THAT THE DEPARTMENT PROCEED WITH THIS RULEMAKING OUT OF CYCLE.

Mr. Ordway noted a lot of areas where this was occurring contained pristine animals and human egos were to get those animals; therefore, the rules were being bent to get those animals. More regulations would allow officers to write more tickets and more hunters to come forward to report illegal spotlighting. It probably wouldn't solve the problem, but from a law enforcement perspective, it would help the officers. Currently, it was difficult to make cases.

Commissioner Gilstrap asked if there was a way to integrate this rulemaking into the current workload to make it move faster without overburdening the current situation.

Commissioner Carter was concerned about a combination of things: 1) drought that was impacting wildlife and its reproduction; 2) water shortages in terms of water availability for them; 3) more aggressive sportsmen who want trophies and 4) other wildlife recreationalists who want to do things. There should be a way to integrate this to dovetail with some ongoing process. Mr. Naugle stated this rulemaking could be added to an upcoming rule package (Article 4) in an out-of-cycle sequence that would take about 18 months. If this were done, the effective date would be around December 2005. However, the Commission must act today on the petitioner's request.

Amended Motion: Golightly moved and Carter seconded THAT THE COMMISSION VOTE TO ACCEPT THE PETITION FROM THE ARIZONA DEER ASSOCIATION RELATIVE TO THE NEED FOR ENHANCED SPOTLIGHTING RULES AND DIRECT THE DEPARTMENT TO ADDRESS THE INTENT OF THE PETITION WITHIN A TIME FRAME THAT WOULD COMPLEMENT THE ONGOING RULES PACKAGE WITHIN ARTICLE 4.

Mr. Odenkirk interjected with a concern that in accepting the petition, it carries with it some direction to follow the petition as presented. Although the Department supports the concept, it does not agree with the way the petitioners are proposing to amend the rule. The petition should be denied with the direction to the Department to initiate a rulemaking process consistent with the process outlined.

Commissioners Golightly and Carter withdrew the previous motion.

Motion: Carter moved and Gilstrap seconded THAT THE PETITION AS PRESENTED BE DENIED.

Vote: Unanimous

Motion: Carter moved and Melton seconded THAT THE COMMISSION DIRECT THE DEPARTMENT TO PROCEED WITH AN OUT-OF-CYCLE RULEMAKING PROCESS TO ACCOMPLISH THE IMPLEMENTATION OF THE MODIFICATION OF THE SPOTLIGHTING RULE.

Vote: Unanimous

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10.1. Request to Approve a Notice of Rulemaking Docket Opening for Article 9, Arizona Wildlife Conservation Fund Grants

Presenter: Mark E. Naugle, Rules and Risk Manager

For additional information, see Commission meeting minutes for January 16, 2004, pages 20-21.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE A NOTICE OF RULEMAKING DOCKET OPENING TO ESTABLISH ARTICLE 9, ARIZONA WILDLIFE CONSERVATION FUND GRANTS, AND TO

PROMULGATE NEW RULES TO PRESCRIBE PROCEDURES FOR THE ARIZONA WILDLIFE CONSERVATION FUND GRANTS PROGRAM.

Vote: Unanimous

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11. Hearing on Proposed Amendment to Commission Order 29 for Special Big Game License-Tag Season for Black Bear for 2004-2005

Presenter: Brian Wakeling, Big Game Supervisor

A recommendation from the Arizona Elk Society was presented to the Commission to extend the black bear special big game season to December 31, 2004 from the current ending date of May 31, 2004, and to expand the open area to statewide. The legal animal will remain any black bear except for a sow with cubs. By extending the date to include the fall when pursuit with dogs is legal, value would be added to the big game permit-tag.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE COMMISSION ORDER 29: BLACK BEAR SPECIAL HUNT, AS PROPOSED.

Vote: Gilstrap, Melton and Golightly – Aye
Chair voted Aye
Carter-Absent for Vote

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12. Possible Date Change and Location Designation for the September 2004 Commission Meeting

Presenter: Dana Yost, Executive Staff Assistant

Because of a scheduling conflict with the International Association of Fish and Wildlife Agencies (IAFWA) annual conference, the original dates for the September 2004 Commission meeting will need to change. The meeting location for the meeting remains open. The original date for the meeting was to be September 24-25.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO CHANGE THE DATE TO SEPTEMBER 17 AND 18, 2004, AND THAT THE MEETING BE SCHEDULED IN SAFFORD.

Vote: Unanimous

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13. Commissioner Committee Appointments

Presenter: Duane L. Shroufe, Director

The following are current Commissioner Committee appointments unanimously approved at the February 21, 2003, Commission meeting.

Arizona Game and Fish Commission Standing Committee Participation		
Committee	Commissioner Representation	Commissioner's Role on Committee
Heritage Public Advisory Committee (HPAC)	Carter	Chairman
Habitat Partnership Committee (HPC)	Gilstrap	Chairman
Landowner-Lessee/Sportsman's Relations Committee	Chilton	Liaison/Member
Shooting Range Economic Development Committee	Gilstrap	Chairman
	Melton	Member
Wildlife Assets Committee	Golightly	Member

Assignments for 2004 through January 2005:

Arizona Game and Fish Commission Standing Committee Participation		
Committee	Commissioner Representation	Commissioner's Role on Committee
Heritage Public Advisory Committee (HPAC)	Carter	Chairman
Habitat Partnership Committee (HPC)	Gilstrap	Chairman
Landowner-Lessee/Sportsman's Relations Committee	Melton	Liaison/Member
Shooting Range Economic Development Committee	Gilstrap	Chairman
	Melton	Member
Wildlife Assets Committee	Golightly	Member
Eastern Counties Organization	Carter	Member

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15. Call to the Public

17. Call to the Public

There were no comments.

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18. Director's and Chairman's Reports

Chairman Chilton attended several meetings in Phoenix and the legislative reception. She also attended the dedication of the wildlife exhibit at the state capital area.

Director Shroufe attended the following meetings: management team; Interagency Executive Committee for the Barry M. Goldwater Range in Tucson; BLM State Director Elaine Zielinski, Deputy Director Rountree and Assistant Director Mike Taylor to discuss issues, including the settlement agreement for Alamo Lake; The Peregrine Fund on condor issues and success of the program; Wildlife Conservation Council; legislative reception; 6th Annual World Wetlands Day in Guadalajara, which included the dedication of 34 more sites in Mexico. He had two telephone conversations with the Grand Canyon National Park Superintendent Joe Alston regarding wildlife issues, i.e., bison, elk, javelina, trout and humpback chub. He attended a meeting with one of the assistant directors for the U.S. Fish and Wildlife Service on wolf issues. He met with representatives of the Northern Arizona Audubon Society regarding cooperation in putting together the wetlands bird watching area at Page Springs Hatchery. He attended the National Shooting Sports Foundation's Step Outside Program in Las Vegas.

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19. Commissioners' Reports

Commissioner Carter attended the dedication of the wildlife exhibit at the state capital area. He attended the legislative reception and worked on Frye Mesa issues.

Commissioner Melton attended the legislative reception and spent time radio collaring coyotes on the Cabeza Prieta.

Commissioner Gilstrap attended the jaguar conservation meeting in Douglas. He hoped all parties would sign an agreement by sometime this summer. He attended the legislative reception and the dedication of the wildlife exhibit at the state capital area. He spent time meeting with legislators regarding Department bills.

Commissioner Golightly spent time on legislative issues.

Commissioner Melton attended the Arizona Trappers Association fur sale and noted the price of furs was up. The interest in furs is increasing.

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20. Approval of Minutes

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION APPROVE THE MINUTES FOR JANUARY 16, 2004.

Vote: Giltrap, Melton and Golightly – Aye
Chair voted Aye
Carter-Absent for Vote

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21. Future Agenda Items

Director Shroufe noted the State Land Department wanted to present State Trust Land issues to the Commission at a future meeting, possibly in March.

Mr. Ferrell noted 12 previously noted items were for action and only one item was for a future agenda, which was for the Commission to review policies and procedures related to on and off campus vending at Ben Avery. It was then clarified the Commission would be provided with a financial report on the Ben Avery vendor fund and a written explanation of the policy or procedures for managing the fund.

Commissioner Gilstrap asked Mr. Yost to make a change regarding the sequence in the awards and awards presentations so that it can happen earlier in the year. The Commission would be able to identify the award recipient earlier and do background work in preparation for the annual presentation.

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Motion: Carter moved and Melton seconded THAT THE COMMISSION RECONVENE INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed at 3:10 p.m.

Meeting adjourned from executive session at 3:25 p.m.

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