

Minutes of the Meeting of the
Arizona Game and Fish Commission
Saturday, March 13, 2004 – 8:00 a.m.
Best Western Inn Suites, 6201 N. Oracle Rd.
Tucson, 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 8:05 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: Melton moved and Carter seconded THAT THE COMMISSION GO INTO EXECUTIVE SESSION.

Vote: Unanimous

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Meeting recessed at 8:06 a.m.

Meeting reconvened at 9:00 a.m.

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Chairman Chilton called the meeting to order at 9:00 a.m. The commissioners introduced themselves and Chairman Chilton introduced the Director's staff. The meeting followed a revised agenda dated March 9, 2004.

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Commissioner Carter introduced William McLean, who was the Governor's appointee to the Commission to replace him. Mr. McLean was awaiting confirmation in the Senate.

Also introduced to the public were former commissioners Bill Berlat and Frances Werner. Former commissioner Beth Woodin was also present.

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13. Call to the Public

Because of the recent situation regarding mountain lions in the Sabino Canyon Recreation Area, a call to the public was scheduled at the beginning of the meeting. Director Shroufe stated public comment should be limited to three minutes. Chairman Chilton gave the ground rules to members of the public wishing to make comment.

Pete Cimellaro, representing self, addressed the decision of the Game and Fish Department and the U.S. Forest Service to cooperatively work to remove mountain lions from Sabino Canyon. He commended the decision to do so after considering other options. After months of monitoring and collaborating, time ran out and the agencies were concerned about public safety. The Department's actions were not endangering mountain lions as is promoted and believed by animal rights extremists. A campaign is planned to be launched on March 31 by such organizations as the Humane Society of the United States and the Animal Defense League of Arizona.

Pat Pugh, representing self, stated the decision to kill the lions was hasty and uncalled for in this situation. Game and Fish was doing this to protect itself from lawsuits; there was no other choice. A liability statute should be introduced in the Legislature, wherein the Commission could be protected. Some other methods should be considered. Once this legislation is in place, the Commission could act prudently and take other alternatives first rather than closing the canyon and shooting lions.

Pamela Elia, representing self, asked if consideration had been given to the circumstances that prompted the lions to come down. Mount Lemmon was severely burned last year and much wildlife has been misplaced. The lions are looking for prey that had also been misplaced. The Department should stop the killing and relocate game for predators to prey upon. Much can be done through education, reestablishment of park boundaries, and keeping people on the main roads until the lions retreat.

Schuyler Hilts, representing self, stated killing cougars was not a reasonable response to mismanagement of the forests by humans. Bad management resulted in the burning of 110 square miles in the Catalinas. The deer came down and the lions followed. The cats will stalk people. There were other methods that could be used in handling the lions.

Donna DeHaan, a Board Member of the Tanque Verde Valley Association, stated there was a unanimous vote for a no-kill policy. The solution was not to kill lions in Sabino Canyon. She asked for adoption of policies similar to those in Yosemite National Park.

Dorothy Prater Niemi, representing self, asked the Governor to appoint an independent ecologist/biologist to study the lions in Sabino Canyon and the Catalinas, while leaving Sabino Canyon closed to the public. Other people needed to study the lions instead of only government agencies

who are benefiting financially from it. This study should be undertaken before taking any drastic action.

William Crosby, representing self, stated the food source for the lions had been eliminated. It's not necessary to eliminate the lions. They should be given food and water. He advocated conservation rather than killing.

State Representative Ted Downing, representing District 28 in Tucson, wanted an educated, cautious approach. The large focus on the issue has occurred in Tucson. He stated he asked the Director yesterday to suspend the hunt until the legislators could be educated. It was felt there was not an immediate accountability to the public. Director Shroufe agreed that on Monday at 4:00 p.m., a meeting would occur after he met with the Governor to explain in more detail the situation. More details would then be given to constituents in Tucson next Friday. This would mean a suspension period of 5-6 days. The legislators would have time to understand other mitigation mechanisms, e.g., adverse conditioning and other ecological theories. There was a political ecology. Legislations actions could be pursued. The public could be educated on ways to avoid encouraging wildlife to come into the areas. There were other areas like Sabino Canyon throughout the state.

Mikki Niemi, representing self, stated if the three lions were killed, three more would move in. He believed in exploring alternatives and education.

Kerin Futscher, representing self, wanted a peaceful resolution to this issue. The lions were indicators of infectious diseases on Mount Lemmon. The ecological disaster brought on by the fire gives people an opportunity to monitor the recovery of the natural ecosystem on its own. She recommended putting radio collars on the lions and studying their patterns.

Patricia Welch, representing self, opposed killing of the mountain lions. Alternative plans need to be made and carried out. The lions should not be slaughtered.

Unidentified speaker, representing self, understood the position of the Department and the U.S. Forest Service. People want to be near wildlife and enjoy the park but they don't behave responsibly and don't follow instructions or warnings. People have to take responsibility with their interactions in wilderness areas, or wildlife would have to be destroyed to protect them from their irresponsible behavior. If the Legislature cannot pass a law protecting Game and Fish from huge liabilities, maybe liability waiver statements could be issued to people who use the canyon until a better legal framework is developed to protect everyone.

State Senator Jorge Garcia, representing District 27 in Tucson, stated other options existed. Humans were encroaching on the lions' territories. He asked the Department to suspend the hunt and to capture and move the lions to higher ground. People in Tucson have learned to live with coyotes and javelina.

Dr. Justin Schmidt, research biologist at the Southwest Biological Institute, asked the Department to wait and to consider using non-lethal methods to scare the lions away from humans, e.g., use of rubber bullets.

Dr. Peter Sherman, professor at the University of Arizona, concurred with Dr. Schmidt but gave three points: 1) this does not need to become a divisive issue; 2) it is a great opportunity to

educate the public and 3) this is a great opportunity for Game and Fish to demonstrate they are at the cutting edge of wildlife management strategies and not practicing “trap and shoot” as the only solution. There is more technology and there are more facts to solve this problem

Gary Vella, representing self, agreed with the previous two speakers. This situation rotated around liability. There was more at stake; a responsibility existed to the wildlife that was displaced. Practical things could be done by the public to protect themselves. He hoped a non-lethal means would be explored. The option of tranquilizing the lions and putting them in sanctuaries should be explored before sending dogs in to hunt the lions.

Joseph Lauricella, representing self, thought it was a common sense issue. There were wild animals in wild places. People believe everything that brings out fear in human beings should be killed.

Mark Bool, representing self, thanked the Commission for making a tough decision. He supported the Department.

Dr. Pat Frederick, representing self, concurred with anti-killing. Educating the public was the most important thing to do.

Sandy Bahr, representing the Grand Canyon Chapter of the Sierra Club, urged the Commission to suspend the activity of killing the mountain lions in Sabino Canyon. This was not just about lions, but it was a microcosm of the problems we have with predator management in the state. The Commission needs to manage predators more positively. If Game and Fish was truly worried about liability relative to wildlife, then it should be more worried about the elk-automobile-human conflicts. This situation was more of an antiquated attitude towards predators than about the risks to humans. There was an opportunity to learn through this and to teach people about living with wildlife and predators.

Jenny Neeley, representing the Defenders of Wildlife (DOW), stated this was not a minority issue; DOW received many phone calls from non-members this past week. Over 90% of the people in the community do not support the hunt. The DOW had offered the Department the use of radio collars and trackers at their own expense to help deal with this problem that would not result in killing of mountain lions. The offer was refused; DOW was willing to help.

Steve Chevront, representing self, worked on wildlife projects, e.g., water catchments and habitat enhancement. He supported the Commission and Department. The lions were a threat to people.

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7. The Commission will be Presented with Information by the Sky Island Alliance regarding the Tumacacori Highlands Wilderness Proposal

Presenter: Bob Broschied, Habitat Branch Chief

The Sky Island Alliance and Friends of the Tumacacori Highlands developed a proposal to designate approximately 84,573 acres of Forest Service lands as wilderness in southern Arizona. U.S. Congressman Raul Grijalva has pledged his support for the proposal and is seeking public review and input before introducing legislation to Congress for consideration.

Reuben Reyes, staff member from Congressman Grijalva's office, and Matt Scroff, Field Director of the Sky Island Alliance, presented more detailed information on the proposal.

Mr. Reyes offered a statement on behalf of Congressman Grijalva regarding the Tumacacori Highlands Wilderness area. Congressman Grijalva expressed disappointment that the Commission was taking a position of opposition so early in the process. He hoped the Commission would refrain from taking a position at this time, including voting on a resolution at this meeting. The details on this legislation are still being worked on and legislation has not been drafted or introduced. He hoped the Commission would decide to work cooperatively on this proposal. The Tumacacori's meant a lot to the Congressman and he wanted to preserve the area as a legacy for future generations. Wilderness designation would provide the highest level form of protection and would preserve it to perpetuity. Motorized access would be available to allow the public access and recreation to man-made lakes and hiking trails.

Congressman Grijalva emphasized the Commission would retain its management responsibilities for wildlife within the boundaries of the wilderness. However, he was aware that the Commission, in its letter to him and other members of Congress, indicated a concern about restricted access. While the wilderness area itself would not allow for additional roads, he emphasized access to within and through the area would be preserved to the present 20 access routes. These routes have been left out of the wilderness designation. The routes as outlined on the draft map were only proposed at this time. Should ranchers, state or federal agencies, or other users require routes not currently outlined on the draft map, Congressman Grijalva's staff would work with the users to insure adequate access.

Mr. Scroff outlined a blueprint for the proposal to seek input from the Commission and other staff members of the Department. He hoped to build the best proposal possible that incorporates the interests of the Department. He provided information on the geographical context of the area. Mr. Scroff noted the 1964 Wilderness Act was unanimously passed in Congress.

In 1983, Region V recommended the Tumacacori Highlands as wilderness. There were specific requests from Congressman Udall at that time:

- Hunter and public access must remain
- Prescribed fire must be allowed
- Roadless water developments must be allowed in terms of wildlife management
- Restoration must be allowed if a catastrophic fire event occurs

The Tumacacori's did not make it into the 1984 Wilderness Bill; however, those issues were addressed. Access could be addressed to remain for wildlife management principles. A variety of access points would exist in the Tumacacori Wilderness area. Of the 300 miles of roads in the proposal, 100 miles do, and in the future will, provide direct access to the wilderness area.

The 1990 Wilderness Act was described. Improvements continue to be made. Protecting this area from further encroachment is a noble cause. It was hoped constructive dialogue would occur with the Commission and Department on the proposal. He hoped specific concerns would be raised so solutions could be found. He urged the Commission to not vote against the proposal at this time.

Commissioner Carter noted that whatever is written into law, there were unintended consequences. There were individuals and organizations that had much different agendas, and that was to lock people out totally. It happens even though it was not the Congressman's intent. It appeared that the courts too often set public policy as opposed to public policy makers. Congress members are elected to set policy, but because the laws are not specific, it was left up to the courts to interpret them. It was also left to the federal agencies' and the attitude of the regional or local land management agency about how they want to manage the land or how they want to interpret what Congress intended. Dialogue needs to continue. Public access could be construed differently many years from now.

Commissioner Carter continued when one considers water developments and maintenance of them and the improvements of developments based on technology, which complements the intent of the wilderness intent, we usually go back to court because somebody said nothing that exists can be modified. He asked if there was an alternative to wilderness by working with the land management agencies. He asked if the Congressman and proponents were willing to look at alternatives to meet the objectives of protecting the wilderness, short of adding another layer of bureaucracy.

Commissioner Gilstrap referenced the letter sent to Congressman Grijalva. The letter stated the Commission and Department have a long history of working with special reservations and those concerns need to be expressed during the scoping process. The Commission was committed to working with congressional staff and wilderness proponents, as well as the public, to discuss issues and concerns on the Tumacacori Highlands Wilderness proposal.

Commissioner Melton asked Mr. Scroff for a list of organizations supporting the proposal. Specific language was included in the 1984 Wilderness Bill to allow military overflights and drug enforcement in southwestern Arizona. There was a suit a few months later to prohibit military overflights. He referenced the new underground water systems. There was no evaporation and only a drinker was visible above the ground. The Yuma Valley Rod and Gun Club was in the process of replacing a lot of old systems with the new in the Sonoran Desert National Monument, but it was stopped due to a lawsuit that it might affect the wildlife. A wilderness bill cannot be written that can be enforced. A Natural Conservation Area designation would provide protection to the Tumacacoris.

Mr. Scroff stated administrative designation of the area could change even more than wilderness. He suggested concerns of the Commission could be written into the wilderness legislation and state a cooperative management agreement would be formulated within one year outlining responsibilities and allowances the Department would have in the area in relation to wildlife management.

Commissioner Carter noted if something was not put into law, it would be ignored by future land management agencies due to changing attitudes. The Commission was committed to working with the Congressman on this issue. The more that could be put into law, the less there would be opportunities for unintended consequences.

Commissioner Golightly pointed out the differences in attitudes between the managers of the Cabeza Prieta and Buenos Aires National Wildlife Refuges in Arizona. He thought there was an inherent distrust when it comes to a restricted land designation. He was concerned about maintaining water developments in roadless areas when there was a critical need for 10,000

gallons of water. He asked about the importance of a wilderness designation. It would be better if there could be regulations to handle some of the things people were concerned about. Mr. Scroff noted a strong clear mandate should be provided that this area would be managed for its outstanding cultural, recreational and biological characteristics. Wilderness designation provides the mandate to the federal agency.

Commissioner Carter raised the issue of illegal immigration into the area. Mr. Scroff thought the issue of illegal immigration should be used as an issue to prohibit wilderness designation.

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Meeting recessed at 11:00 a.m.

Meeting reconvened at 11:10 a.m.

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Mr. Broschied addressed the facts of the Department's concerns regarding present wildernesses and past, current, and projected long-term management implications.

Chairman Chilton noted national monuments were not the same as wildernesses. The interim management plans for monuments have more or less created de facto wildernesses that limit the Department's authorities in various ways. National monuments can be administered by various land management agencies that all have different mandates on how the areas will be managed. The Department has struggled to clearly outline, follow, and develop activities with standard statutory authority to manage wildlife prior to designation. Mr. Broschied was unaware of any recent water developments in wilderness areas.

Commissioner Melton stated the problems occurring over the years have been the federal agencies have been writing regulations according to how they perceive them to be. The regulations have changed the intent of the 1964 Wilderness Act; a lot of problems are caused by the reinterpretation of what was set aside as a roadless area.

Deputy Director Ferrell further explained past challenges to the Department with regard to wilderness designations.

Director Shroufe gave a briefing on the recent 9th Circuit Court decision on the subject of what constitutes a commercial activity within a wilderness and how it could potentially impact present and future wilderness designations. In summary, a wilderness area cannot be used to provide commercial benefit. The decision would impact the ability to hunt and guide in wilderness areas in Arizona.

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club (YVRGC), noted there was a special provision in the 1964 Wilderness Act for powerlines. There was a powerline on the Kofa National Wildlife Refuge (NWR). He noted the Cabeza Prieta NWR consisted of 860,000 acres and was 93% wilderness with three roads open. Campfires were prohibited and the use of wheeled game carriers to retrieve legally taken game was prohibited. If the Tumacacori Highlands become wilderness, the prohibition against the use of wheeled big game carriers becomes valid since the U.S. Forest Service disallows their use. The expansion of hunting opportunities continues to be challenged. The YVRGC was opposed to wilderness.

Brian Dolan, representing the Arizona Desert Bighorn Sheep Society, stated it was difficult to write a good wilderness bill that reflects promises made at the time the bill was initiated. A wilderness designation places an unmanageable burden on the agencies responsible in managing and caring for natural resources. He urged the Commission not to vote in favor of the wilderness bill.

Bryan Croll, representing the Sopori Ranch, stated the ranch was 60,000 acres; 12,000 acres of the forest lease was encompassed in the proposed Tumacacori Highlands Wilderness area. He had heard existing roads have been grandfathered into the map; this was not true. Many roads were not included and he would not be able to access tanks or wells or get to the boundary fence. He would not be able to get from one side of the ranch to the other. Wilderness land is highly unusable when compared with U.S. Forest Service land. Forest Service land was better for recreation.

Dennis Moroney, representing the Cross U Cattle Company, stated wilderness areas were off limits to any kind of management other than unsuppressed wildfires. Maintenance of water catchments requiring access by vehicles would be prohibited. Silt needs to be cleaned out of the tanks if they are to hold water. Things that could be done to enhance watershed values could not be done. There was illegal alien traffic across his ranch, which was about 20 miles north of the Mexico border. Major improvements can be made by regulating human behavior. Wilderness designation would cancel a lot of the best tools for ecological restoration and wildlife management.

Sue Krentz, representing the Arizona Cowbells, opposed the designation of a wilderness area as it tied their hands to manage the land properly. Illegal aliens were causing degradation of riparian areas. Wilderness regulations for this particular area, which has a motif for creating a wildland corridor, would be ineffective and detrimental to the community.

Daniel Bell, representing the ZZ Cattle Corporation and Beer Valley Ranch, opposed the wilderness area proposal. The issue for wilderness in this area had already been addressed. The Pajarito Wilderness was created in 1984. With the legislation, the Tumacacoris were released from further consideration. He referenced a letter from former Congressman James F. McNulty that addressed that fact. Wilderness was meant for roadless areas and these lands had many miles of roads within them. Many roads have been eliminated on the map and many were essential to the maintenance of critical functions, such as homeland security. Control of illegal immigration and prevention of drug trafficking were essential. Most of the roads access livestock watering facilities, which also benefit wildlife.

George Volker, representing self, opposed the wilderness designation. He was concerned about access.

Glynn Burkhardt, representing the Pima County Coalition for Multiple Use, stated the closure of roads could hinder the ranchers in doctoring their livestock, especially during calving season. He was concerned about different road designations, many of which are not recognized in the Wilderness Act. He hoped the Commission would oppose the Tumacacori proposal.

Beverly Holmquist, representing the Desert Gold Diggers, opposed the proposed Tumacacori Highlands wilderness area.

Douglas Lowell, a rancher and forest permit owner in the Atascosa Mountains, opposed the proposal. The land has been well preserved by the U.S. Forest Service. He thought this proposal was the result of an anti-grazing maneuver and the ranchers would go out of business if the wilderness area is designated. It was a huge issue with the U.S. Border Patrol. Wilderness can be good if it includes access and people. There should be a conservation approach. Ranching and hunter access should be allowed to continue and multiple use is the best avenue to do that.

David Steimle, representing self, opposed the proposal. Road closures would not be good for anyone. The U.S. Border Patrol would not be able to enforce the laws it needed to enforce. He also opposed the Sonoran Desert Conservation Plan.

David Salars, representing self, opposed the wilderness proposal.

Unidentified speaker, representing self, thought there was a lot of mismanagement related to mountain lions. She was distressed at the Commission process today. She believed the Commission had already made up its mind. She did not trust in this Commission. It had too much power and was not accountable to the people. She supported the wilderness area. She was not a rancher or a hunter. The Commission needed to be open minded that most of the state's citizens are not ranchers or hunters and they cherish wild open spaces.

Chairman Chilton and Commissioner Carter provided clarification to the previous speaker regarding her comments regarding the Commission and the Commission meeting process. The Commission delayed making a decision for three months on the proposed Tumacacori Highlands Wilderness proposal until it was able to take public comment at its Tucson meeting. People have been allowed the opportunity to speak regarding the Sabino Canyon issue. The Commission would not make any decision until it heard from every member of the public who wished to make comment today.

Pete Cimellaro, representing the Arizona Elk Society and Arizona Deer Association, stated wildlands become so embroiled in bureaucracy that they cannot function. He urged the Commission to oppose the wilderness proposal

Jonathan Duhanel, representing People for the West, opposed the wilderness proposal. Nature was not static and changed all the time. Preservation was unnatural and, in the long run, futile. Multiple-use management works.

Cynthia Copping, representing self, opposed the wilderness area. Invasive species control would not be possible. Another reason was wilderness fire management by the U.S. Forest Service.

Dale Volz, representing the Arizona Ecumenical Council, supported the wilderness proposal.

Jennifer Katcher, representing self, supported the Tumacacori Highlands Wilderness proposal. Arizona Game and Fish would have an opportunity to be at the table in planning habitat conservation to recover threatened and endangered species.

Dan DiSarno, representing self, opposed the Tumacacori Highlands Wilderness proposal because the designation would do more harm than good. It would provide another corridor for illegal immigrants to use to leave debris and trash behind. The area accounts for 30% of all drug seizures and apprehensions in Arizona.

David Hodges, Executive Director of the Sky Island Alliance, supported the proposal. He was not optimistic current regulations and management were going to be adequate to protect the Tumacacoris. He advocated a cooperative agreement between the Game and Fish Department and U.S. Forest Service. The Alliance wanted to have a portion of the Tumacacoris set aside for non-motorized recreation, which would be a little more than 40% of the area. Almost 60% of the wilderness would be available for recreation. Access for recreation could be further pursued during the planning process. The Alliance would be working with the U.S. Border Patrol on immigration issues, and he also would be doing research on what the current actual impacts are. Illegal alien incidents are happening in areas having the highest density of roads. He hoped the Alliance, the Department and Commission could work together.

Lisa Collis, representing self, stressed people who support the proposal were not extreme environmentalists and wanted to be able to compromise with people on the other side of the issues.

Meredith Hartwell, representing self, supported the wilderness proposal. She read a statement in support written by another member of the public who was unable to attend the meeting.

Andrew Schneller, representing the Center for Biological Diversity, supported the wilderness proposal. Wilderness areas were invaluable tools for education for both teachers and students. Wilderness does not prohibit ranching from operating. Land in the wilderness area will need little management and will recover itself from injuries. Wilderness areas are extremely biologically diverse.

Commissioner Carter noted the Commission's concern was if special status for specific lands was designated, it automatically results in a greater impact on remaining recreational lands. This would cause a greater impact on the remaining lands because the special lands take away opportunities that exist across the board. Two issues cause great concern and they are access and management responsibilities. Whatever can be put into law reduces the misinterpretations of others who have a different agenda.

Diana Rhodes, representing the Friends of the Tumacacori Highlands, supported the wilderness proposal. She handed out a packet to the Commission. She noted several organizations and many people supported the proposal as well.

Edith Lowell, a rancher in the proposed wilderness area, opposed the proposal. She emphasized the fire danger. Because of the problem of limited access, it may be more difficult to fight fires. Regarding grazing, wilderness designation was the first step towards eliminating grazing. According to historical records, preserving the wilderness value is of the utmost importance.

Robert Rowley, a ranch owner, opposed the wilderness proposal. He appreciated the Commission being in the forefront of this issue and not waiting to see the proposed legislation.

Camille Kershner, representing self, supported the wilderness proposal.

Nick Heatwole, a member of the Yuma Valley Rod and Gun Club (YVRGC), summarized the YVRGC's perspectives on three issues in the context of the proposal. The issues involved 1) wildlife management, 2) access and 3) law enforcement. Illegal immigration and smuggling and

associated littering are, and would be, the dominant land use and constitute the greatest threat to the area. He urged the Commission to oppose this wilderness proposal.

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Meeting recessed at 1:35 p.m.

Meeting reconvened at 1:45 p.m.

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14. Hearings on License Revocations for Violations of Game and Fish Codes and Civil Assessments for the Illegal Taking and/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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Meeting recessed at 2:25 p.m.

Meeting reconvened at 2:35 p.m.

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7. The Commission will be Presented with Information by the Sky Island Alliance regarding the Tumacacori Highlands Wilderness Proposal – cont'd.

Public comment

Scott Wilbur, Conservation Biologist for the Tucson Audubon Society, supported the proposal for the Tumacacori Highlands Wilderness designation. He thought a cooperative management agreement between Game and Fish and the U.S. Forest Service should be incorporated into the enabling legislation. There also needed to be a cooperative agreement with the U.S. Border Patrol and the U.S. Forest Service in the legislation. An agreement on the maintenance of water structures needed to be incorporated as well. The number one problem was illegal alien traffic and impacts to the habitat from that traffic. Access can be provided into the wilderness. Closure of roads would be the highest form of protection for the habitat and wildlife. Reduction of road density in the wilderness would improve habitat for large-ranging carnivores and 50 wildlife species of special concern.

Commissioner Golightly asked why people would not accept a lesser designation, e.g., national monument. Mr. Wilbur stated wilderness would guarantee in law the highest level of protection. Commissioner Carter was also concerned about the need for a wilderness designation. He suggested that consideration be given to it being a natural conservation area. Two such areas in Arizona are doing well, e.g., Las Cienegas. Wilderness would not resolve the immigration problem and its impacts. Mr. Wilbur stated the preference was for wilderness designation, but the door was not closed on other area designations. Commissioner Melton's concern was the loss of water for ranchers who, in turn, provide water for wildlife. Roads are needed to access waters; presence of wildlife in the area is greatly enhanced by availability of water. If this area becomes wilderness and the ranchers are knocked out, there would be no water.

Bill Berlat, representing self, was opposed to this wilderness proposal. Arizona has enough wilderness areas. Game and Fish has responsibility for the management of the wildlife resources

in the state. There is difficulty in dealing with any federal agency when it came to wildlife issues.

Carter Rose, representing self, supported the wilderness designation. He urged the Commission to postpone any decisions since the dialogue has just begun. He was disappointed with the way Game and Fish officials have handled the mountain lion situation in Sabino Canyon.

Scottie Johnson, representing Defenders of Wildlife, urged the Commission not to make a decision today regarding the wilderness proposal. The main point is regarding the complaints with the way management of wilderness has been done in the past. To not advance the wilderness concept because of bad management does not make sense. Complaints expressed today should be addressed in open communication. The process point was crucial. There was huge public outcry regarding the mountain lion situation. Game and Fish should explore creative behavioral adverse management techniques, which could become a model for the nation. The Department should suspend the hunt for the cougars.

Ellen Kurtz, representing Friends of Tumacacori Highlands, stated the lion situation in Sabino Canyon was a good reason for wilderness designation for the Tumacacori Highlands. This decision should not be made hastily.

Leslie Sellaren, representing self, supported the Tumacacori Highlands wilderness proposal. She listed several reasons why there should be wilderness.

- Preserve and rehabilitate the habitat for native species, plants and animals
- Protect the area from future human development as the population grows
- As the populations grows, stress will continue to be put on this valuable habitat

There were opportunities for recreation within wilderness lands.

Commissioner Melton commented that, at last count, there were 138 abandoned vehicles on the Cabeza Prieta wilderness area. These vehicles were used by drug traffickers and smugglers and the vehicles cannot be retrieved. When an area is created where law enforcement cannot go, that is where these people are going to go. There were problems with wilderness when it comes to enforcement. This area is right on the border.

Lance Altherr, representing Hunters Who Care, opposed wilderness designation for the Tumacacoris. He noted the amount of damage to the habitat caused in southern Arizona by illegal immigrants. This will increase with a wilderness designation.

Sandy Bahr, Conservation Director for the Grand Canyon Chapter of the Sierra Club, thought the Chairman had a conflict of interest since the area in question involved her grazing allotment. The Chair should recuse herself from this discussion. The Grand Canyon Chapter of the Sierra Club supported the Tumacacori Highlands wilderness proposal. This would provide the strongest level of protection for the habitat and for wildlife. The trash issue and trashing of public lands is not a wilderness problem - it is a societal problem. There are ways to enforce without driving vehicles all over the landscape. She addressed the fire issue. Wilderness allows fire to regain its natural role. There has been so much fire suppression.

Chairman Chilton explained grazing was a grandfathered and permitted activity. Grazing was not in conflict with wilderness and it would not be affected by the proposal. The issue today was the Department's ability to manage wildlife.

Commissioner Melton named the appellants in the appeal for the wildlife water catchments on the Sonoran Desert National Monument (SDNM). This would allow the Department to maintain and redevelop 16 existing wildlife water catchments within the SDNM. The appellants were: Arizona Zoological Society, Center for Biological Diversity, Friends of Cabeza Prieta, Sierra Club-Grand Canyon Chapter, and Canyon Chapter of The Wilderness Society.

Ms. Bahr believed it was not clear that developing more water catchments is the best thing for wildlife. The organizations named have pulled research relative to that issue. The organizations do support instream flows and limiting groundwater pumping, and natural waters for wildlife, as well as providing opportunities for wildlife to move between mountain ranges and other areas to enable them to access additional waters instead of staying in a particular area and eventually disappearing. Commissioner Melton stated this was not to construct more water catchments but to maintain and redevelop existing ones. Water catchments benefit all wildlife. Ms. Bahr stated available food was important as well. Forage was a major determining factor. Part of the problem with the drought is food sources are limited and because there is more and more wildlife fragmentation, wildlife can't move like it might have in the past to take advantage of dispersed areas of water. There is more competition. Water was important, but if there was no food, conditions would not be helped. Problems are caused by disappearing habitats.

Commissioner Melton stated forage enhancements involve nothing more than a sprinkler system that recreates a rain (up to ½ inch) to green the desert grasses and forbs where does (antelope) can raise fawns.

Stephanie Nichols Young, representing the Animal Defense League of Arizona, supported the wilderness proposal. She stated she was disappointed in the process that led to the decision regarding the Sabino Canyon lions. She submitted a public records request to get data to understand what information was available and who actually made the decision. The public needs to understand how the decision was made. Data was needed on lion behavior. This was a good opportunity to study lions in an urban interface area. There was no trigger incident that led to this decision. There needed to be a long-term plan. Educating the public was important. There were a lot of potential sources of funding for an educational program.

Commissioner Carter stated it was time for others to share with the Department and the Commission their recommendations, but they do not have the opportunity to make the decisions about where their money goes. Ms. Young stated there were issues that needed to be discussed on ways nonconsumptive users could contribute to a specific fund or purpose. He hoped organizations would contact their legislators to authorize the Department to use the monies set aside for specific purposes, i.e., law enforcement and education.

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13. Call to the Public

Unidentified speaker was concerned with the premature decision to take out the lions in Sabino Canyon because of public safety issues. There were non-lethal methods to use. The lions should not be punished for being in the canyon; humans were encroaching into the lions' habitat.

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7. The Commission will be Presented with Information by the Sky Island Alliance regarding the Tumacacori Highlands Wilderness Proposal – cont'd.

Chairman Chilton noted written comments and petitions would be entered into the record.

Commissioner Carter stated everyone here desired protection of habitat. People had a concern for wildlife whether or not they support or oppose the wilderness proposal. He was not convinced adding a layer of this magnitude was going to solve those problems. He believed the Department and Commission needed to be at the table and needed to continue to work with the congressional delegation, the Governor's Office, and the stakeholders pursuing the agenda. He hoped they would be open to look at alternatives that might achieve the desired objectives. A national conservation area is an alternative. He was concerned with wilderness designation as related to interpretation and unintended consequences.

Motion: Carter moved and Gilstrap seconded THAT THE COMMISSION GIVE CONSIDERATION TO NAMING A COMMISSIONER FROM THIS BODY TO WORK WITH THE STAFF OF THE DEPARTMENT AND THE LAND MANAGEMENT AGENCY, CONGRESSIONAL DELEGATION, GOVERNOR'S OFFICE, AND WITH THOSE WHO ARE PURSUING THIS PARTICULAR DESIGNATION TO SEE IF THERE ARE ALTERNATIVES ON WHICH WE MIGHT BE ABLE TO REACH CONSENSUS.

Commissioner Carter did not mean to have cooperative agreements as an alternative due to their being arbitrarily interpreted. Commissioner Melton agreed with Commissioner Carter.

Vote: Unanimous

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13. Call to the Public – cont'd.

Commissioner Carter offered a brief statement. He believed there was concern for public safety as it relates to wildlife. Public safety is the highest priority in making these decisions. Our experience in these matters, as well as our peers in the wildlife management profession, has offered little or no viable options but to remove large predators presenting a risk to human safety.

The Department and Commission will coordinate with the Legislature and the Governor's Office to provide background information and updates on our efforts. The Commission supported the direction of the Department.

Commissioner Carter requested the Commission direct the Department to schedule a telephonic Commission meeting as early as possible next week. In order to meet legal noticing requirements, the earliest would be next Tuesday. This would give a chance for the Commission to give consideration of the testimony presented today, including the request for a five-day moratorium, in order for the Department to fully brief the Governor's Office and the legislative body before continuing to move forward with this action.

Chairman Chilton noted this was direction to the Department only and not a motion.

Mr. Odenkirk made comments regarding procedures. Commissioner Carter requested a meeting. The Open Meeting Law requires a 24-hour notice before a public meeting can be held. The Department would post the notice on Monday morning to the public.

The earliest a meeting could occur would be on Tuesday morning. At that time, the Commission could take action on the decision before it. Nothing can occur until the Commission reconvenes in Tuesday.

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Meeting recessed at 4:10 p.m.

Meeting reconvened at 4:20 p.m.

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Director Shroufe clarified that the telephonic Commission meeting, with an agenda proposed for Tuesday, would be open to the public. The meeting was not to collect more input. It would involve discussion of recorded input the Commission received today.

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12. An Update and Status Report on the Sonoran Desert Conservation Plan and Proposed Multi-Species Conservation Plan for Pima County

Presenter: Bob Broschied, Habitat Branch Chief

For additional information, see Commission meeting minutes for September 5, 2003, pages 15-17, and August 8, 2003, pages 2-3.

Maeveen Behan, Project Director of the Sonoran Desert Conservation Plan (SDCP), gave a Powerpoint presentation.

All that is remaining in the Plan is the federal permit aspect, which is really a subset. The permit would not include State land. Only a permit for unincorporated Pima County land that the board will make land use decisions over was being sought. This would be for only 630,000 acres, and would be only for activities affecting the county, e.g., development; public works projects; flood control district; and recreation through the Parks Department. These are elements of the larger plan.

The Section 10 permit has the potential to be the first federal permit issued on a large scale that permits working landscapes.

A bond initiative is coming up in May. The Bond Committee hopes to have money available for conservation use.

As a part of the federal permit, there would be a few opportunities (hookups) for parties who were not ready to enter into a Section 10 agreement now to buy into it in the future, if they want.

Regarding the difference between habitat protection and wildlife management, a cooperative agreement could be created in the Plan between the County and Game and Fish that meets a comfort level between the two entities.

Chairman Chilton asked if the County was going to purchase conservation easements except in certain identified restricted areas. Ms. Behan stated because the County did not want to own or manage more land, it would lease it back to the persons or group. Conservation easement

discussions were moving along with the hope they would be cheaper than buying acquisitions and long-term management issues would be resolved.

Public comment

Richard Genser, representing the Coalition for Sonoran Protection, thanked the Commission for its support of the Sonoran Desert Conservation Plan. He thanked the Department for entering into a cooperative agreement in February 2002 with Pima County. He hoped the Commission and Department would continue to work in a cooperative manner with Pima County and its citizens.

Brian Dolan, representing the Arizona Desert Bighorn Sheep Society, stated he was pleased with the presentation given at the meeting in September. When a resolution was being pursued with the Pima County Board of Supervisors concurrent to that, the Board approved a watered-down version of what was presented in Yuma. He was still following the SDCP and would provide a copy of the resolution to the Commission next week. One of the biggest worries was that these lands acquired in the name of conservation are going to be ultimately turned over to an expansion of the Buenos Aires National Wildlife Refuge or Saguaro National Monument. This would represent a loss of hunting opportunities. Ms. Behan stated the best strategy would be for Mr. Dolan to be invited to the drafting team for the implementation agreement so that the language would be in the contract the County enters into with the U.S. Fish and Wildlife Service.

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11. Landowner Relations Program (LRP) Presentation to the Commission

Due to the length of the meeting, this item was postponed to a future Commission meeting.

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16. The Scientific Process Followed for Requesting a Delisting of the Hualapai Mexican Vole

Due to the length of the meeting, this item was postponed to a future Commission meeting.

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5. 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.

The Pima County Range broke ground. He described the two development phases.

A new group of archers will be coming to the Commission with a couple of shooting range proposals, both through the grant cycle and as a Wildlife Conservation Fund possibility.

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5.1 Vendor Activities and Agreements at Department Shooting Ranges

Presenter: Kerry Baldwin, Education Branch Chief

The Commission was briefed on current vendor activities at Department shooting ranges, including the Ben Avery Shooting Facility. The briefing included information on agreements between the Department and vendors, as well as administrative procedures in place to address these activities and proceeds from vendor activities.

For additional information, see Commission meeting minutes for February 13, 2004, pages 9-10.

Where the Department does not manage the facility (Three Points, Usery Pass, Sierra Vista, and 7-Mile Ranges), the operating club is directly responsible for processes and procedures. Processes and procedures were described.

At facilities the Department owns and operates (Ben Avery Shooting Facility), there are three ways vendors are allowed on the property.

- 1) The vendor may establish an agreement directly with the Department
- 2) Vendors may establish an agreement with a group hosting an shooting event under a Master event agreement established with the Department
- 3) Long-term vendor agreement or contract

These three situations were further described.

The Ben Avery Range Fund, managed by the Arizona State Rifle and Pistol Association (ASRPA), was further described.

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Commissioner Carter left the meeting at 5:22 p.m.

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Public comment

Joe Duchene, representing self, makes use of the Ben Avery Range Fund and wanted to see such programs continue. Regarding the proposed wilderness area, he needed to have roads to have recreational access. He was opposed to the proposal.

Terry Allison, representing ASRPA, further described the Ben Avery Range Fund. The money raised on the Range was 100% used on range improvement. He asked for the Commission's continued support of the fund.

Marlys Duchene, representing self, is a shooter and a hunter and appreciated the Commission's support for shooting ranges and shooting sports education.

Commissioner Golightly wanted the following questions or concerns addressed at the June Commission meeting:

- Was there a contract between the County and the Club for vending services before the Department took it over? If so, did it transfer via a conscious decision or a written agreement

with Commission acknowledgement of the contract? Was it developed in accordance with state government standards, rules or policies?

- How do we contract for vendor services in general? What are the requirements?
- What are the options for future vendor services at the Ben Avery Shooting Facility?
- Is there an audit trail using acceptable business accounting practices for vending money and ASRPA?
- Identification of exposures with regard to legal liability of where we are vulnerable for substandard practices for a state agency.

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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: Bob Broschied, 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.

One update was given regarding the Environmental Assessment of the Apache Trout Enhancement Project. The Apache-Sitgreaves National Forests issued a Decision Notice and Finding of No Significant Impact on the non-wilderness portion of that project. The Forests decision was subject to a 45-day administrative review or appeal, which expires on April 16. The issue has to do with pesticide application within and without wilderness. In a wilderness area, the deciding officer is the Regional Forester and non-wilderness decisions are made at the forest level.

Chairman Chilton referenced the 9th Circuit Court decision that opened the Forest Service's Supplement to the Final Environmental Impact Statement regarding the forest land in Arizona and New Mexico and goshawks and Mexican spotted owl. She asked if the Director could meet with Harv Forsgren, Regional Forester, to determine how we can work together to have an acceptable document to the court that meets the needs the requirements of the law but does not use a single species to stop ongoing healthy forests projects. She asked to have a report on the issue at the next Commission meeting.

With regard to the Parashant National Monument, Commissioner Melton asked if there was input from non-governmental organizations or was it between government agencies. Mr. Broschied stated the only people at the table were the Bureau of Land Management (BLM) and the Game and Fish Department. Alternatives were being developed. Next month the Department would be presenting two MOUs for Commission approval that would grant the Department cooperating agency status and would allow us to participate in management plans and National Environmental Policy Act documents.

Chairman Chilton asked for a Department briefing at the next Commission meeting on the recent 9th Circuit Court decision on the subject of salmon and the wilderness. This could be a part of the federal lands update.

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club, asked for a Department update on the issue of catchments. Regarding road plans, BLM has been more than adequate in review of existing map of roads of existing management plans and asking for input to ensure no roads were missed or unidentified before starting the process. The draft plan is anticipated on the Cabeza Prieta National Wildlife Refuge. Director Shroufe stated the update could be covered under Item 2.

The Department has been invited to a meeting the end of April in Washington, D.C. with the Department of Defense and three other states that have INRMPs due under the revision of the Sikes Act in 1997.

Brian Dolan, representing the Arizona Desert Bighorn Sheep Society (ADBSS), referenced two issues: the Long Tom grazing allotment and the Black Mesa Ranger District and the Black River Burn in the Alpine Ranger District. The ADBSS is working with the Department on the expansion of Rocky Mountain bighorn sheep habitat in Arizona. Both of the projects affect that. The ADBSS is anxious to find out if the Long Tom allotment permittee is a willing seller to convert to cattle only.

Mr. Broshied noted the Department and BLM were not close to reaching resolution regarding a permittee releasing cattle on that portion of the mountain on the A Allotment in Unit 15C that is utilized by bighorn sheep. Commissioner Golightly directed the Department to draft a letter for his signature objecting to the permittee being allowed to release cattle. He wanted a copy of the letter to go to the ADBSS. The A Allotment should be evaluated in terms of forage availability on the unusable portion. Commissioner Golightly would share the letter with any other commissioners who were interested.

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18. Call to the Public

Don Farmer, representing the Arizona Heritage Alliance (AHA), noted the AHA appointed a new Executive Director. John Bashears, the Executive Director of the AHA, noted the challenges of the AHA in the future and asked for Commission support.

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2. 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.

With regard to Mr. Fugate's earlier suggestion, Mr. Adkins stated he filed a motion this week to accelerate the appeal after having first discussed it with Bill Horn. If no response was received within 30 days from the IBLA with regard to the appeal, he would be sending a letter to the Secretary of the Interior requesting that she take jurisdiction. A list of the appealing organizations was read.

With regard to *Ameduri and Yee et al. v. U.S. Forest Service et al.*, the Department was waiting on a court ruling for a stay order filed by the appellants. He expected a ruling would be rendered soon. The land exchange is ready to occur. The Governor has to approve the deeds; her signature is required.

The Fund for Animals et al. v. Norton et al.; case has been settled. There was nothing new in the final settlement agreement.

Commissioner Melton referenced the situation in the Silverbell Mountains. Director Shroufe noted there would be a discussion next week in the Federal Relations Committee at the North American Conference about the BLM cattle trespass issue. This will be addressed at the national level to try to work out an Emergency Disease Response to allow BLM and the U.S. Forest Service to take immediate action in trespass situations instead of going through a three-four week process.

Public comment

Brian Dolan, representing the ADBSS, referenced the grazing permit and goats escaping from State Land. He thought a MOU or an internal grazing policy within the State Land Department (SLD) could be written that would allow Game and Fish to have more influence preventing another disaster. Director Shroufe noted the Department was seizing the opportunity and, with SLD, was going to assess goat leases in the state. The Department would be asked for its opinion. The Department would have a meeting with SLD and all State Land considerations having wildlife implications would require Game and Fish Department input.

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4. State and Federal Legislation

Presenter: Anthony Guiles, Legislative Liaison

Handouts were provided: language for H 2158 (Shooting Range Preservation) and overview of State Trust Land reform.

The new language for H 2158 was adopted in amendment and passed 57-0 in the House. There were several provisions. It was relevant to the Ben Avery Shooting Facility only.

Chairman Chilton requested a more thorough report on the State Trust Land reform at the next meeting.

Commissioner Golightly was concerned about restrictions on the Commission and trying to usurp its authority. He cited “the Commission unanimously approve the closure after public hearings have been held to discuss the closure and the three counties with the highest

population.” He thought this would set up in law, over time, the requirement of unanimous approval by the Commission in order to do anything.

Motion: Golightly moved THAT THE COMMISSION OPPOSE THE BILL.

Commissioner Golightly did not want the Commission to give up something that belongs to it on fee simple properties.

The motion died for lack of a second. Mr. Guiles pointed out there may be some intent clarifications that needed to be made before opposing the bill.

Commissioner Gilstrap noted two things were critical that Commissioner Golightly said. This legislation, which the Commission should be working on in concert with others, has become extremely contentious. He saw it as a tool to usurp the authority of the Commission and it was poor public policy. He was also concerned with the potential precedent.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION SUPPORT THE REVISION OF THIS BILL, AND IN TESTIMONY IN THE SENATE COMMITTEE, IT EXPRESS ITS CONCERNS SO IT GOES INTO PUBLIC RECORD THAT THIS IS RELATED TO ONE PROPERTY IN THE STATE OF ARIZONA.

Chairman Chilton shared Commissioner Golightly’s concern regarding one legislative body telling the Commission there needed to be a unanimous vote on a subject. She did not want this precedent to spread.

Vote: Gilstrap and Melton – Aye
Golightly – Nay
Chair voted Nay
Carter – Absent
Motion failed to pass

Chairman Chilton explained there could be another motion in support of the bill, but would include a statement of the Commission’s deep concern for the issue being raised about the legislative body telling an independent Commission it must take action on a 100% vote.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION SUPPORT THE BILL AND TO ARTICULATE BOTH VERBALLY AND IN WRITTEN FORM TO THE LEGISLATURE ITS CONCERN OF THIS POTENTIAL PRECEDENCE.

Commissioner Golightly preferred to monitor the bill in the Senate.

Public comment

Jon Fugate, representing the Yuma Valley Rod and Gun Club, asked for clarification. Mr. Guiles explained initially the legislation was taken out because there was separation of powers

issue and the attorneys in the House had ruled this legislation could not go forth with that in there. This was another layer of protection since introduction of the bill for this particular asset was an unanimous vote. There were other statutes requiring unanimous vote of other bodies.

Vote: Gilstrap and Melton – Aye
Golightly – Nay
Chair voted Aye
Carter – Absent
Motion passed 3 to 1

Commissioner Golightly stated that because he was delegated with Commissioner Gilstrap to be the legislative representative, he would uphold the Commission's desire on this and he would do what it voted.

Commissioner Gilstrap stated that because of the tedious process involved, he directed the Director to write a letter to the ASRPA to thank them for their support for Commission independence and for identifying a constitutional issue. He also wanted thank you letters written to organizations who were aggressive in their support when needed on this legislation. Also, there were representatives of the board of directors with the National Rifle Association (NRA) who used arguments that had nothing to do with H 2158. Legislative Liaison Darren LaSorte had substantial inaccurate information. Commissioner Gilstrap asked that a followup be done with the NRA so that, in the future, there was better reference of the facts so that similar misinformation does not go to the House, public, or anywhere else. Chairman Chilton noted there was a desire to rebuild a constructive relationship.

Director Shroufe stated he preferred to make contacts first rather than write letters. He hoped to get a fresh opinion next week.

Regarding H 2158, Commissioner Golightly was willing to share the tapes of the Commission meetings of June and August 2002 with the public. He set up a public meeting last Wednesday at the Ben Avery Shooting Facility. A typed verbatim transcript of those meetings would be available soon. He noted physical tapes and the written minutes were available to any member of the public at any time.

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6. Substantive Policy: Arizona Wildlife Conservation Fund Expenditures – Second Read

Presenter: Kerry Baldwin, Education Branch Chief

For additional information, see Commission meeting minutes for February 13, 2004, pages 10-11 and page 15.

Motion: Melton moved and Golightly seconded THAT THE COMMISSION ADOPT THE POLICY AS WRITTEN.

Vote: Unanimous

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8. Request to Close the Record and Approve the Notice of Final Rulemaking and the Economic, Small Business and Consumer Impact Statements for Amendments to Article 6, Rules of Practice Before the Commission

Presenter: Mark Naugle, Rules and Risk Manager

The rules were as follows: R12-4-601, R12-4-602, R12-4-603, R12-4-604, R12-4-605, R12-4-606, R12-4-607, R12-4-609, and R12-4-610. The Commission was also asked to vote to close the record and to approve the Notice of Final Rulemaking and the Economic, Small Business and Consumer Impact Statement for promulgation of new Article 6 rules of practice before the Commission rule R12-4-611 for filing with the Governor's Regulatory Review Council.

For additional information, see Commission meeting minutes for December 4, 2003, pages 18-19.

The anticipated effective date for the Article 6 rule amendments will be July 3, 2004.

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION VOTE TO CLOSE THE RECORD AND TO APPROVE THE NOTICE OF FINAL RULEMAKING AND THE ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENTS FOR AMENDMENTS TO THE FOLLOWING ARTICLE 6 RULES OF PRACTICE BEFORE THE COMMISSION RULES: R12-4-601, R12-4-602, R12-4-603, R12-4-604, R12-4-605, R12-4-606, R12-4-607, R12-4-609, AND R12-4-610; AND FOR THE PROMULGATION OF NEW ARTICLE 6 RULES OF PRACTICE BEFORE THE COMMISSION RULE R12-4-611 FOR FILING WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL.

Vote: Unanimous

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9. Request for Consideration of Mr. Dennis A. Smith's Petition to Adopt a New Rule in Article 3, Taking and Handling of Wildlife to Address Concerns Over Public Access to Wildlife Watering Locations

Presenter: Mark E. Naugle, Rules and Risk Manager

Dennis Smith submitted a petition requesting the adoption of a new rule in Article 3 regarding public access concerns to wildlife watering locations and restricting the use of tree stands and blinds during big game hunting seasons.

The Department reviewed the petition and it did not meet the submission requirements set forth in A.A.C. R12-4-601.

Mr. Smith's proposed rule would prohibit a person from restricting, obstructing, impeding or otherwise blocking the access of a hunter to a watering place of wildlife on public lands. Specifically, the placement of signs, notes, unattended vehicles and camps, or obstruction to roadways and trails would be considered a violation.

The Department believed this to be a waterhole confrontation issue. There were no issues involving the use of tree stands or confrontations at waterholes that will prevent the Department

from fulfilling its mission from biological and recreational perspectives. The issue then becomes one of ethical behavior by hunters. The Department has the opportunity to facilitate peaceful resolution of most waterhole confrontations through an information and education campaign. The Department believed there were sufficient existing state statutes or federal regulations in place for addressing issues related to a person's belief of an exclusive right or entitlement to public water and to address the placement of signs or tree stands. The Department recommendation was to deny Mr. Smith's petition.

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION VOTE TO DENY THE PETITION FROM MR. DENNIS A. SMITH REQUESTING THE ADOPTION OF A NEW RULE IN ARTICLE 3 REGARDING CONCERNS OVER PUBLIC ACCESS TO WILDLIFE WATERING LOCATIONS AND RESTRICTING THE USE OF TREE STANDS AND BLINDS.

Vote: Unanimous

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10. Consent Agenda

- a. Memorandum of Understanding between the Arizona Game and Fish Department (Department) and the Nevada Division of Wildlife.

Motion: Melton moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE ARIZONA GAME AND FISH DEPARTMENT AND THE NEVADA DIVISION OF WILDLIFE.

Vote: Unanimous

- b. Request for Commission Approval of a Memorandum of Understanding between the USDA Forest Service, the Pinetop-Lakeside Sanitary District and the Arizona Game and Fish Commission for Continued Cooperation regarding Future Management of Jacques Marsh Wildlife Area in Navajo County, Arizona.

Motion: Golightly moved and Gilstrap seconded THAT THE COMMISSION VOTE TO APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE USDA FOREST SERVICE, THE PINETOP-LAKESIDE SANITARY DISTRICT AND THE ARIZONA GAME AND FISH COMMISSION FOR CONTINUED COOPERATION REGARDING FUTURE MANAGEMENT OF JACQUES MARSH WILDLIFE AREA IN NAVAJO COUNTY, ARIZONA, AND EXECUTE THE AGREEMENT AS ATTACHED OR AS RECOMMENDED AND APPROVED BY THE OFFICE OF THE ATTORNEY GENERAL.

Vote: Unanimous

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15. Request for Authorization of Expenditure of Funds from the Arizona Wildlife Conservation Fund

Presenter: Steve K. Ferrell, Deputy Director

Expenditure of funds in the amount of \$66,000 from the Arizona Wildlife Conservation Fund would be used to pay for the costs of the recent outbreak of disease in the Silverbell desert bighorn sheep population.

Motion: Gilstrap moved and Melton seconded THAT THE COMMISSION VOTE TO APPROVE THE EXPENDITURE OF FUNDS FROM THE ARIZONA WILDLIFE CONSERVATION FUND TO PAY FOR THE COSTS OF THE RECENT OUTBREAK OF DISEASE IN THE SILVERBELL DESERT BIGHORN SHEEP POPULATION.

Vote: Unanimous

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17. Potential Changes to the Annual Meet the Commission Awards Banquet

Presenter: Dana Yost, Executive Staff Assistant

Potential changes to the annual Meet the Commission Awards banquet were discussed. These included, but were not limited to, the date of the event (and the corresponding January Commission meeting), the time period for the nomination cycle, the content and format of the awards presentations, the tribute to the outgoing chairman, and event sponsorship.

Mr. Yost recommended moving the nomination process up. Instead of bringing a roster of the nominees to the Commission in December, this would be done in August.

Motion: Gilstrap moved and Melton seconded THE RECOMMENDATION.

Vote: Unanimous

Mr. Yost recommended moving the Meet the Commission banquet and the corresponding Commission meeting forward one week. There was concern expressed by the public that the event currently occurs on a three-day holiday weekend and also occurs at the start of javelina season. The Commission meeting is currently scheduled for Friday, January 14 and the Meet the Commission is scheduled for January 15, 2005. If the dates were moved up, the Commission meeting would be on Friday, January 21 and Meet the Commission would be on Saturday, January 22.

Motion: Gilstrap moved and Melton seconded THAT THE JANUARY 2005 MEETING AND MEET THE COMMISSION BE MOVED ONE WEEK FORWARD ON THE CALENDAR.

Vote: Unanimous

Mr. Yost noted the Sheraton Crescent had been reserved for January 22

Vote: Unanimous

Mr. Yost referenced the format and content of the awards presentations. It was suggested the Department bring back to the Commission at the August meeting, with the nomination package, some kind of options to achieve the direction the Commission wants. Commissioner Gilstrap stated expanding the timeframe would enable the Department to properly prepare for the event.

According to Mr. Yost, fundraising would become an important part of obtaining money for this event.

Chairman Chilton wanted focus to be more on wildlife management contributions or activities of the individual.

19. Director's and Chairman's Reports

This item was tabled due to the length of the meeting.

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20. Commissioners' Reports

This item was tabled due to the length of the meeting.

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21. Approval of Minutes

Motion: Golightly moved and Gilstrap seconded THAT THE MINUTES FOR FEBRUARY 13, 2004, BE APPROVED.

Vote: Unanimous

The minutes for January 16, 2004, were signed.

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22. Future Agenda Items

Mr. Ferrell reviewed action and future agenda items noted during this meeting.

1. Conduct a telephonic Commission meeting hopefully on Tuesday, March 16, that would consider a five-day moratorium on lion removal efforts at Sabino Canyon. Brief the Governor and legislators on efforts and our reasons behind our decision to remove the lions.
2. At the June Commission meeting, bring back the Ben Avery vendor fund as a action item and produce products as they are available and submit to the Commission
3. Present a report to the Commission at the next Commission meeting regarding the Director's efforts to meet with Regional Forester Harv Forsgren on preparation of a document acceptable by the 9th Circuit Court and meets the Commission's needs for wildlife management that does not impact the implementation of the healthy forest initiative.
4. Include in the next lands update, present information on the 9th Circuit Court's Alaska decision and how it might affect the Department's programs.
5. Add to future federal lands updates the Long Tom Allotment in the Black Mesa Ranger District and the Black River Burn in the Alpine Ranger District.
6. Items 11 and 16 from today's agenda will be added on a future Commission meeting agenda.

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Motion: Gilstrap moved and Golightly seconded THAT THE MEETING ADJOURN.

Vote: Unanimous

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Meeting adjourned at 7:25 p.m.

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Sue Chilton, Chairman

W. Hays Gilstrap, Member

Joe Melton, Member

Michael M. Golightly, Member

Joe Carter, Member

ATTEST:

Duane L. Shroufe
Secretary and Director