

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Tuesday, March 16, 2004 – 10:00 a.m.
Arizona State Fairgrounds-Wildlife Building
17th Avenue & McDowell Road
Phoenix, Arizona

PRESENT-On Site: (Commission) (Director's Staff)

Commissioner W. Hays Gilstrap

Deputy Steve K. Ferrell
Asst. A.G. Jay R. Adkins

PRESENT-Phone (Commission)

Asst. A.G. Jim Odenkirk

Chairman Sue Chilton
Commissioner Joe Melton
Commissioner Michael M. Golightly
Commissioner Joe Carter

Chairman Chilton called the meeting to order at 10:00 a.m. The meeting followed an agenda dated March 15, 2004. It was the intent of the Commission not to take any more public comment on Item 1, inasmuch as the purpose of the item was to discuss public comment the Commission received at the March 13, 2004, meeting in regards to the subject. Chairman Chilton noted extensive public comment was heard at the March 13 meeting in Tucson.

1. Consideration of the Sabino Canyon Mountain Lion Issue

Presenter: Steve K. Ferrell, Deputy Director

Director Shroufe issued a five-day moratorium on the Department's response to the Sabino Canyon issue, which was effective at midnight, Sunday, March 14. This would allow the Department time to meet with those elected officials, their constituent groups, as well as stakeholders involved in the issue during the five-day period. The meetings started as of yesterday; there were more scheduled for today and more were intended during the week.

Commissioner Gilstrap gave a briefing regarding the make-up those present at the meeting location. No one was present from the Sabino Canyon Recreation Area.

Commissioner Golightly stated the Governor wrote Chairman Chilton a letter and asked that she respond. Chairman Chilton noted she signed the response letter on Saturday. Mr. Ferrell stated it was faxed to the Governor on Monday morning, but a return response had not yet been received from the Governor.

Commissioner Melton received a copy of the report and was in favor of it. There were 18 reported sightings or incidents of mountain lions in 2003. During the first three months of 2004, there were 18 reported sightings of mountain lions. There have been intensified contacts or sights of these animals. He hoped that even with the five-day moratorium, there would be no attacks on humans.

Commissioner Carter stated he had an opportunity to review the events leading up to this year, as well as the response letter to the Governor. He felt the actions the Department has taken in conjunction with the U.S. Forest Service were consistent with policy and paramount concern with public safety. It was clear, in his opinion, the decisions made by the Director, in consultation with other agencies, was the right thing to do and was consistent with policies established by the Commission.

Commissioner Golightly noted there was an ongoing public safety issue in the Sabino Canyon area.

Motion: Golightly moved and Carter seconded THAT OUT OF RESPECT TO THE ELECTED OFFICIALS WHO HAVE EXPRESSED CONCERN OVER THE DEPARTMENT'S DECISION TO REMOVE MOUNTAIN LIONS IN SABINO CANYON, AND IN RESPONSE TO THE THREAT THEY PRESENT TO PUBLIC SAFETY, THE COMMISSION SUPPORT THE FIVE-DAY MORATORIUM ON LION REMOVAL EFFORTS SO THAT THE COMMISSION MAY MEET WITH THE GOVERNOR'S STAFF, CONCERNED LEGISLATORS, STAKEHOLDERS AND CONSTITUENT GROUPS TO EXPLAIN THE DEPARTMENT'S RESPONSE PROTOCOLS, AS WELL AS EXPLORE LONG-TERM SOLUTIONS TO HUMAN AND MOUNTAIN LION CONFLICTS STATEWIDE, NOT JUST IN SABINO CANYON. FURTHER, THAT AT THE END OF THE FIVE-DAY MORATORIUM, THE DEPARTMENT RESUME ITS EFFORTS TO REDUCE THREATS TO PUBLIC SAFETY IN SABINO CANYON.

Chairman Chilton suggested including on the list with who we were meeting on this issue, principals and parent groups of schools that were in proximity to the canyon.

Commissioner Golightly accepted that as an amendment to his motion; Melton concurred as the second.

Vote on amended motion: Unanimous

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2. State and Federal Legislation

Presenter: Anthony Guiles, Legislative Liaison

Ideas have been proposed regarding immunity legislation, on feeding ordinances and trying to find a solution in either this session or in the future.

Commissioner Gilstrap asked about the status of potential legislation. Mr. Guiles stated there was a proposed bill in the Senate (S 1347) regarding immunity and public entities. This bill was held in the Judiciary Committee; the bill is now dead. This bill was proposed before the situation arose in Sabino Canyon. There was some concern expressed by legislators regarding absolute immunity granted to public entities.

Mr. Odenkirk related concerns expressed regarding immunity. Throughout the past week, there have been reports that part of the motivation for the Department's action is

concern regarding liability caused by damages and injuries with wildlife and that the state has been held liable the past few years for fairly significant damage claims for injuries caused by wildlife. This is a concern to the Commission but more paramount, the concern is public safety and injuries to people. The Department is motivated because it may face liability. Liability remains a real issue. S 1347 would have established absolute immunity for injuries caused directly or indirectly by wildlife.

Mr. Odenkirk had expressed concern with the bill previously. Although the concept of immunity, in general, is important and would help protect the Commission and the State of Arizona from incurring large liability claims, there was some concern with the language in the bill that dealt with the scope of the legislation. Typically courts will look at immunity language very narrowly and will construe statutes to not create immunity. The concern with the bill is that there could be situations where the element of human failure is involved in a situation that results in an injury to a member of the public. The bill does not adequately address that concern. There may be situations where wildlife were clearly responsible for injuries; but injuries may occur due to human error in wildlife encounters.

The bill would amend ARS §12-820.01 by adding a new subsection that states “public entities and public employees are immune from suit and shall not be liable for any damage to life, person or property that is caused directly or indirectly by any wildlife defined in ARS §17-101.” He thought the language should be expanded to state “any damage to life, person or property that involves any wildlife or is caused directly or indirectly by any wildlife.” He cited a case when an elk had been hit on I-40 and the victim had filed an action against Arizona for damages. The jury awarded over \$3 million to the victim. He was not sure this legislation would adequately create immunity for the state. Even though there were injuries caused indirectly by wildlife, the court may find the injuries were caused by the state by failing to remove the animal in a timely manner. Therefore, the state had contributed to the injuries. The courts do not look favorably on efforts by legislatures to establish immunity so the courts will interpret statutes very narrowly to avoid immunity when possible.

Commissioner Carter thought there should be language stating “except for neglect of employees, agents and representatives.” He thought there needed to be work with the Legislature and the Governor’s Office with regard to public safety and limiting the potential for liability.

Commissioner Gilstrap asked if the Department worked with the bill’s sponsor, could the language be revised to encompass some of the Commission’s other concerns and make it more inclusive. Mr. Guiles stated it would be possible for the Department to approach the sponsor to draft language using the original language as a base. The Attorney General’s Office and other stakeholders would be asked to help draft legislation that may be amenable to all parties.

Chairman Chilton suggested starting with a focus on highways. Such legislation may get passed. Commissioner Gilstrap noted the highways were one of the principal venues of liability. He thought legislation needed to be broader. This legislation would not preempt someone from filing suit.

Mr. Odenkirk stated immunity legislation establishes defenses for claims so anybody can continue to bring cause of action against the state and the Commission for injuries. It would be up to the court to decide if the immunity statute applied to a given situation. If so, it would be an affirmative defense to any claim.

Commissioner Golightly could not support specific instances.

Motion: Golightly moved and Gilstrap seconded THAT LEGISLATION NEEDED TO BE ALL ENCOMPASSING AND THE DEPARTMENT SHOULD RECOMMEND LANGUAGE FOR THE BILL. THE LANGUAGE SHOULD BE ALREADY ON THE BOOKS IN THE SENATE AND AMENDED TO JIM ODENKIRK'S CONCERNS.

Commissioner Carter wanted to see more specifics from Mr. Odenkirk before taking action. He wanted to know if there was a vehicle in this session that would address the issue of feeding wildlife. This would give the agency a tool to deal with this increasing problem, especially in urban areas. Commissioner Golightly stated previously the Commission recommended monitoring the bill in its current form. He was worried about the time element with regard to reviewing the bill and finding a legislator who would be interested in doing a striker on another bill.

Commissioner Gilstrap clarified the Department would work with the bill's sponsor to pursue revisions and amendments. This would give an opportunity for the Commission to review it and then decide to support the amendment. The Senate would be responsible to find a vehicle bill on which to utilize it. Commissioner Golightly suggested putting the feeding element in a separate item.

Commissioner Melton and Chairman Chilton preferred to do two separate bills. Chairman Chilton also wanted to see a separate track on the immunity bill so that if it was not possible to get a broader one, at least we may be able to deal with the highway issue. Commissioner Gilstrap concurred on the feeding bill. Work would need to be done on that with not only the Legislature, but municipalities. Law enforcement would be critical to the value of a wildlife feeding bill.

Because he made the motion, Commissioner Golightly felt the feeding issue should be in separate legislation. Draft language on the feeding issue could be presented to the Commission. Each county statewide must support legislation on the feeding issue.

Commissioner Carter stated he could support the immunity portion, but he could not support something he could not see, i.e., legislation on the feeding issue. There was a need to work at the county or city/town level regarding feeding of wildlife. Chairman Chilton agreed.

Commissioner Carter noted he wasn't ready to vote to give the Department direction because he supported the need for immunity. He wanted to see the language before moving from the position of monitor to support.

Commissioner Golightly noted his motion was to give direction to the Department to draft language that would amend the bill to address Mr. Odenkirk's suggestions earlier

about the immunity language. A legislator should be found to do a strike to include the already existing legislation being held in the Senate to incorporate the Commission's concerns related by Mr. Odenkirk. The language should be all encompassing and not just focused on the highway aspect.

Commissioner Gilstrap noted the intent of his second of the motion was to give the Department direction and the Commission could review draft language before giving support to have the bill move through the Legislature.

Vote: Unanimous

Motion: Carter moved THAT THE DEPARTMENT BE GIVEN DIRECTION TO EXPLORE WITH LEGISLATIVE AND OTHER APPROPRIATE PUBLIC ENTITIES HOW WE MIGHT BEGIN TO ADDRESS, AS QUICKLY AS POSSIBLE, THE ISSUE OF FEEDING OF WILDLIFE.

Commissioner Gilstrap stated he would second the motion if it included the League of Cities, the Association of Counties and other parties that might be impacted. Commissioner Carter affirmed it would.

Vote on amended motion: Unanimous

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

Vote: Unanimous

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Meeting adjourned at 10:45 a.m.

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