Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Friday, January 30, 2006 – 1:00 p.m.
Arizona Game and Fish Department
2221 W. Greenway Road
Phoenix, Arizona 85023

PRESENT: (Commission)

In person:
Commissioner Michael M. Golightly
Commissioner William H. McLean
Commissioner W. Hays Gilstrap

Via telephone:
Chairman Joe Melton
Commissioner Robert Hernbrode

(Director's Staff)

Deputy Director Steve K. Ferrell
Assistant Attorney General Jim Odenkirk
Assistant Attorney General Shelley Cutts

Chairman Melton called the meeting to order at 1:05 p.m. The Commissioners introduced themselves and Commissioners Melton and Hernbrode confirmed they were present via telephone. Deputy Director Ferrell introduced himself and stated that he was standing in for Director Shroufe. Chairman Melton turned the Chair over to Commissioner Golightly for this meeting. This meeting followed an agenda dated January 26, 2006.

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1. Senate Bill 1300: Wildlife Habitat Restoration Committee; Appropriation

Presenter: Anthony Guiles, Legislative Liaison

The Commission was provided with a copy of Senate Bill 1300 (attached to these minutes) titled Wildlife Habitat Restoration Committee; appropriation, prior to this meeting for review and consideration. This legislation appoints seven members to an oversight committee. Those seven members consist of two members of the Game and Fish Commission, one sportsman appointed by the President of the Senate, one sportsman appointed by the Speaker of the House, one member of the public appointed by the Governor, one landowner appointed by the Senate, and one landowner appointed by the Speaker of the House. This bill would appropriate $5 million dollars in each of the next three next consecutive fiscal years for a total of $15 million. Also included in the bill is a list of priority projects on where that money could be spent.

Commissioner Melton asked about the difference of $76,000 between $5 million and the $14,924,000 that was swept from various Department Funds, and would the last $5 million be less $76,000 or would it be $5 million.

Mr. Guiles stated that the way the bill is written, it would be a $5 million dollar appropriation in that last year.

Commissioner Hernbrode understood that the list of seventeen items/projects in the proposed bill were obtained from the Department, but wanted to know how they were prioritized.

Commissioner Gilstrap recused himself from discussion and from the subsequent vote.

Chairman Golightly stated that the list was presented to the Commission two years ago as a recommendation on how the Department would spend fee increase monies if a fee increase were granted through a bill, and the Commission prioritized that list.

Deputy Director Ferrell stated that the Department generated a list for the fee increase as well as for the sales tax initiative, and the one for this bill, and that those lists were consistent with one another. The priorities have been the same with habitat improvement at the top of the list.

Commissioner McLean commented on the broad language of the bill and stated that if it was going to become statute then it needed to be amended and more defined. An example is in Section 4.A, number 3, Wildlife water redevelopment in Yuma; the boundaries are not defined.

The Commission discussed other items in the list that were not defined.

Commissioner McLean stated for the record that when the Commission gets money, the Department proposes a budget, that budget is brought before the Commission, public hearings are held for public input, and finally the Commission approves a budget. That budget goes to the Joint Legislative Budget Committee, and the Governor's Budget Office, and then to appropriations where more public meetings are held, and then finally some refinement of that set of numbers is passed by the Legislature. The Commission does not need another layer of bureaucracy to give input on how to spend money. Further, Commissioner McLean stated that he believes the priorities will change depending on who is sitting on the Committee.

Commissioner Hernbrode noted that there was no reference in the bill to the near $15 million that was swept from the Department's budget since 2003, so it seems to be independent of that. Also, it's clear that the establishment of a Wildlife Habitat Restoration and Enhancement Committee usurps the authority of the Game and Fish Commission on specific issues of habitat restoration and forces decisions outside long-range planning.

Public Comment

Jack Simon, representing himself, urged the Commission to make every effort to get swept funds back, but that they should go back to the same funds that they were taken from. Senate Bill 1300 takes away the power and authority of the Commission. This bill gives the Speaker of the House and the President of the Senate the ability to control the expenditure of $15 million dollars.

Pete Cimellaro, representing himself, stated, "This bill originated from a discussion that a handful of sportsmen had quite some time ago, last summer, in an effort to try to recover some funds that were removed from this agency. Over the years a number of inappropriate hits have taken place, but legal, from the Legislature. We are not tied to any specific amount. We came up with an amount that we thought we could get from the Legislature. It's not tied to Heritage, it's not tied to Watercraft, it's not tied to anything. It is simply an amount that we thought we could get over a period of time. Let me make that perfectly clear, first of all. In our discussions at the Legislature with some of the leadership, it was very clear that if any way shape or form, you pursued specific funds for specific purposes without the Legislature being able to be

involved, that you probably weren't going to get what you wanted. At the same time, a number of legislators felt that the Department was forced to give up funds that it shouldn't have had to. There's a bit of guilt at the Legislature right now among some members that say the funds that have been borrowed, shall I say, from this agency, some would say taken, in the last so many years was inappropriate. It shouldn't have been done. Our attempt is to recover something for the agency out of the obligation that some legislative members feel. We recognize that, more than likely, the friends that we had, and when I say that I'm talking about both democrats and republicans, that were willing to work with us, weren't the ones we had to convince. Indeed, if anything happens at the Legislature, you have to work with leadership. We went to leadership and began to try to craft something that we could then bring back in the form of legislation that would be supported by leadership. Since this has nothing to do with past monies taken, other than the sense of obligation that may exist by those legislators, we crafted something that does have some oversight, it does have a committee that speaks specifically to this bill, and projects included specifically in this bill, no others and no other authority or challenge of authority for the Arizona Game and Fish Department other than what is contained in this bill.

We met with Director Shroufe asking if we could then get a list of projects. He said, absolutely and asked Bob Broscheid, the Habitat Branch Chief, to work with us and after subsequent meetings and phone calls, we came up with the list. The original list was some $65 million dollars in projects. I forwarded that list to many sportsmen organizations, all of the Wildlife Council members and even to some others, and asked for their input over a period of two months, in October and November. Unfortunately, feedback was slow as some of you understand, because of hunting season as much as anything. It's hard to get sportsmen to do anything at the end of the year, whether or not they get a permit, they're hunting with friends and family, and we did not finalize this list until just before the legislative session began.

The descriptions that you see listed were taken off of the Department's names of these projects and Department list of projects. I think we got them correct, but that is the list that you see. The reason why there are projects that exceed the $15 million is because all of us that work with habitat projects today understand that many hoops have to be jumped through and many obligations in terms of the national environment policy act and others have to be completed, but what we asked Mr. Broscheid for was a list of projects that we could complete over the next two to five years, something that could be done now. I believe this list reflects that, but it also gives some flexibility knowing that you're not going to have the ideal conditions for a burn, you're not going to have all of the paperwork work done for this project, a priority may come along that changes this process, and that's why some flexibility was designed in this legislation to allow this committee to change that priority. Not other projects and not to add any additional projects and if that needs to be clarified, we're perfectly willing to do it, but it was to come off this list of projects that was identified by numerous sportsmen groups.

I think the oversight that I started to speak of in the beginning is clear. Yes, if they were going to give us monies, then they wanted to have some say in that so what we did clearly was, we thought we put something together that worked pretty well. You've got two commissioners and those to be chosen from among yourselves. You do have two sportsmen, one from the House and one from the Senate, and granted, the leadership will pick those. I am not fearful, personally, that it would be anything contrary to what this agency, commission and sportsmen would support. Someone from the Governor, I do not believe that person, appointed by the Governor, would be objectionable. It's basically just a broad representation of people that

should be involved. Landowners, yes, it's a component that I think is important in this, and two are on this list. It's the oversight that the leadership said they wanted. I'm comfortable with it.

The attempt here was to do nothing more that find additional dollars. That $15 million, if we are granted that appropriation over the next three years can turn itself into $30 to $40 million dollars with proper match, and that was another criteria that we brought forward to Mr. Broscheid, that we wanted projects that could indeed be matched with federal funds. So it's a tremendous return, it does have some limitations with the oversight committee, but it's a tremendous return for monies that you can't recover in any other way, at least that's my opinion. If there is any sense of obligation at the Legislature, we can capitalize on it at this time frame, but if you go and you request specific monies for specific projects that the Legislature does not agree with, I don't think you can be successful. So what we tried to craft is something broad enough, it's statewide, it's in all different areas, the language on the projects, I admit I heard the concern of Commissioner McLean where you talk about 'in Yuma' and I don't believe that was the way it was originally listed, it is in Southwestern Arizona, it looks at a whole group of projects already identified as needed, most of them from BLM, within the southwestern portion of the state. So, we can certainly work to clean up the language of those, but again, these are Department projects that have been identified. We didn't go outside that list at all. We are very confident they all worthwhile projects, but they do reflect a broad spectrum of sportsmen organizations.

Commissioner McLean expressed additional concerns about undefined terms and ambiguities in the bill, as well as concerns about creating a new bureaucratic process that is not necessary and usurps Commission authority.

Commissioner Hernbrode asked Mr. Cimellaro to elaborate on the rational or justification for the oversight committee.

Mr. Cimellaro stated, "In speaking with the leadership at the Legislature, we are attempting to do something that hasn't been done before. In fact, that this Legislature would actually give funds to the Department presents some belief that they have an obligation to do so since they decided to use funds in other ways, but one of the things that was brought up to us by the leadership was, if we're going to return money, or we're going to give money, by the way, that's the way I should say it, to give money to the agency, then it goes back to the old days when you're not going to buy trucks for the Director and all the statements we used to hear, we want you to find out, give us some justification for it, give us something that is going to manifest itself in some good for whatever you choose, but define something that is going to work. That's where we came up with this list of projects, habitat work, etc. and that being the tie in or buy in that the legislative leadership said this would be something we could support."

Commissioner Golightly stated that he was confused about the purpose of this bill because John Gisi, one of the founding members of Arizona Sportsmen for Wildlife, told him that the reason for this bill was because the Commission did not run their own bill and had no foresight into getting their money back, and now Mr. Cimellaro just stated that it is independent of the swept funds and that they were attempting to find additional money. Commissioner Golightly asked Mr. Cimellaro if he had misunderstood.

Mr. Cimellaro stated: "I believe so, the correlation you are making to that. Basically, what we're trying to do is capitalize on what may be an obligation that the Legislature may support,

period. And that's where they'll trespass into funding areas of the Game and Fish Department, in years past, they've played games with our budget and your budget for years. It's an ongoing fight is what it is. What we're capitalizing on is the immediate scenario that would allow us to go back and try to recover some funds, and we could have set that number at $100 million. What we did is take a small bite. That was crafted by us to get a number back that we could build into something substantial, which we believe a federal match would be $30-40 million. I wasn't there to hear what transpired between you and John Gisi and I can't speak for him, so I'm giving you my perspective of what's been involved from the start as I've worked with this bill.

Commissioner McLean mentioned the possibility of a striker bill to recover swept funds and suggested that the sportsmen might support it since this bill is separate from those swept funds.

Mr. Cimellaro disagreed with a striker bill because the sportsman's groups would like the Commission to work with them to craft something that they can support.

Chairman Golightly stated that the main point is that General Fund dollars are being sought in this legislation and when the Legislature puts money in the General Fund, they want oversight, and he does not support that.

Public Comment

Jim Unmacht, Immediate Past President of the Arizona Antelope Foundation, urged the Commission to look at this as an opportunity to garner funds for critical projects for habitat and wildlife.

Chairman Golightly pointed out that Mr. Unmacht is formerly from another state where they have done away with the Commission system and have a Department of Natural Resources, and in this situation the Commission is trying to preserve the Commission system.

Commissioner Melton stated that he would like to see the Department get the swept funds back in some fashion and perhaps there is a way to move forward on this subject through negotiation.

Public Comment

Don Farmer, representing himself, urged the Commission to oppose Senate Bill 1300 stating that the swept funds should go back to the funds they came from and not the General Fund, allowing the Commission to maintain control.

Sandy Bahr, Conservation Outreach Director, Sierra Club – Grand Canyon Chapter, sent a letter via fax (attached to these minutes for the record), urging the Commission to oppose Senate Bill 1300. The Commission did not receive the letter prior to or during this meeting due to a Department oversight.

Commissioner McLean stated that as written the bill is vague and indefinite, and subject to individual interpretation. However, in order not to turn down $15 million, maybe some work could be done in the language.

Chairman Golightly stated that he supports the return of swept funds, but not if coming from the General Fund.

Public Comment

Mr. Cimellaro stated for the record that he is confused due to the fact that the Commission approved the sales tax initiative funds that will be coming from the General Fund.

Commissioner McLean stated that the sales tax monies will not be General Fund monies and will be free of political strings, and further concurred with Chairman Golightly in opposing monies going into the General Fund.

Mr. Cimellaro pointed out that the Legislature has control of the monies regardless of the funding source and pointed to the sweep of the Heritage, Watercraft and OHV Funds as an example. Additionally, opposing this legislation would feed into the development of a Department of Natural Resources in Arizona.

Mr. Simon suggested that the Commission vote to oppose this bill as written, but support a bill that contains language that would keep the Commission system intact.

Motion: McLean moved THAT THE COMMISSION VOTE TO OPPOSE SENATE BILL 1300 IN ITS PRESENT FORM, BUT THAT THE LIAISON MEMBERS OF THE COMMISSION BE DIRECTED BY THE COMMISSION TO WORK WITH STAKEHOLDERS, LEADERSHIP, AND OTHER REPRESENTATIVES OF THE HOUSE AND SENATE TO PROPOSE ALTERNATIVE LANGUAGE AND AMENDMENTS AND RETURN TO THE COMMISSION FOR FURTHER INSTRUCTION.

Mr. Odenkirk stated concerns about the motions ambiguities in its direction.

Chairman Golightly suggested opposing the bill in its current form and amend the bill to an acceptable form.

Mr. Odenkirk stated that “acceptable form” needs to be defined.

Motion Restated: McLean moved THAT THE COMMISSION VOTE TO OPPOSE SENATE BILL 1300 IN ITS PRESENT FORM, BUT THAT THE LIAISON MEMBERS OF THE COMMISSION BE DIRECTED BY THE COMMISSION TO WORK WITH STAKEHOLDERS, LEADERSHIP, AND OTHER REPRESENTATIVES OF THE HOUSE AND SENATE TO PROPOSE ALTERNATIVE LANGUAGE AND AMENDMENTS TO ELIMINATE OR SEVERLY LIMIT THE OVERSIGHT COMMITTEE ASPECTS OF THIS BILL, AND WHERE NECESSARY TO CLARIFY AMBIGUITIES IN THE PROJECT LIST AND RETURN TO THE COMMISSION FOR FURTHER INSTRUCTION.

Motion Withdrawn

Motion: Hernbrode moved and McLean seconded THAT THE COMMISSION VOTE TO OPPOSE SENATE BILL 1300 IN ITS CURRENT FORM.

Vote: Aye – Golightly, McLean, Hernbrode
Nay – Melton
Gilstrap recused
Passed 3 to 1

Motion: Hernbrode moved and McLean seconded THAT THE COMMISSION VOTE TO SUPPORT LEGISLATION TO REPLACE MONEY FROM SWEPT FUNDS AND NOT OPPOSE AN INDEPENDENT OFFER OF SIGNIFICANT FUNDS FROM THE GENERAL FUND THAT ARE SPECIFICALLY EARMARKED FOR HABITAT ENHANCMENT IF THE AUTHORITY AND DECISIONS FOR THE ESTABLISHMENT, MONITORING AND OVERSIGHT OF THOSE SPECIFIC HABITAT RESTORATION PROJECTS NOT BE PLACED OUTSIDE THE COMMISSION'S AUTHORITY AND PROCESS.

Commissioner McLean stated for the record that he has seconded the motion and will vote aye solely for the purpose of providing a viable vehicle for moving this issue forward and that his vote is not a statement that he would ultimately vote for language that would be for true General Fund monies without limitations.

Vote: Aye – Melton, McLean, Hernbrode
Nay – Golightly
Gilstrap recused
Passed 3 to 1

Chairman Golightly stated that he does not want to vote no, but he is opposed to General Fund monies and would like to work with the stakeholders and sponsors of the bill to possibly remedy or salvage it.

Motion: McLean moved and Hernbrode seconded THAT THE COMMISSION VOTE TO SUPPLEMENT THE PREVIOUS VOTE TO OPPOSE SENATE BILL 1300 AND THE VOTE JUST PASSED, TO DIRECT STAFF TO FIND AN APPROPRIATE STRIKER AND SPONSORS THEREOF TO SPONSOR LEGISLATION THAT WOULD APPROPRIATE THE SUM OF APPROXIMATELY $15 MILLION DOLLARS FROM THE STATE GENERAL FUND IN THE FISCAL YEAR 2006-2007 TO THE GAME AND FISH HERITAGE FUND, WATERCRAFT FUND AND OFF-HIGHWAY VEHICLE FUND FOR A REPAYMENT OF MONIES DIVERTED IN FISCAL YEARS 2003, 2004 AND 2005.

Chairman Golightly suggested an amendment to the motion as follows: To use the same process and vehicle to name the bill Repayment to the Game and Fish Department and that it be enacted at the Legislature of the State of Arizona in Section 1, appropriation, Game and Fish Fund, repayment of monies diverted, the sum of $14,924,000 to be appropriated from the State General Fund in one-third each for each of the fiscal years 2007, 2008 and 2009 to the Game and Fish Department; and that the appropriation made in subsection A of this section is exempt from the provisions of Section 35-190 Arizona Revised Statutes relating to the lapsing of appropriations.

Motion Amended: McLean moved and Hernbrode seconded THAT THE COMMISSION VOTE TO SUPPLEMENT THE PREVIOUS VOTE TO OPPOSE SENATE BILL 1300 AND THE VOTE JUST PASSED, TO DIRECT STAFF TO FIND AN APPROPRIATE STRIKER AND SPONSORS THEREOF TO SPONSOR LEGISLATION THAT WOULD

APPROPRIATE THE SUM OF APPROXIMATELY $15 MILLION DOLLARS FROM THE STATE GENERAL FUND IN THE FISCAL YEAR 2006-2007 TO THE GAME AND FISH HERITAGE FUND, WATERCRAFT FUND AND OFF-HIGHWAY VEHICLE FUND FOR A REPAYMENT OF MONIES DIVERTED IN FISCAL YEARS 2003, 2004 AND 2005; AND FURTHER, TO USE THE SAME PROCESS AND VEHICLE TO NAME THE BILL "REPAYMENT TO THE GAME AND FISH DEPARTMENT" AND THAT IT BE ENACTED AT THE LEGISLATURE OF THE STATE OF ARIZONA IN SECTION 1, APPROPRIATION, GAME AND FISH FUND, REPAYMENT OF MONIES DIVERTED, THE SUM OF $14,924,000 TO BE APPROPRIATED FROM THE STATE GENERAL FUND IN THE AMOUNT OF ONE-THIRD OF THE SUM FOR EACH OF THE FISCAL YEARS 2007, 2008 AND 2009 TO THE GAME AND FISH DEPARTMENT; AND THAT THE APPROPRIATION MADE IN SUBSECTION A OF THIS SECTION IS EXEMPT FROM THE PROVISIONS OF SECTION 35-190 ARIZONA REVISED STATUTES RELATING TO THE LAPSING OF APPROPRIATIONS.

(THIS MOTION /VOTE WAS RETRACTED /VACATED AT THE SUBSEQUENT FEBRUARY 10-11, 2006 COMMISSION MEETING)

Vote: Unanimous
Gilstrap recused

Mr. Odenkirk stated that legislative appropriations beyond the current year can be authorized for multiple years, but he was not sure it could be appropriated.

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2. State and Federal Legislation

Presenter: Anthony Guiles, Legislative Liaison

The Commission was briefed on the status of House Bill 2127. It was heard in committee today and the Chairman of that committee directed the stakeholders to work out a compromise and an agreement.

Commissioner McLean briefed the Commission on his activities regarding this bill. He and Chairman Golightly opposed this bill and proposed an offer to bring to the Commission a compromise that may be favorable. That offer is an amendment that would put a period after the words random drawing for the bill to read "the Commission may limit the number of big game permits issued to nonresidents in a random drawing." That would strike the portion of that bill that would limit the Commission to 10% or fewer of the total hunt permits. If the Commission votes to give Commissioners Golightly and McLean the authority to compromise, then Representative Weiers will facilitate a meeting tentatively scheduled for Wednesday evening with stakeholders.

Mr. Odenkirk clarified for the record that the language provides the Commission with discretion to impose limits on nonresident permits, but that the limitation is 10% or fewer of the total hunt permits. This statute would be the only expressed statutory authority referencing the Commission's authority to impose limits on nonresidents and they would be limited as to how

they exercise that authority, so the Commission would not be able to exceed 10% of available permits. Additionally, if the permissive word "may" is simply permissive authority and the legislative intent was that the Commission could go over that 10%, then it would make sense to just eliminate any reference to 10% or fewer.

Motion: McLean moved and Melton seconded THAT THE COMMISSION OPPOSE HOUSE BILL 2127, BUT THAT COMMISSIONERS GOLIGHTLY AND MCLEAN AS LEGISLATIVE LIAISONS OF THE COMMISSION BE GIVEN THE AUTHORITY TO MEET WITH AND TO THE EXTENT NOT INCONSISTENT WITH MR. ODENKIRK'S AND COMMISSIONER MCLEAN'S STATEMENTS HERE TODAY, GIVEN THE AUTHORITY TO WORDSMITH AND COMPROMISE IN GOOD FAITH ON THIS LEGISLATION.

Vote: Unanimous
Gilstrap recused

Chairman Golightly suggested the following motion.

Motion: Melton moved and Hernbrode seconded THAT THE COMMISSION VOTE TO HAVE THE LEGISLATIVE LIAISONS FOR THE COMMISSION APPROACH REPRESENTATIVE WEIERS TO HAVE THREE OR MORE ADDITIONAL SPORTSMAN INVOLVED WHO OPPOSE THE BILL AND WHO CAN COME TO A CONSENSUS.

Vote: Unanimous
Gilstrap recused

Mr. Guiles briefed the Commission on Senate Bill 1438, the wildlife feeding bill, and asked the Commission to take a formal position to support the bill.

Motion: McLean moved and Golightly seconded THAT THE COMMISSION VOTE TO SUPPORT SENATE BILL 1438.

Vote: Unanimous
Gilstrap recused

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

Vote: Unanimous

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Meeting adjourned at 3:00 p.m.
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Joe Melton, Chairman

Michael M. Golightly, Member

William H. McLean, Member

Robert Hernbrode, Member

W. Hays Gilstrap, Member

ATTEST:

Steve K. Ferrell, Deputy Director
Acting Secretary and Director