

Minutes of the Telephonic Meeting of the
Arizona Game and Fish Commission
Friday, March 14, 2008
Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086

PRESENT: (Commission)

(Director's Staff)

Via telephone:

Chairman William H. McLean
Commissioner Robert D. Hernbrode
Commissioner Jennifer L. Martin
Commissioner Robert R. Woodhouse
Commissioner Michael M. Golightly

In person:

Director Duane L. Shroufe
Deputy Director Steve K. Ferrell

Via telephone:

Assistant Attorney General Jim Odenkirk

Director Shroufe conducted roll call and all five Commissioners were present via telephone. Several Department staff members and 25-30 members of the public were present. Chairman McLean called the meeting to order at 11:30 a.m. This meeting followed an agenda dated March 12, 2008.

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1. Request by Cabela's T.A.G.S. for a Hearing to Extend the 2008 Antelope and Elk Draw Deadline.

Presenter: Harry Seck, Assistant Director, Special Services Division

Cabela's T.A.G.S. mailed applications for 568 hunters for the 2008 Arizona Antelope and Elk draw. These packages were submitted to a private courier and scanned in Sydney, Nebraska at 6:52 P.M. February 11, 2008. The packages did not arrive by the posted deadline time of 7:00 P.M. Mountain Standard time February 12, 2008. Cabela's T.A.G.S. requested that the 2008 Antelope and Elk draw deadline be extended to consider all applications received by the Commission to date where there is proof of mailing on or before February 11, 2008, or proof that the applications were sent via courier service guaranteeing delivery February 12, 2008 before 7:00 P.M.

Motion: Hernbrode moved THAT THE COMMISSION VOTE TO DENY THE PETITION FOR A HEARING.

Chairman McLean stated that if the Commission rejects the petition without a hearing the petitioner could go for a judicial review claiming that a denial of the hearing was a denial of their rights.

Motion withdrawn.

Motion: Golightly moved and Hernbrode seconded THAT THE COMMISSION GRANT A HEARING TO DISCUSS THE MERITS OF THE PETITION.

* * * * *

Vote: Unanimous

Mike Callahan, Sr. Vice President, Cabela's, addressed the Commission requesting that the 2008 Antelope and Elk draw deadline be extended. Further, Mr. Callahan stated for the record that Cabela's has no intention of suing the State, the Department or any employee. Cabela's has not attempted to strong arm, bully, threaten, or in any way attempt to exert undue or inappropriate influence over the Commission or Department. Cabela's has acted as Arizona Statute allows in requesting relief for the 568 applicants and any others who were unable to meet the deadline due to extenuating circumstances such as bad weather. Mr. Callahan added that hunters also missed the deadline because they believed they could apply online and they were not able to. Mr. Callahan requested that the Commission consider a Rule change for 2009 to recognize and accept postmarks, and to consider for this year extending the deadline to include all applications that were postmarked on or before February 11 or proof that applications were sent via courier with service guaranteed to deliver before 7:00 P.M. February 12. The Department has set a precedent in the past by extending the deadline for the 2007 fall hunts. If the Commission does not extend the deadline, Mr. Callahan requested that they at least allow for bonus points for the applicants.

Bruce MacRae, Director of Public Affairs, United Parcel Services (UPS), addressed the Commission. UPS picked up the three packages from Cabela's on February 11. When they realized that the packages had been mis-sorted, measures were taken, including chartering a Leer jet at a cost of over \$9,000 and contracting a local courier service, to ensure the packages made it to the Department by the deadline. The flight arrived just after 7:00 P.M. and the packages were delivered just after 9:00 P.M. The mistakes made were not due to applicants putting there applications in late, but were due to mistakes and to the weather.

Public Comment

Chris Agnew, representing himself, opposed extending the draw deadline because hundreds of residents are denied every year because their applications arrived late. Cabela's could have shipped out their applications earlier. It is also unfair to those currently in the draw process because this would have an impact on them.

Keith Gaines, representing himself, agreed with Mr. Agnew.

Duane Ott, representing himself, agreed with Mr. Agnew and added that considering accepting the postmark might be something to consider in the future, but for this year the Commission should follow the rules that are in place. Regarding the bonus points, the Commission should consider giving the applicants their bonus points or not taking any away.

John Koleszar, Board Member, Arizona Elk Society and Arizona Deer Association, opposed to having late applicants included in the draw, but the Commission should consider giving them their bonus points.

Bruce Johnson, representing himself, opposed the petition and made the following points for the record: Both Cabela's and UPS have disclaimers that they are not liable for problems that occur

as a result of using their services; the delay of the 2007 online draw was due to technical problems by the vendor in accepting applications and it applied to everyone, so it does not set a precedent for this situation; it was well noted on the regulations that the online application was not available and also noted the deadline date and time; and it was not prudent for Cabela's to wait until the last minute to send in the applications.

Charles Decker, representing himself, opposed the petition and stated that it would set a dangerous precedent that would cause all kinds of problems, but that the Commission should consider allowing the applicants to keep their bonus points or have their bonus points for this year.

Carl Brashears, representing himself, opposed the petition and opposed the applicants getting their bonus point or loyalty point.

Edward Corona, representing himself, agreed with Mr. Brashears and further stated that he volunteers for Game and Fish on deadline day and a lot of people are turned away because they didn't make the deadline for various reasons.

Terry Herndon, representing himself, opposed the petition and opposed to giving back bonus or loyalty points.

Dick King, Board Member, Arizona Bowhunters Association, opposed to petition for the same reasons as has been stated.

Marvin Zieser, representing himself, opposed the petition further stating that the Commission has not made exceptions in the past and should not make any exceptions today. Mr. Zieser also opposed restoring the applicants bonus points.

Chairman McLean stated that each Commissioner was provided with a copy of the petition (attached to these minutes) and a copy of a letter (attached to these minutes) from Michael P. Spitzer, an attorney in Bozeman, Montana, representing approximately 35 individuals. Chairman McLean further stated that through the Department's website, he received between 75-100 emails, which have all been reviewed.

Commissioner Woodhouse confirmed with Mr. Seck that there were 84,371 applications and 120,237 applicants received on time for the Antelope and Elk 2008 fall hunts.

Chairman McLean asked questions and confirmed the following points with Mr. Seck:

- The Department began accepting draw applications for the Antelope and Elk draw for the 2008 fall hunts on December 21, 2007
- The website, the paper regulations booklet, and the number of news releases all informed the public beginning on December 21, 2007 that only paper applications would be received and that there were 7 physical locations throughout Arizona where the applications could be deposited
- There was never any indication from the Department to Cabela's or UPS that the deadline would be extended

- Cabela's requested before the deadline that the deadline be extended and a Cabela's employee told a Department employee that if there applications were accepted after 7:00 P.M. on February 12, 2008 that it could be kept just between them
- The Department or Commission has never accepted applications after the deadline
- That the extended deadline in 2007 occurred due to vendor problems. The online application process was suspended on May 21, 2007. The public was notified on that date that the online application process was suspended and only paper applications would be accepted. Because of this situation, the deadline was extended from June 12 to June 26, 2007. The public was notified of the extension by several press releases and it was posted on the Department's website.

Commissioner Woodhouse thanked the public for attending this meeting and further stated that this is a violation of the rules and the rules should be strictly adhered to. The applicants through Cabela's chose to have an outside party make their applications for them and by doing that they assumed some risk. Also, in the past with applications received after the deadline, no bonus or loyalty points were granted.

Commissioner Golightly stated for the record that in all his dealings with Cabela's, they have conducted themselves very professionally. The Department has had a tremendous relationship with Cabela's.

Chairman McLean agreed with Commissioner Golightly and thanked the public for their participation on this issue.

Motion: Woodhouse moved and Martin THAT THE COMMISSION VOTE TO DENY THE REQUEST IN THE PETITION.

Vote: Unanimous

2. Call to the Public

There were no requests from the public to speak.

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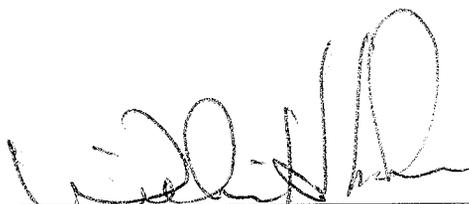
Motion: Martin moved and Hernbrode seconded THAT THE COMMISSION VOTE TO ADJOURN THIS MEETING.

Vote: Unanimous

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Meeting adjourned at 12:25 p.m.

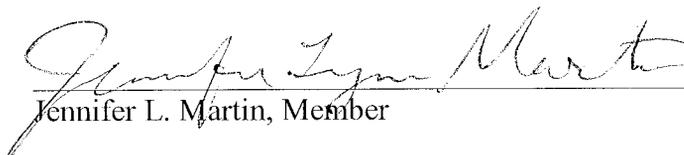
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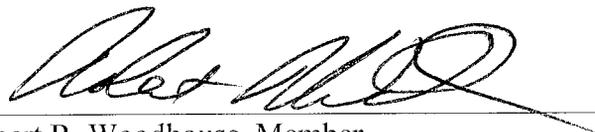
William H. McLean, Chair



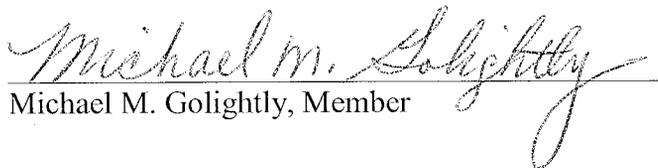
Robert D. Hernbrøde, Vice Chair



Jennifer L. Martin, Member

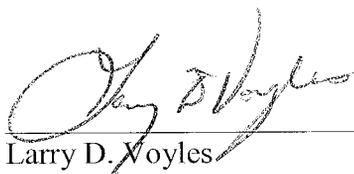


Robert R. Woodhouse, Member



Michael M. Golightly, Member

ATTEST:



Larry D. Voyles
Secretary and Director

March 11, 2008

Director's Office
Arizona Game & Fish Department
Attn: Marty Fabritz
5000 W. Carefree Hwy.
Phoenix, AZ 85086
Ph. 623-236-7281

Re: Petition for Hearing by the Arizona Game and Fish Commission

Dear Mr. Fabritz:

Cabela's T.A.G.S. respectfully requests a special session for a hearing before the Arizona Game and Fish Commission prior to the 2008 Arizona Big Game Hunt draw for Elk and Antelope tags, which is anticipated to occur within the next few weeks. Cabela's T.A.G.S. makes this request in order to address an unfortunate and unfair situation in which at least 568 sportsmen were denied the opportunity to apply for the Arizona Big Game Hunt draw for Elk and Antelope.

Identification of Petitioner

Michael Callahan
Cabela's T.A.G.S.
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308-255-1613
Mike.Callahan@cabelas.com

Statement of Facts and Issues

Cabela's T.A.G.S. provides license application services to today's hunters, who entrust us with properly applying and submitting applications to licensing authorities on their behalf.

The Arizona Game and Fish Department recently changed its application procedures for the Elk and Antelope Draw, to exclude on-line applications and require paper applications. This is the first cycle of the Arizona Elk and Antelope Draw incorporating this change. Cabela's T.A.G.S. received numerous telephone calls from its customers expressing confusion and concern

regarding the application deadline due to the fact that they were not able to apply online as they did in 2007. Many of these hunters utilized the services of Cabela's T.A.G.S. to submit their applications for this cycle of the draw.

Cabela's T.A.G.S. ultimately mailed applications on behalf of 568 hunters for the Arizona Elk and Antelope Draw. These packages were submitted through a private courier well in advance of the February 12, 2008 (7:00 P.M.) deadline, with guaranteed delivery by 10:00 A.M. local time on February 12, 2008. Unfortunately, due to a sorting error by the courier, the packages did not make it to Arizona Game and Fish Department by the 7:00 P.M. deadline. The courier made extraordinary efforts in an attempt to rectify the error and deliver the applications before the deadline, including renting a private jet specifically to move these packages from Denver to Phoenix, but ultimately the packages arrived two hours late and were refused.

The recent change to Arizona's application procedure, requiring the submission of paper applications, invariably places sportsmen, and particularly non-resident sportsmen, who seek to participate in Arizona's Big Game Draw in a precarious situation where they have to rely upon the U.S. Postal Service or private couriers to deliver their applications before the established deadline. Unfortunately, these delivery services can be, and are, impacted by circumstances beyond the control of the person submitting the application, including errors by the courier or even weather events that may prevent the courier from delivering packages by a specified date. While the packages submitted by Cabela's T.A.G.S. were delayed due to an unforeseen error by the courier, it is very likely there were many other hunters who also completed and mailed their applications on-time, only to have their packages miss the deadline due to unexpected issues involving a courier. This is especially true where there were several significant weather events in certain areas of the country during the week leading up to the February 12th deadline that could have certainly impacted applications mailed by hunters throughout the country.

Petitioner's Proposed Remedy

The Director has the authority, under R12-4-104(C), to extend the draw deadline date for big-game applications at his discretion “if problems occur that prevent the public from submitting a hunt permit-tag application within the deadlines set by the Commission.” The Director has, as recently as last year, exercised this authority in a very similar situation when there was public confusion concerning the change of the application process related to the Sheep and Deer Draw. We respectfully request, in the name of fairness, and due to the confusion with the change of Arizona’s Big Game application process, as well as unforeseen issues with couriers, that the Arizona Game and Fish Commission extend the deadline to consider all applications received by the Commission, to date, where there is proof of mailing on or before February 11, 2008, or proof that the applications were sent via courier service guaranteeing delivery February 12, 2008 before 7:00 P.M. We believe this would provide a fair and equitable resolution for all hunters who provided timely submission of their applications and took all reasonable steps to comply with Arizona’s new application procedures, but due to unforeseen and unexpected circumstances were denied the opportunity to have their applications considered.

Date and Signature



Mike Callahan
Cabela’s Incorporated
One Cabela Drive
Sidney, Nebraska 69160
308-255-1613

3-11-08
Date

ANGEL, COIL & BARTLETT

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CHARLES F. ANGEL III
1932-2005

March 13, 2008

The State of Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086-5000

RE: March 14 Public Meeting of Arizona Game and Fish Commission

Dear Members of the Arizona Game and Fish Commission:

Please be advised that I have been retained by a group consisting of 34 Resident and Non-Resident big game hunters who have hunted in your State and continue to build Bonus Points in Arizona toward future big game hunts. These individuals, whose names and addresses are attached to this letter, hereby express their opposition to the 2008 Antelope and Elk draw deadline extension being contemplated at the above referenced meeting of the Commission.

Cabela's T.A.G.S. has requested that the draw deadline be "extended to consider all applications received by the Commission, to date, where there is proof of mailing on or before February 11, 2008, or proof that the applications were sent via courier service guaranteeing delivery February 12, 2008 before 7:00 P.M."

The regulations which the Commission have established are not ambiguous; completed applications are to be accepted until 7:00 P.M. on deadline days. **"No applications will be accepted after this time regardless of the postmark"** (Emphasis added). *AZGFD 2008 Pronghorn Antelope and Elk Hunt Draw Information*, page 12. As such, Cabela's T.A.G.S. request is in complete contrast to the regulations wherein the postmark has no bearing on the deadline, much less a guarantee by a courier service.

Cabela's T.A.G.S. is just an individual who has missed a deadline. The fact that Cabela's represents numerous Arizona Resident and Non-Resident Big Game hunters should not be taken into consideration. Cabela's has made a for-profit business out of applying for tags on individuals' behalf. Whether the fault on this occasion be that of Cabela's or of a courier service,

their liability is not yours, their negligence is not yours, and neither is it that of the thousands of other Resident and Non-Resident hunters who diligently apply to hunt in your great State year after year.

Every year many individuals miss the deadline either by their own fault, or by that of the Postal Service or another courier service. Some of my clients have been included in this unfortunate circumstance. However, as experienced by these individuals when they missed a drawing deadline, Arizona Game and Fish charged them the cost of a non-refundable hunting license, and disallowed the opportunity to participate in the limited entry permit draws. This was completely within the scope and regulations of your agency. My clients are asking that the same actions be taken with regards to any delinquent applications in the 2008 elk and antelope draws, whether they be Cabela's clients, or not. To treat Cabela's otherwise would give the appearance or perhaps give weight to the understanding that rules do not apply to big corporations and that you can buy your way out of any problem.

All of the applicants represented by Cabela's should be allowed to purchase the resident or non-resident hunting license, as they requested, because no deadline for acceptance of license purchases exists. These delinquent applicants should in no way be allowed to apply for elk and antelope permits after missing the clearly defined deadline.

This is not a one-time glitch and there should not be a one-time exception. If Cabela's T.A.G.S. customers are allowed into the draw, they will carry bonus points and their loyalty point for many years to come, giving them an unfair advantage over those individuals who have been diligent in their adherence to the regulations.

My clients are determined in their quest to ensure that rules are not bent for some while being enforced for others. They are all recreational hunters. However, also included are outdoor writers, videographers, DVD producers, and professionals and they are prepared to retain Arizona counsel in order to fight as long and hard as legally possible to defend their position. I respectfully request that their voices and positions are heard at the public meeting commencing March 14 at 11:30 A.M.

Cordially,

ANGEL, COIL & BARTLETT



Michael P. Spitzer

Arizona Residents

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