

Proceedings of the Arizona Game and Fish
Commission License Revocation and Civil
Assessment Hearings
Time Certain – 2:00 p.m.
Friday, February 6, 2009
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, Arizona 85086

PRESENT: (Commission)

(Director's Staff)

Chairman Robert D. Hernbrode
Vice Chair Jennifer L. Martin
Commissioner Robert R. Woodhouse
Commissioner Norman W. Freeman
Commissioner William H. McLean

Director Larry D. Voyles
Deputy Director Gary R. Hovatter
Deputy Director Bob Broscheid
Assistant Attorney General Jim Odenkirk
Assistant Attorney General Shelley Cutts

Hearings on License Revocations for Violation of Game and Fish Codes and Civil Assessments
for the Illegal Taking and/or Possession of Wildlife

Presenter: Gene Elms, Law Enforcement Branch Chief

Mr. Elms presented the cases below to the Commission. Each of these cases were reviewed and it was determined that all cases met the criteria established in A.R.S. §15-714, §17-238, §17-314, §17-340, §17-362 and/or §17-363 for Commission action. The Commission and the respondents were provided with copies of the original court docket and case reports prepared by the officers along with copies of all other pertinent materials in each of these cases. All of these exhibits may be considered by the Commission in order to make a final determination. Each of the following individuals were legally noticed for this hearing.

<u>Name</u>	<u>Conviction</u>
Presmyk, Kevin	Count C: possession of unlawfully taken mountain lion
Presmyk, Kevin	Count B: possession of unlawfully taken mountain lion
Thomas, Stanley	Count A: use aircraft to locate elk during open season
Hutson, James	Count A: take deer during the closed season Count B: take deer without a valid tag Count C: possess/transport unlawfully taken deer Count D: possess unlawfully taken elk
Hutson, Cory	Count A: attach tag to a deer one did not kill Count B: possess unlawfully taken deer
Hutson, Chad	Count A: take elk during the closed season Count B: take elk without a valid tag Count C: possess/transport unlawfully taken elk

Count D: take elk and allow to waste

Hutchens, Wayne

Count A: possess unlawfully taken antelope

Scott, Benjamin

Count A: possession of unlawfully taken mule deer

Count B: use big-game tag of another

Roll call was taken and the following were present: Kevin Presmyk, Cory Hutson, Chad Hutson

Mr. Elms stated that the civil assessment process is not intended to be punitive, but is a process allowing the Commission to recover financial damages to compensate the State for the loss of any wildlife. Hunter Education requirements are imposed as a remedial measure to increase knowledge and prevent future violations and not as punishment.

The Commission was asked to consider and take action on the license revocations and/or civil assessments for the individuals listed above.

Motion: Woodhouse moved and McLean and Martin seconded THAT THE COMMISSION VOTE TO TAKE JURISDICTION IN THESE CASES.

Vote: Unanimous

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Kevin D. Presmyk

Presmyk was found guilty by the Flagstaff Justice Court for: Count B: Possession of unlawfully taken mountain lion; and sentenced Count B: Fined \$900.00.

Case Officer Peebles was not present, but was available by phone to answer any questions the Commission might have.

Kevin Presmyk was present and addressed the Commission stating that he was a very responsible hunter and that he just made a mistake and is sorry for that.

The Commission questioned Mr. Presmyk on the details of the case including whether or not he knew that he was in the Walnut Canyon National Monument area which is closed to hunting.

Motion: McLean moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF KEVIN D. PRESMYK TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF **FIVE (5)** YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST KEVIN D. PRESMYK TO

COLLECT THE AMOUNT OF \$1,500.00 FOR THE LOSS OF ONE (1) MOUNTAIN LION; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Kevin D. Presmyk

Presmyk was found guilty by the Flagstaff Justice Court for: Count C: Possession of unlawfully taken mountain lion; and sentenced Count C: Fined \$1,350.00.

Case Officer Peebles was not present, but was available by phone to answer any questions the Commission might have.

Mr. Elms informed the Commission that Mr. Presmyk requested that his two licenses revocation periods run concurrently.

Mr. Presmyk addressed the Commission and stated that he believed the information in the case file was wrong and that the client was within 3-5 miles away when they released the dogs, so he did not believe he did anything wrong.

The Commission further questioned Mr. Presmyk on the details of the case.

Motion: Woodhouse moved and McLean seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF KEVIN D. PRESMYK TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS CONSECUTIVE TO HIS PRIOR REVOCATION; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST KEVIN D. PRESMYK TO COLLECT THE AMOUNT OF \$1,500.00 FOR THE LOSS OF ONE (1) MOUNTAIN LION; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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The cases of James Hutson, Cory Hutson and Chad Hutson were related.

James W. Hutson

Hutson was found guilty by the Show Low Justice Court for: Count A: Take deer during the closed season; Count B: Take deer without a valid tag; Count C: Possess/transport unlawfully taken deer; Count D: Possess unlawfully taken elk; and sentenced Count A, B, C and D: Fined \$1,520.00.

Hutson was present and addressed the Commission stating that he was the one who shot the deer and went home and talked his son into tagging it.

Motion: Freeman moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JAMES W. HUTSON TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST JAMES W. HUTSON TO COLLECT THE AMOUNT OF \$8,000.00 FOR THE LOSS OF ONE (1) TROPHY 4X5 MULE DEER BUCK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Cory J. Hutson

Hutson was found guilty by the Show Low Justice Court for: Count A: Attach tag to a deer one did not kill; and Count B: Possess unlawfully taken deer; and sentenced Count A and B: Fined \$750.00.

Hutson was present and addressed the Commission to answer questions, and stated that he tagged the deer because his dad asked him to.

Motion: Martin moved and McLean seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF CORY J. HUTSON TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF TWO (2) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S

LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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Chad J. Hutson

Hutson was found guilty by the Show Low Justice Court for: Count A: Take elk during the closed season; Count B: Take elk without a valid tag; Count C: Possess/transport unlawfully taken elk; Count D: Take elk and allow to waste; and sentenced Count A, B, C and D: Fined \$1,400.00.

Hutson was present and addressed the Commission apologizing for his actions.

Motion: McLean moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF CHAD J. HUTSON TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST CHAD J. HUTSON TO COLLECT THE AMOUNT OF \$2,500.00 FOR THE LOSS OF ONE (1) BULL ELK; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

Commissioner McLean stated for the record that this bull elk, under proper notice, might have qualified as a trophy bull elk and cost \$8,000.

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Stanley L. Thomas

Thomas was found guilty by the Snowflake Justice Court for: Count A: Use aircraft to locate elk during open season; and sentenced Count A: Fined \$510.00.

Thomas was not present.

Case Officer Diamond was present and answered questions for the Commission, confirming that Mr. Thomas was cooperative in the investigation and that Mr. Thomas misinterpreted the regulations regarding flying within 48 hours of his hunt.

Commissioner Woodhouse confirmed with Officer Diamond that Officer Clay saw the aircraft and reported that it was flying very low and very well could have been at the 200 foot level.

Motion: McLean moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF STANLEY L. THOMAS TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF THREE (3) YEARS; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Aye - Hernbrode, Martin, Freeman, McLean

Nay - Woodhouse

Passed 4 to 1

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Wayne F. Hutchens

Hutchens was found guilty by the Round Valley Justice Court for: Count A: Possess unlawfully taken antelope; and sentenced Count A: Fined \$508.40.

Hutchens was not present.

Mr. Elms advised the Commission that Hutchens has committed violations in New Mexico and is currently on their schedule for revocation. That hearing is scheduled for the spring and Hutchens is facing a three year revocation in New Mexico.

Chairman Hernbrode asked if the Commission could revoke a license consecutive to another states revocation period.

Ms. Cutts stated that the Commission does not have authority to do that under Arizona law.

Commissioner McLean confirmed with Mr. Elms that Hutchens was uncooperative and did not take any responsibility for his actions.

Motion: Woodhouse moved and Martin and McLean seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF WAYNE F. HUTCHENS TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER

FOR A PERIOD OF **FIVE (5) YEARS**; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST **WAYNE F. HUTCHENS** TO COLLECT THE AMOUNT OF **\$1,500.00** FOR THE LOSS OF **ONE (1) DOE ANTELOPE**; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

The Commission discussed Chairman Hernbrode's question regarding revoking a license consecutive to another states revocation period, and requested that the Mr. Odenkirk and Ms. Cutts look into the issue.

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Benjamin T. Scott

Scott was found guilty by the Prescott Justice Court for: Count A: Possession of unlawfully taken mule deer; and Count B: Use big-game tag of another; and sentenced: Ten (10) days in jail; \$60.00 jail fees for each day in jail (\$600.00); Fined \$500.00; Three (3) years probation; and forty (40) hours community restitution.

Scott was not present.

Commissioner McLean confirmed with Mr. Elms that Mr. Scott was currently under revocation until September 7, 2045, and that since this revocation was for possession and not take, it could not be considered for a lifetime revocation.

Motion: McLean moved and Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF **BENJAMIN T. SCOTT** TO **HUNT, FISH, AND TRAP** IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF **FIVE (5) YEARS TO BEGIN AS OF SEPTEMBER 7, 2045 AND END FIVE CALENDAR YEARS THEREAFTER ON SEPTEMBER 7, 2050**; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT'S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST **BENJAMIN T. SCOTT** TO COLLECT THE AMOUNT OF **\$8,000.00** FOR THE LOSS OF **ONE (1) TROPHY MULE DEER**; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED

TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Commissioner McLean confirmed with Mr. Elms that this mule deer qualified as a trophy animal under Arizona Statute in that it possessed four points on each antler not including eye guards.

Vote: Unanimous

Motion: McLean moved and Woodhouse seconded THAT THE COMMISSION VOTE TO AMEND THE MOTION TO BEGIN ON SEPTEMBER 7, 2045 AND END ON SEPTEMBER 6, 2050.

Vote: Unanimous

Amended Motion: McLean moved and Woodhouse seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF BENJAMIN T. SCOTT TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF FIVE (5) YEARS TO BEGIN AS OF SEPTEMBER 7, 2045 AND END FIVE CALENDAR YEARS THEREAFTER ON SEPTEMBER 6, 2050; THAT THE CURRENT LICENSE(S) BE SUSPENDED AS OF THE DATE OF THIS HEARING, AND THAT IT/THEY BE REVOKED AS OF THE DATE THE ORDER IN THIS CASE IS SIGNED BY THE DIRECTOR; THAT HE BE REQUIRED TO COMPLETE THE HUNTER EDUCATION COURSE, AND PROVIDE PROOF TO THE DEPARTMENT’S LAW ENFORCEMENT BRANCH, BEFORE APPLYING FOR ANY OTHER LICENSE TO HUNT IN THIS STATE; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST BENJAMIN T. SCOTT TO COLLECT THE AMOUNT OF \$8,000.00 FOR THE LOSS OF ONE (1) TROPHY MULE DEER; AND FURTHER MOVE THAT THE DIRECTOR, AS SECRETARY TO THE COMMISSION, BE DIRECTED TO SIGN AND ISSUE A FINDING OF FACT, CONCLUSIONS OF LAW AND AN ORDER IN THIS MATTER PURSUANT TO THIS MOTION.

Vote: Unanimous

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These hearings concluded at 3:41 p.m.

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