

Proceedings of the Arizona Game and Fish
Commission License Revocation and Civil
Assessment Hearings
Time Certain – 2:00 p.m.
Friday, January 16, 2009
Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, Arizona 85086

PRESENT: (Commission)

(Director's Staff)

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

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>
Mitchell, Michael	Count A: possession of unlawfully taken mule deer
Barrios, Jose	Count A: take over limit of game fish (18 trout) Count B: possess unlawfully taken game fish
Smith, Scott	Take over limit big or trophy game (antelope) and failure to purchase conservation stamp.
Finch, Destry	Count A: assist unlawful take of big game for monetary gain (f6)
Winters, Jason	Count A: ARS 17 309 (A.17), possess/ transport unlawfully taken white-tailed deer
Ortega-Casillas, Manuel	Count A: ARS 17 309 (A.17) possess/transport unlawfully taken white-tailed deer

Tinney, Shane

Count A: ARS 17 309 (A.15) take nine doves over bag limit (to wit: 19 total)

Count B: ARS17-309 (A.20) no feathered wing attached to 17 doves.

Gessner, Kurt

Count A: take Javelina during closed season

Count B: take Javelina during closed season

Roll call was taken and the following were present: Jose Barrios

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 Martin seconded THAT THE COMMISSION VOTE TO TAKE JURISDICTION IN THESE CASES.

Vote: Unanimous

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Jose D. Barrios

Barrios was found guilty by the Flagstaff Justice Court for: Count A: Take over limit of game fish (18 trout); and Count B: Possess unlawfully taken game fish; and sentenced Count A: Fined \$223.00; and Count B: Fined \$162.00.

Case Officers Fabian and Turnpaugh were present.

Barrios was present and addressed the Commission. He apologized for his actions and stated that he did not realize he was over the limit.

Chairman McLean confirmed with Mr. Barrios that he now understood he had to read and know what is in the regulations.

Commissioner Martin asked Mr. Barrios about his citation in 2001 for hunting in a closed season and asked if he learned from that experience that he needed to know what is in the regulations.

Barrios stated that because of that experience, he doesn't hunt anymore.

Commissioner Woodhouse asked about the fish spoiling.

Barrios stated that the fish were in the water by the shore and he guessed that maybe it was still too hot from the sun.

Commissioner Hernbrode questioned the Officers on how they arrived at the number of fish as charged.

Motion: Martin moved and Woodhouse seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JOSE D. BARRIOS 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 JOSE D. BARRIOS TO COLLECT THE AMOUNT OF \$500.00 FOR THE LOSS OF EIGHTEEN (18) RAINBOW TROUT; 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 Woodhouse confirmed with the Attorneys that the Commission was bound by Statute to assess a minimum of \$50 per fish.

Commissioner Martin confirmed with the Attorneys that the Commission didn't have to assess for 18 trout, but could assess for 10 trout.

Motion: Hernbrode moved and Freeman seconded THAT THE COMMISSION VOTE TO AMEND THE MOTION TO A THREE (3) YEAR REVOCATION PERIOD.

Vote: Unanimous

Amended Motion: Martin moved and Woodhouse seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JOSE D. BARRIOS 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; THAT THE DEPARTMENT BE DIRECTED TO COLLECT CIVIL DAMAGES OR TO BRING CIVIL ACTION AGAINST JOSE D. BARRIOS TO COLLECT THE AMOUNT OF \$500.00 FOR THE LOSS OF TEN (10) RAINBOW TROUT; 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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Michael Mitchell

Mitchell was found guilty by the Prescott Justice Court for: Count A: possession of unlawfully taken mule deer; and sentenced Count A: Fined \$240.00.

Mitchell was not present.

Chairman McLean asked Mr. Elms to state for the record how the Statute defines a trophy mule deer and to describe how this animal does or does not fit within that definition.

Mr. Elms stated that a trophy class mule deer must have a least four points on one antler, not including eye guards, and that this mule deer had four points on both antlers, not including eye guards.

Commissioner Martin confirmed with Mr. Elms that it was not discovered who actually shot the deer. The claim was that it was a road kill.

Motion: Hernbrode moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MICHAEL MITCHELL 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 MICHAEL MITCHELL TO COLLECT THE AMOUNT OF \$8000.00 FOR THE LOSS OF ONE (1) 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.

Motion: Hernbrode moved and Freeman seconded THAT THE COMMISSION VOTE TO AMEND THE MOTION TO ADD THE WORD "TROPHY" AS FOLLOWS: "ONE (1) TROPHY MULE DEER.

Vote: Unanimous

Amended Motion: Hernbrode moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MICHAEL MITCHELL 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 MICHAEL MITCHELL TO COLLECT THE AMOUNT OF \$8000.00 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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Scott E. Smith

Pursuant to recent notice from the State of **Wyoming**, **Scott E. Smith** has failed to appear in regards to a citation for the wildlife violation of: **taking an over limit big or trophy game (antelope) and failing to purchase a conservation stamp**. Thus, **Scott E. Smith** is to be considered for immediate suspension of any licenses to take wildlife in Arizona until such time as the State of **Wyoming** notifies the Department that he is in compliance with the terms of the original citation. This is in accord with the Wildlife Violator Compact for which the States of **Idaho** and Arizona are participating members.

Smith was not present.

Motion: Freeman moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF SCOTT E. SMITH TO HUNT, FISH AND TRAP IN THE STATE OF ARIZONA BE SUSPENDED AND HE BE DENIED ANOTHER UNTIL THE LICENSING AUTHORITY FROM THE STATE OF WYOMING FURNISHES THE DEPARTMENT WITH SATISFACTORY EVIDENCE OF THE SUBJECT'S COMPLIANCE WITH THE ORIGINAL CITATION; 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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Destry S. Finch

Finch was found guilty by the Flagstaff Justice Court for: Count A: Assist unlawful take of big game for monetary gain; and sentenced Count A: Fined \$1,080.00.

Finch was not present.

Mr. Elms noted that this was Mr. Finch's second take violation.

Motion: Woodhouse moved and Freeman and Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF DESTRY S. FINCH TO HUNT, FISH, AND TRAP IN THE STATE OF ARIZONA BE REVOKED AND HE BE DENIED ANOTHER FOR A PERIOD OF TEN (10) 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 DESTRY S. FINCH 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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Jason J. Winters

Winters was found guilty by the Globe Justice Court for: Count A: Possess/ transport unlawfully taken white-tailed deer; and sentenced Count A: Fined \$502.00, inclusive of surcharges.

Winters was not present.

Case Officer Rodriguez was present and answered questions for the Commission.

Commissioner Hernbrode confirmed with Officer Rodriguez that Mr. Winters and the other person involved stated they did not shoot the deer, but found it already shot.

Commissioner Woodhouse asked if the deer was a fresh kill, to which Officer Rodriguez stated that it was.

Motion: Woodhouse moved and Hernbrode seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF JASON J. WINTERS 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; 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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Manuel J. Ortega-Casillas

Ortega-Casillas was found guilty by the Globe Justice Court for: Count A: Possess/ transport unlawfully taken white-tailed deer; and sentenced Count A: Fined \$502.00, inclusive of surcharges.

Ortega-Casillas was not present.

Motion: Freeman moved and Martin seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF MANUEL J. ORTEGA-CASILLAS 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; 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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Shane A. Tinney

Tinney was found guilty by the Gila Bend Justice Court for: Count A: Take nine doves over bag limit (19 total); and Count B: No feathered wing attached to 17 doves; and sentenced Count A: Fined \$315.22, plus \$304.78 in surcharges.

Tinney was not present.

Motion: Martin moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF SHANE A. TINNEY 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 **SHANE A. TINNEY** TO COLLECT THE AMOUNT OF **\$450.00** FOR THE LOSS OF **NINE (9) DOVES**; 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 Hernbrode stated that he would vote no because he believes it is too harsh.

Commissioner Woodhouse confirmed with Case Officer Dinquel that both wings had been removed from all the doves.

Vote: Aye - McLean, Martin, Woodhouse, Freeman
Nay - Hernbrode
Passed 4 to 1

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Kurt M. Gessner

Gessner was found guilty by the Show Low Justice Court for: Count A: Take Javelina during closed season; and Count B: Take Javelina during closed season; and sentenced Count A and B: Fined \$1500 or 100 hours of community service.

Gessner was not present.

Case Officer Podoll was present and answered questions for the Commission.

Motion: Martin moved and Freeman seconded THAT THE LICENSE(S) AND/OR LICENSES PRIVILEGES OF **KURT M. GESSNER** 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 **KURT M. GESSNER** TO COLLECT THE AMOUNT OF **\$1000.00** FOR THE LOSS OF **TWO (2) JAVELINA**; 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 Hernbrode questioned imposing a 5 year hunting revocation when this was not a hunting situation.

Commissioner Woodhouse noted that Mr. Gessner has purchased hunting licenses in the past.

Vote: Aye - McLean, Martin, Woodhouse, Freeman
Nay - Hernbrode
Passed 4 to 1

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These hearings concluded at 3:03 p.m.

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