

MINUTES

NEW MEXICO STATE GAME COMMISSION  
 Willie Ortiz Building/NM State Personnel Office  
 Leo Griego Auditorium  
 2600 Cerrillos Road  
 Santa Fe, NM 87505  
 March 5, 2009  
 10:00 a.m. – 3:00 p.m.

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AGENDA ITEM NO. 1: Meeting Called to Order.

Meeting called to Order at 10:00 a.m.

AGENDA ITEM NO. 2: Roll Call.

Chairman McClintic – present

Vice Chairman Buffett – present

Commissioner Arvas – present

Commissioner Montoya – present

Commissioner Salazar – present

Commissioner Salmon – present

Commissioner Sims – present

QUORUM: present

Chairman McClintic: Welcome to our new Game Commissioner from Albuquerque, Kent Salazar.

AGENDA ITEM NO. 3: Approval of Agenda.

MOTION: Commissioner Buffett moved to accept the agenda for the March 5, 2009 State Game Commission Meeting. Commissioner Arvas seconded the motion.

VOTE: Voice vote taken. All present voted in the Affirmative. Motion carried unanimously.

**AGENDA ITEM NO. 4: Introduction of Guests.**

Introductions were made by approximately 45 members of the audience.

**AGENDA ITEM NO. 5: Approval of Minutes (December 4, 2008 – Deming, NM).**

**MOTION:** Commissioner Sims moved to approve the Minutes of the December 4, 2008 State Game Commission Meeting in Deming as presented. Commissioner Arvas seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**NEW BUSINESS:****AGENDA ITEM NO. 6: Designate Reasonable Notice to the Public for Commission Meetings during 2009.**

**Presented by Jim Karp** - Section 19.30.3.8 (A)(1), NMAC, requires the Commission to take action at its first annual meeting to continue or amend its existing practice to determine what is reasonable notice of Commission meetings under Section 10-15-1D, NMSA, of the Open Meetings Act. It is the Department's recommendation that the Commission adopt the existing notice provisions in Section 19.30.3.8 that has been in effect for many years which provides that for regular meetings or rule making meetings that there not be less than 10 days' notice for special meetings, not less than 3 days' notice, and for emergency meetings 24 hours' notice to the Associated Press and if time permits, hand-delivery or fax delivery to at least one newspaper by general publication. Telephone or electronic participation at a meeting by a Commissioner is authorized provided the Commissioner identifies himself/herself and everyone else participating in a meeting is in a position to hear what's being said by the absent Commissioner.

**Commissioner Buffett:** Would it be possible to revise Section A of the rule that we had an ongoing e-mail list of stakeholders who want to have the notice e-mailed to them? Is that something the Department could do?

**Jim Karp:** We could do that since it's a regulation as long as we comply with the statutory requirements which are already in the regulation.

**Tod Stevenson:** We are currently doing that so even though it's not within the rule we could adopt that in the rule, but that has been a common practice and we're glad to add anyone to that list.

**Commissioner Buffett:** So you don't see any burden to adding that into the rule that an e-mail list be maintained of interested stakeholders for an additional layer of public outreach?

**Jim Karp:** We could add that now by adding a new section to Section 19.30.3 which would probably be a Subparagraph 6 that would recite that notice shall also include contact by e-mail by those members of the public who have requested that and have provided us with appropriate e-mail addresses.

**MOTION:** Commissioner Buffett moved to adopt the notice provisions as amended for State Game Commission public meetings presently contained in Section 19.30.3.8, NMAC, as reasonable notice to the public as applied to public meetings held by the State Game Commission in the year 2009, and that reasonable notice shall include notice by e-mail to all interested persons who have provided the Department with an e-mail address. Commissioner Salazar seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 7: Revocations.**

**Presented by Dan Brooks** – The Department presented a list of one individual that the Commission considered for revocation and has met established revocation criteria. There is a rule previously adopted in truth in reporting that requires all deer/elk/licensed trappers/furbearer hunters who provide false/fraudulent information regarding the results of hunting activities shall be assessed revocation points. In this instance, a Department Conservation Officer checked Mr. Raymond Coriz in the field and it didn't match with his harvest reports and since this the first individual we're bringing forward for a false hunter harvest report there's no conviction. This is an administrative process. Mr. Coriz requested a hearing which was provided. We recommended to the Hearing Officer a 1-year revocation for his hunting privileges and the Department is recommending adoption of the Hearing Officer's report.

**Commissioner Sims:** We get notice of results of administration revocation hearing on most of these. This one is vague. What exactly were the mitigating circumstances that led to one year instead of 20 months?

**Dan Brooks:** This is the first year this was adopted and this particular individual was in a fairly big camp and we've now improved the process where there's a form hunters sign. There was no form this individual signed and so we actually had the officer's word against the hunter's word and we wanted to give him the benefit of the doubt because of all the factors.

**MOTION:** Commissioner Salmon moved to adopt the Hearing Officer's recommendations on revocation and point assessment for the attached list of one individual for the period of time specified. Commissioner Sims seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 8: Presentation of the FY '09 2<sup>nd</sup> Quarter Depredation Report.**

**Presented by Cal Baca** – The Department presented the FY '09 2<sup>nd</sup> Quarter Depredation Report in accordance with 19.30.2.11, NMAC. The 2<sup>nd</sup> Quarter of FY '09 encompasses the months of Oct. 1, 2008 through Dec. 31, 2008 and 46 complaints have been filed with the Department, 18 of which were resolved, the remaining 28 complaints are unresolved at this time. Intervention methods to resolve these complaints are currently in progress. Of the total 46 complaints filed, the 4 species for which the most complaints were received are raccoon with 75%, deer 17%, beaver 9%, and bobcat at 7%. The majority of raccoon complaints were from the northwest area, and most deer complaints were from the southwest area. Beaver complaints were most often in the northeast area and almost all bobcat complaints occurred in southwest area. The 86 complaints filed in the 2<sup>nd</sup> Quarter of FY '08 that have reached one year, 48 have been resolved, yielding a 56% resolution rate. Those unresolved within one year involved primarily elk/pronghorn antelope/deer complaints. Resolution efforts continue with all complaints.

**Commissioner Salazar:** What's the response time on depredation complaints? How long does it take the Department to get on the ground?

**Cal Baca:** Many of our field operations make it a priority to handle depredation complaints as we receive them so presence is almost immediate, if not a phone call.

**Commissioner Salazar:** Does the initial response include education to these people?

**Cal Baca:** At this time, initial response is both investigation of the complaint to determine what species, estimated cost of what damage may/may not be, and if they have the ability to educate landowner/complainant, they will take the time to do that to give them information on species involved, some simple mitigation techniques they can take upon themselves, and explain to them the process they're entering into filing a depredation complaint with the Department.

**Commissioner Salmon:** In the southwest area, in the past year we've had a number of rabies incidents involving bobcats/gray fox. Are those included in this depredation report, or are those handled differently than regular depredations?

**Cal Baca:** If a wildlife complaint form is filled out on the incident, yes it will be reported to you on a quarterly basis. Under normal circumstances every incident is tracked either through a wildlife complaint process that will go through depredation or if an officer has to trap and relocate the animal, they'll track it through another data base system. We track all incidents of interactions with wildlife in one of multiple data bases we maintain. If they do not file a wildlife complaint, that information is not reported to the Commission on a quarterly basis.

**Director Stevenson:** Due to the rabies outbreak coming in from southeast Arizona, we're working collectively with NM Veterinary Services. All those animals that have rabies and we're helping collect those, and two/three other agencies are actively working on that in the Silver City area--bobcats/foxes in Arizona/NM right now, but we're actively out there. If we've got any sick looking animals or look like they're actually impacted are being collected. All those are being provided to the NM Veterinary Services in Albuquerque for testing.

**Commissioner Buffett:** There were two kill permits and one trap kill permit issued for mountain lions. Can you expand on the circumstances that required that?

**Cal Baca:** The two kill permits for cougar were because one cougar permit in the northwest issued to the landowner. A pet dog was killed and cached the carcass of that pet. The landowner found the cougar the next day in the shed where it cached it. The cougar did not leave with the warning shot the landowner fired. He felt he was in immediate threat, so he fired and killed the cougar. The other for this quarter I don't have all the information but I can provide it to you.

**Commissioner Buffett:** Can you provide that to me?

**Cal Baca:** Yes, I can e-mail it to you and anyone else who may want that information.

**Commissioner Sims:** I noticed that mountain lion number of complaints to number of interventions is four, successful interventions is zero, and unsuccessful interventions is zero, and we didn't kill anything either. Doesn't that need to be either unsuccessful or successful?

**Cal Baca:** Information in this report is based on the wildlife complaint forms entered into the data base by the area depredation specialist. If that information is incomplete on the form, then the data base does not gather that information, so at this time that is an unresolved complaint because either none of the interventions were accepted so there are no successful interventions to track.

**Commissioner Buffett:** I'll accept the report but I do want to receive the information.

**Commissioner Salmon:** As an update, a couple of weeks ago a mountain lion in the Silver City area killed a goat and that lion was tracked down by Department personnel and Wildlife Services personnel with dogs and was treed and killed. I'm not sure that's the incident you're looking for.

**Cal Baca:** No, sir, that'll be reported to you in the 3<sup>rd</sup> Quarter. This is 2<sup>nd</sup> Quarter information.

**Commissioner Salazar:** So we're not tracking interventions that were refused? If a landowner/property owner refused intervention, we don't list that?

**Cal Baca:** Not on this report.

**Commissioner Salazar:** Do we track that somewhere?

**Cal Baca:** Yes we do track it. Our data base tracks what the officer offers, what the landowner accepts, interventions implemented, and of those implemented, which are successful/unsuccessful. That's what the data base is set up to do. It's based on the paperwork trail provided to us by the officer, then to the depredation specialist who enters it into the data base. There are several processes that have to be checked/double checked to make sure the process is complete.

**Commissioner Salazar:** As we go through legislation regarding this, we have to have good records and I encourage the Department because it's going to be an issue.

**Commissioner Buffett:** Based on further reflection perhaps with the data glitches and my request for further information, perhaps we

should defer action on this to the next meeting.

**Cal Baca:** It's not due to a glitch or typo, it's due to information not being collected by the field officer. That means interventions were recommended or they're still working with the landowner to come up with a solution to that complaint. Just because there's no successful interventions does not mean that they're not actively working that complaint with the landowner.

**Chairman McClintic:** You have either a successful/unsuccessful intervention, you can't have both, so how do we work inside the Department to where we get an explanation one way or the other?

**Cal Baca:** For those two cougar complaints, we had four interventions that were recommended for each. Apparently, from information that's been entered into the data base at this time, nothing has been accepted by the landowner/complainant and so we have no ability to gather whether they're successful/unsuccessful. We can make an assumption that they're unsuccessful because the landowner hasn't accepted them, or we can say this is what we've recommended. Once we get an acceptance of that intervention, then we can apply that on the ground to determine whether it's been successful/unsuccessful.

**Chairman McClintic:** So you're saying that the Department can ask the people to reply but you can't twist their arm.

**Cal Baca:** Our officer can go to a landowner/complainant and say these are the things we know will work to address this complaint and mitigate this damage. It's working with them to determine whether they want to implement those interventions or not.

**Director Stevenson:** We can go back and find the specific circumstances of that cougar we don't have information on. I'll attempt to get it by the end of the day so we'll be able to act on that. If not, putting it off until the next meeting is fine.

**Chairman McClintic:** Let's run that past the Commission to see if they're okay with that *caveat* and get the information to Commissioner Buffett.

**Commissioner Sims:** I think it's confusing when we say successful/unsuccessful and you have a zero in both places. It might be better to have another column that says work in progress.

**MOTION: Commissioner Salmon** moved to accept the Fiscal Year 2009 2nd Quarter Depredation Report as submitted by the Department. **Commissioner Sims** seconded the motion.

**Commissioner Salazar:** I request Commissioner Sims' recommendation be following and insert a column for open so the report reads better.

**Cal Baca:** That will be simple to do. We already gather that information so it's just a matter of re-doing the report we present to you to include that information.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 9: Presentation of the Fiscal Year 2009 Financial Statements and Audit Report. Presented by Alexa Sandoval** - The State Audit rule requires that agencies governed by a board or commission present the annual financial statements and audit report to their governing body in a public meeting. According to Section 2.2.2.10.J (3) (d) of the New Mexico Administrative Code, "Once the finalized version of the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required 10-day waiting period has passed, the audit report shall be presented to a quorum of the governing authority of the agency for approval at a public meeting." The State Auditor has approved the Department's FY '08 financial report. The final result of the audit is an overview where the Department resolved five out of six previous years audit findings with one finding remaining moved down from a material weakness to a significant deficiency level. There were two additional audit findings for this fiscal year that were held at a significant deficiency level. Regarding the federal single audit, we had two audit findings. Our first audit finding was a repeat from last fiscal year was our general ledger reconciliation. Basically, we had some accounts that were not reconciled properly. The second audit finding this fiscal year is it states actual expenditures exceeded the budgeted expenditures. After discussion with our auditors, the movement of money into our capital outlay fund was not properly transferred using proper account codes. We've gotten clarification both from the auditor/DFA. That has been resolved. With this finding, the auditors expressed an unqualified opinion regarding the agency's basic financial reports and the federal single audit report.

**Director Stevenson:** I recommend approval of this. An unqualified statement from the auditors is the best you can get. We don't have anything that rose to that level on this audit that was out of the ordinary with some minor fixes.

**MOTION: Commissioner Montoya** moved to approve the Department's financial statements and audit report for Fiscal Year 2008.

**Commissioner Arvas** seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 10: Hunting Regulation and Associated Rules Development for the 2009-2010 Migratory Game Bird Rule 19.31.6 NMAC.**

**Presented by Tim Frybarger** – The Department requested the Commission open the Migratory Game Bird Rule, 19.31.6 NMAC, to obtain public input or testimony, and management adjustment recommendations to use in developing regulations for the 2009-2010 license year. The Department learned today that USFWS will probably allow a 10-day longer season on doves this year.

**Commissioner Salmon:** What's the trend with the collared dove and do you see any changes in the rules regarding collared dove as far as population numbers?

**Tim Frybarger:** They continue to increase every year.

**MOTION: Commissioner Sims** moved to accept the Department's recommendation to open the Migratory Bird Rule 19.31.6, NMAC, to receive public comment and Commission consideration with the expectation that the Department will present a final recommendation to the

Commission at a future meeting. **Commissioner Salmon** seconded the motion.

**Commissioner Arvas:** Do we have specified/designated entities that we contact and make them aware of the fact that we've opened up the rule?

**Tim Frybarger:** We'll put notice out as a news release but we also have an e-mail list of approximately 600 individuals and we'll request public comments from them.

**Commissioner Arvas:** I've never seen a recommendation from organizations like Ducks Unlimited or local water fowlers for example in the Albuquerque area, is there any reason for that?

**Tim Frybarger:** They do send the Department recommendations.

**Commissioner Arvas:** Do their recommendations go to the Commission members?

**Tim Frybarger:** If the recommendations made to the Department seem reasonable, they get incorporated into the regulations but we don't specifically indicate that a recommendation was made by what organization.

**Commissioner Salazar:** We'd like to know what those organizations recommend. I would appreciate receiving those.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 11: Adoption of Amendments to the Hunting and Fishing Manner and Method of Taking Rule, 19.31.10 NMAC.**

**Presented by R. J. Kirkpatrick** – The Department asked the Commission to adopt amendments to the Manner and Method Rule 19.31.10 NMAC. Proposed amendments modified the definition of a two-track road, added a definition for sporting arms type, defined requirements of sportsmen to demonstrate landowner permission to hunt/fish/trap on private land, make any game or fish unlawfully taken on private property subject to seizure, and ensure alignment with all big game and turkey rule amendments for the 2009-2010 and 2010-2011 license years, as presented by the Department. The Commission will recall in October 2008, the Commission was presented with recommendations for taking action on adopting rules for all our big game hunting seasons for 2009-2010 license year. Manner and method rule was in that set of rules and there was significant controversy over language that basically asserted that landowners would be required to have written permission to hunt on private property regardless of whether the property was posted or not. Since October, 2008, the Commission elected not to adopt the manner and method rule. The Department has been working on different options to deal with the issue of what is required of a hunter to hunt/fish/trap on private property and came before the Commission in December, 2008. At that meeting we had draft language, and realizing that that draft language wasn't sufficient given public input, the Department requested the Commission put off adopting amendments to the manner and method rule. Subsequent to that, the Commission established a public comment discussion forum in Albuquerque in January, 2009, which was well attended. Based on the results and comments during that meeting, the Department has new proposed language for the Commission's consideration. The amendment the Department is proposing today is in Section 19.31.10.18, NMAC, Unlawful Taking or Killing of Game Animals, Furbearers, Game Birds, or Game Fish on Private Land.

**Commissioner Sims:** For residents to hunt non-game animals such as varmint/coyotes, they do not have to have a valid hunting/fishing license in NM, but out of state does have to have a valid hunting/fishing license. Would we not need to include a varmint hunting license requirement into this regulation for the purpose of out of state residents?

**R.J. Kirkpatrick:** Dan Brooks, Law Enforcement Division Chief, asserts that while you do have a point, the Commission does not have authority over the manner and method by which varmints would be hunted. It does have authority in that it requires non-residents to be licensed but it doesn't have authority to regulate the manner and method of the activity by which those hunters hunt.

**Commissioner Salazar:** State law has a misdemeanor penalty if a person claims that it's private land and it's not, is that addressed in the rule? What's the penalty for a landowner that incorrectly identifies land as private land?

**R.J. Kirkpatrick:** That circumstance in that provision is addressed in this trespass statute, but I believe it's a misdemeanor for a landowner to falsely post public land or what's not private property.

**Commissioner Salazar:** When officers out in the field question whether they knew it was private land and the hunter has permission, is it just the officer's determination at that time if that's the landowner's properly posted land? How is game seized and is the carcass maintained by the Department until there's a settlement?

**R.J. Kirkpatrick:** As I understand the circumstance you're alluding to, an officer runs into an individual that is on private property who does not have written permission but is asserting that he does, in most cases our officers will do everything possible at that time to determine whether or not the assertion is valid. If that's not a task able to be accomplished, then the officer will cite and seize the animal. Once animals are seized, they are disposed of pursuant to the Department selling the animal. Typically we do not retain those carcasses.

**Commissioner Montoya:** There was legislation that might slightly impact statutory posting requirements. Can you tell us the status of that?

**R.J. Kirkpatrick:** I believe legislation regarding amending the trespass statute was tabled in committee yesterday/day before yesterday.

**Director Stevenson:** My understanding is the representative sponsoring that is looking at trying to work with constituents.

**Commissioner Montoya:** Can you tell us what that legislation would do if it were successful?

**Dan Brooks:** The trespass bill, HB 163, sponsored by Representative Gloria Vaughn, has several provisions. The substitute bill had a provision allowing for painting of trees/posts with orange paint was removed, but brought forward that a person could by fence an enclosure to either exclude intruders or maintain livestock would constitute notice. Notice means that you cannot go beyond there so there was a sign/posting provision but that didn't have to go if there was basically a fence. That was still being contemplated in that bill. There

was also a provision that allowed for written communication. Written communication was not clear in its meaning. It allowed the landowner to communicate in writing to prohibit trespass. There was a portion that provided for seizure of game and fish protected species if a person was found in violation. There were a couple of other minor provisions about dairies/biosecurity and they just had to post a sign. There was some consistency in the latest substitute that talked about posting at all points of access. The bill has been tabled but it is the sponsor's prerogative to work with groups and try and bring it back. Everything was made into a misdemeanor in the substitute bill. There is a provision that allows for petty misdemeanor but this would make everything a misdemeanor.

**Public Comment:**

**Joel Gay:** I'm Communications Director with NM Wildlife Federation. We urge your support of this proposal.

**John Boretsky:** Some of the checkerboard land is not marked one way or the other. In the past, the Commission has had more confidence in the hunter on private land than public land hunters. If the private land hunter strays onto public land, then he is hunting with an invalid hunting license and the game is automatically seized. There is no knowingly/unknowingly involved. If we are operating in checker boarded areas, if someone hunting with a private license and permission for the private land strays onto public land at this point it's not equal justice. The Commission needs to look at that.

**Commissioner Salazar:** If an officer checks on them and they have a private land permit and they're hunting on public land, what would the officer do?

**Dan Brooks:** While an investigation would definitely occur, and there are valid points to what Mr. Boretsky said, there are several other layers involved and that's when it comes to private land hunting. It depends on which kind of private land hunting you're talking about. Deer has some unlimited opportunities and so one of the things we're cognizant of, and I think that was built into presentations over the last few years with the Commission, is that we want to make sure private land hunters stay on private land and do not come on to public land where we've allotted those opportunities by draw. Elk is different but it's the same if it's a ranch-only license. They have to stay on that ranch and then they can't go off the ranch on to public land, so there are restrictions and there could be enforcement action. Back to your question, an investigation could ensue and the hunter could be cited and the game could be seized.

**Commissioner Salazar:** There is enforcement for private land hunters that go on to public lands with a private-land only permit.

**John Boretsky:** Yes, and again when you're operating in checkerboard areas where the land is not designated, I'm in agreement that private land hunters should stay on private land. Also, public land hunters should stay on public land. As the two overlap, I'm saying there needs to be an equality of justice as it's perfectly understandable if the public hunter strays on to private land, it also has to be understandable that the private land hunter in the checkerboard areas can stray on to public land and knowingly, if it's going to apply to the public hunter, needs to apply to the private hunter also.

**Commissioner Salazar:** It's important that we properly post these properties so neither one of these things occur.

**John Boretsky:** I have no argument with that but when you get into checkerboard areas it's extremely difficult when you're talking about sections that are alternating.

**Commissioner Sims:** R.J., with the language we have in the motion, could we not go back and change the language in the rules that say that if a private landowner knowingly went onto public land that he would have to know he was going on to public land? Would it not be fair to come back and put the same language in?

**R.J. Kirkpatrick:** The Commission has purview to amend rules however they see fit. I suggest that although I understand Mr. Boretsky's concerns and the discussion around it, we all have recognized in the conversations over the last 6 months that this knowingly language in Section C, this is the most difficult section of this provision for us to enforce. Being able to prove knowingly is always going to be a challenge.

**Commissioner Sims:** Either we are going to make the state/BLM/Forest Service post their land wherever it is, or we're going to have knowingly into the equation?

**Chairman McClintic:** I think the issue is that the public land hunter on private land is a trespass issue. The private landowner that steps on public land is not a trespass issue. That's a jurisdiction/unit/license issue. It may be difficult to mix all of them because one is a trespass issue and the other is not. I agree with Commissioner Sims that the more equitable we can get all situations the better off we'll be. I don't know how dealing with a trespass can incorporate it into a non-trespass issue.

**Commissioner Arvas:** Most private landowners who have private land hunters do a great job telling the private land hunter where the boundaries are. Most private lands you hunt on the private landowner does a great job of telling that hunter where he can or can't hunt. Dan, have we really cited that many private landowner licensees for hunting in the wrong unit?

**Dan Brooks:** Unfortunately, I can't speculate on that and I'd have to do research and respond at a later date.

**Commissioner Arvas:** It would be interesting to bring to us on how many citations annually in the last 2-3 years have been written to private land licensees.

**John Boretsky:** In the case of an unjust law, one is too many. I agree that most people hunting on private land the landowner is careful and is deliberate about defining his property. Perhaps I'm making too much of checkerboard areas because that's where these problems will come up. All I'm saying is that I recognize the trespass issue; however, the minute a private land hunter steps off that private land, his hunting license is no longer valid. The hunting license for the public land hunter is valid on the private land with/without permission to be there with/without posting and this is the inequity that needs to be addressed more so than simple trespass.

**Commissioner Sims:** I have a difficult time understanding what Commissioner Arvas and everyone is talking about if a public land guide doesn't know but private guides are good at, what school did the public land guide go to that wasn't sufficient for the private land guide?

**Commissioner Arvas:** Basically, the comment I made is in reference to in most cases the private land licensee pays a substantial amount of money to the landowner. Most know what they're buying, whereas the public hunter unfortunately doesn't have quite that feeling of concern about straying off public land on to private land. I can't give you a good reason for that but the multitude of public hunters in

relationship to the smaller number of private land hunters is also a factor. It's been my experience that most public hunters make an effort to find out where they're at, but most usually don't.

**Commissioner Sims:** So you'd say that it's a matter of will or effort?

**Commissioner Arvas:** I'd agree with that.

**Commissioner Sims:** So we're going to put a higher effort on the private hunters than we are the public hunters?

**Commissioner Arvas:** I don't think we're putting a higher effort on them. I think it's a fact that the private landowner is going to tell his hunters exactly what the boundaries are. With the public hunters there are so many different markings/areas that he really needs to be up to speed more than the private land hunter. I'm saying the private land hunter does not have that same level of responsibility a public hunter has because his area is limited in size more so than a public hunter. The public land hunter isn't going to be worried about BLM/Forest land properties, whereas the public land hunter is very concerned with all of that and there's so much more where he can get into trouble.

**Commissioner Sims:** Wouldn't it be nice if we all cared the same?

**Commissioner Arvas:** I'd concur but I think reality plays a role there.

**Kevin Reilly:** I represent Trout Unlimited and we support the Department's proposed revision to the rule. We think it strikes the right balance between landowners/hunters/anglers and we strongly feel that the key to that balance is the word knowingly in Subsection C.

**MOTION: Commissioner Salazar** moved to adopt amendments to the Hunting and Fishing-Manner and Method of Taking Rule 19.31.10, NMAC, that make it unlawful to hunt, capture, take, attempt to take, or kill any game animal, furbearer, game bird, or game fish without possessing written permission on any private property that is posted, where permission to be on the property has been denied, or when the hunter or angler knows the property is private land; and, make any game or fish unlawfully taken on private property subject to seizure as presented by the Department. **Commissioner Buffett** seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

**AGENDA ITEM NO. 12: Adoption of Amendments to the Deer Rule 19.31.13 NMAC; Elk Rule 19.31.14 NMAC; Barbary Sheep, Oryx, and Persian Ibex Rule 19.31.12 NMAC; Bear and Cougar Rule 19.31.11 NMAC; Pronghorn Antelope and Javelina Rule 19.31.15 NMAC.**

**Presented by Tim Frybarger** – The Department provided the Commission with proposed amendments to these rules for adoption. The presentation included amendments to specific sections of the Deer Rule 19.31.13 NMAC; Elk Rule 19.31.14 NMAC; Barbary Sheep, Oryx, and Persian Ibex Rule 19.31.12 NMAC; Bear and Cougar Rule 19.31.11 NMAC; and the Pronghorn Antelope and Javelina Rule 19.31.15 NMAC, to align these rules with the amended Manner and Method of Taking Rule, 19.31.10, NMAC and to correct errors and omissions. The amended rules applied to the 2009-2010 and the 2010-2011 hunting season. We have administrative corrections to make. In Subsection D of the Special Hunting Unique Late Archery opportunities, we inadvertently set that hunt the same time as another hunt so we'd like to move those dates from Dec. 5 to Dec. 12 and the corresponding timeframe in 2010. Elk hunts, where no core is established this year, during regulation changed boundaries between 41 and 59. Unit 41 was always included to allow private landowner elk hunting but we inadvertently left 59 out so the landowners in 59 can now take part in this hunt. The Javelina rule this last hunt is actually a McGregor Range military-only hunt. The dates we set are Tuesday/Wednesday—McGregor Range only allows hunting on the weekends so we changed the dates to correspond to weekends. The last one was passed at the October meeting to not allow bear hunting during these elk seasons in these specific units. We had several public people call and ask how come the same rule doesn't apply to deer hunters. We added deer into everything so that it'd be the same for elk/deer hunters. These are the actual dates that they would not be allowed to bear hunt unless you had a license.

**Public Comment:**

**Juan Baca:** Regarding this ruling done on Oct. 2 not to allow bear hunting other than by elk hunters, I spoke with Tim Frybarger. I'm not sure I made him aware deer hunters weren't allowed at this time to hunt along with elk hunters. It should include them. He commented that the Department would add that and bring it before the Commission for approval. At that same time I started a petition to include deer hunters in this rule. A week after a group of individuals came to me and asked why are they allowing only two people to hunt bear at this time. All people should be allowed to hunt bear. It's a different species and they can understand that if it's allowed to be done by weapon choice if you're going to bow hunt to allow bear hunters to bow/muzzleloader/rifle hunt during same timeframe, whatever it may be for fairness to everyone and not select groups. I currently have 286 signatures on my petition to either change or rescind.

**Chairman McClintic:** Originally you wanted it to include deer and now you're against it?

**Juan Baca:** Originally it was to include the deer hunters. After being approached by a group of people to represent them in getting this rescinded/changed to allow them to hunt bear at the same time using bow/muzzleloader or whatever the elk/deer season may be in that timeframe. I agreed to do that. That's why I changed the petition to hopefully get this rescinded back to the same schedule during the 2007-2008 season.

**Debbie Hughes:** In the previous agenda item regarding the Barbary sheep hunts where you're requesting changes in 19.31.4.11, NMAC, in talking about private/public land hunting and it specifically states that these licenses are going to be available only in Department offices/website and shall only be valid on deeded private lands. I agree with Commissioner Sims. I point out we have checker boarded lands. We have several pieces of BLM land totally surrounded by private land, 40 acres, 120 acres, so we'd be making criminals out of these people if they got a private land and they happened to kill Barbary sheep or other animals on that small piece of public land. We've also got several pieces of state land that are totally surrounded by private land and there's no way to post these. These are in the middle of pastures, not along fence lines so the checker boarded and quite an issue. I understand the difference in trespass and license but I do

think that if you're going to say knowingly, that also needs to apply for private land licenses if they unknowingly kill an animal on public land because your switching to more things including Barbary sheep. We now have a lot more Barbary sheep hunters than deer on checker boarded land.

**Commissioner Sims:** Ms. Hughes, in your part of the country, do you find that private land hunters are more knowingly knowledgeable than public land hunters?

**Debbie Hughes:** They're only going to know as much as we tell them. When we lease our private land, we tell them which. We don't tell them but stay off these 40 acres on the top of this hill here, that's BLM land. We're not doing that. I don't think they're going to have any way of knowing unless they actually have a GPS and a real detailed map because that's never been a big issue. We've been trying for 15 years to buy/trade these isolated pieces from BLM, but unfortunately they do management plans every 10-15 years and ours weren't originally identified for disposal. We're still trying to get them on there but because of that issue, we have 500-600 acres at least in small parcels of BLM. The homesteaders didn't want it because it was a little rocky hill or whatever, and no, sir, the private landowners aren't going to know.

**MOTION: Commissioner Arvas** moved to accept the Department's recommendation to amend specific sections of the Deer Rule 19.31.13, NMAC; Elk Rule, 19.31.14, NMAC; Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC; Bear and Cougar Rule, 19.31.11, NMAC; and the Pronghorn Antelope and Javelina Rule, 19.31.15, NMAC, to align these rules with the new requirements from the Manner and Method of Taking Rule, 19.31.10, NMAC, concerning written permission and legal access to private land, and to correct errors and omissions, as identified by the Department. **Commissioner Salmon** seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

### **AGENDA ITEM NO. 13: Opening the Fisheries Rule (19.31.4 NMAC).**

**Presented by Mike Sloane** – The Department opened the Fisheries Rule, 19.31.4 NMAC, to seek public input on changing the daily bag limit at Conservancy Park Lake/Tingley Beach from five (5) fish to three (3) fish. The change is proposed in order to more equitably distribute the limited number of fish stocked in Conservancy Park Lake/Tingley Beach. We have scheduled about 18,500 fish, and the City of Albuquerque supplements that number. Our angler estimate is about 23,000 angler days per year, the City's estimate is higher than that, so you can see from that that there are not enough fish to go around. The City also feels that there are a number of core group anglers that come each day that have almost a competition to see how many fish they can catch. Taking those fish home and lowering the limit would more equitably distribute those fish to the large number of anglers that use the resource.

**Chairman McClintic:** This is an informational item?

**Mike Sloane:** Correct. It's to open the rule for public discussion. The City of Albuquerque will engage in a creel survey of anglers to determine acceptance of proposed change and we'll probably have a public meeting in Albuquerque. We'll bring that rule proposal before the Commission in April/May.

**Commissioner Salazar:** We have an issue with kids not getting back to nature and this is a great program.

**Commissioner Sims:** Are we stocking this lake any differently than we've stocked it in the past?

**Mike Sloane:** No. We're looking at ways to increase the number of fish that we do stock.

**Commissioner Sims:** Are there more fishermen at this lake now than there have been in the past?

**Mike Sloane:** Yes.

**Commissioner Sims:** Would our problem not be solved with stocking more fish?

**Mike Sloane:** More fish would help. The question is where do we take those fish? We currently have all our fish allocated. We still have one hatchery down so we're even off our scheduled numbers. We're planning to do some survey work on the ditches around Albuquerque next winter to see if those are getting the use that we think they are and maybe we can skim fish from there.

**Commissioner Sims:** What's the possibility of going out of state for fish. I know we've traded for fish in other places. I don't think it's that expensive anyway, but what're the chances of going out of state to get more fish for our fishermen?

**Mike Sloane:** In general, Rainbow trout are hard to come by in a trade.

**Commissioner Sims:** Don't we kill them all the time in streams?

**Mike Sloane:** We try not to. Other states tend to be looking for Rainbow as well and when you can get them from other places, they're small fish. Not the catchables required for Tingley Beach.

**Chairman McClintic:** They're visits are over 100,000 a year and it's been great for us. There are a lot of people that don't fish other areas of the state that do buy licenses to fish in Albuquerque. They've stepped up security on catch and release, they've got lights, they've got a camera, and they do have city personnel watching, so they're very excited about this fishery. When we have a working involvement with a municipality, those are the kinds of things we need to step up to the plate and try to do what we can do.

**Commissioner Salmon:** Are there any other species like Channel catfish or Orange Mouth bass that we might use to augment the supply of the lake?

**Mike Sloane:** There are, and we do stock. It is a big Channel catfish water where we have a 2-fish limit over 16 inches, so we do stock that about 3-4 times a year with those fish. There are some Large Mouth bass in the lake. We have a survey plan for later in May to look at. We have a warm water fish hatchery now so there may be an opportunity for us to stock. We need to look at the forage base and what that water can handle, but we do have other resources.

**Commissioner Buffett:** This item states the Department is opening the rule and in other items it says the Department requests permission from the Commission to open the rule. Can you explain why there are differences in the procedures?

**Director Stevenson:** This was primarily to get more input on this issue so we could decide whether to bring that to you in the future and

actually open the rule. That's the only difference. We could give you the information to open that rule today if you wish.

**Mike Sloane:** The confusion was on my part. I've never had to open a rule before. I usually bring amendments so I changed the process from my Division's perspective.

**MOTION:** Commissioner Buffett moved to open the Fisheries Rule, 19.31.4, NMAC. Commissioner Salazar seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. Motion carried unanimously.

**AGENDA ITEM NO. 14: San Juan River Public Input Process.**

**Presented by Mike Sloane** – The Department presented an approach to seeking public input on the management of the Special Trout Water below Navajo Dam on the San Juan River. There's been a significant amount of interest in the San Juan fishery and quality of the fishery. The Department has so far met with several groups and drafted a white paper to try and provide information to the public to help them understand our perspective on the fishery. We as an agency are obviously concerned about that and confused by it because the fisheries data we have hasn't changed substantial, so we're interested in meeting with specific interest groups as well as the general public to identify and better define what the concerns are and see how we can address them. Our proposal is to meet with groups as NM Trout Unlimited/San Juan Fly Fishers/Concerned Citizens for the San Juan/the Guide Association on the San Juan and try to better define exactly the problems these folks are having. We've heard sediment is killing the river, we've heard the top end of larger size fish are missing, and we also know that there's been a change in the fishery from about 5% brown trout to about 50% brown trout, so that's also a change in how people fish. Our proposal is to go forward and do that and then at the April meeting we'd come before the Commission with results from those meetings, and some possible resolutions.

**Kevin Reilly:** I represent Trout Unlimited. We support the Department's plan to open up the public process on the condition of the San Juan and we want to be an active partner. An independent study should be done to determine the source of the siltation and it's affect on the fishery, and develop a plan to minimize siltation to the extent possible.

**Commissioner Salazar:** This is an internationally known fishery that has tremendous economic impact on NM and the Commission well realizes we need to address these issues. I hope we come back with definite strong points to help and maintain this fishery and maintain the positive economic impacts on NM.

**Commissioner Salmon:** I'm also pleased with the direction the Department is taking on the San Juan.

**Chairman McClintic:** I know this is an extremely important issue to the Administration, and the Department is taking this issue very seriously.

**Discussion item only.**

**AGENDA ITEM NO. 15: Unit 6 Elk Management.**

**Presented by Bill Graves** – The Department provided an update regarding a proposal received from landowner and sportsmen interests to modify the manner in which elk hunting opportunities are allocated and private land damage concerns are managed.

**Chairman McClintic:** R.J., aren't we conducting a survey to people that are landowners or hunted there?

**R.J. Kirkpatrick:** Yes, that's correct. That survey has been out on the street as he spoke to all participating E-PLUS landowners in both units, all the individuals that hunted the unit during the 2008 season, Forest Service offices, Valles Caldera, Tribal interests, outfitters, and businesses. That survey is out and is due back to us by the 13<sup>th</sup> of March.

**Chairman McClintic:** There's some misinformation going around that I need to get clarified. Did we send the survey out to all hunters that got a license for that unit or just people that were successful?

**R.J. Kirkpatrick:** All hunters who drew a license for Unit 6-A and 6-C, across all weapon types and bag limits.

**Commissioner Salazar:** One of the things I got comments on were on everybody that put in, but I think Bill said this was open, so anyone that put in for it that was not successful could also put in comments, correct?

**R.J. Kirkpatrick:** That's correct. Pursuant to our news release and our website, there have been quite a few folks that said they'd like to participate. We're making the questionnaire available to them on a case-by-case basis.

**Public Comment:**

**Jared Taylor:** I'm a landowner and owner/operator of Red Top Mountain Outfitters out of La Jara, NM. My immediate family consists of 7 private landowners in 6-A two of whom currently participate in the E-PLUS landowner tag system. We have not at this point designated any spokesperson for ourselves being from Cuba/La Jara area. We oppose combining the units. We feel combining the units will jeopardize the quality of the hunting in 6-A and decrease the value of the permits we currently receive. Unit 6-C landowners/outfitters would benefit from the combination whereas 6-A landowners/outfitters would not benefit and would decrease the quality hunts and values of the tags. Landowner compensation probably does need to be re-visited in certain instances. Some folks have lots of grazing land v. folks that don't. Landowners with food sources that attract elk will still have a problem if they recombine the units but the tags will be worth less money to us lowering the compensation for damages incurred by elk. Without the quality hunting opportunities that definitely drive the cost of landowner permits and what we're able to sell them for. Unit 6-A is mostly public land. The elk populations and quality hunting opportunities shouldn't be jeopardized to benefit landowners from the other side of the mountain. In the past there's been pressure put on the Department to manage the numbers on that side of the mountain and that's why the split was done. Unit 6-C should probably be brought back to it's prior quality before any further discussion about combining the units.

**Ric Martin:** I'm Northwest Director for and represent the Guide and Outfitters Association. I've talked to several people outfitting in this area and most everyone agrees that combining the two units would not be advantageous to the outfitting industry. I'm not going into all the details about what might happen if you split the two units but that's the impression I got from the members of the Council of

Outfitters/Guides actually involved in this area.

**John Boretsky:** If you're thinking about recombining these units, to do so after you've brought 6-C up to an acceptable level. In the Proclamation you have a disclaimer when you talk about 6-C as to the quality of hunt you can expect. As a management tool, if today you look at 6-A and you took all the tags from 6-C without combining and you dumped all those tags into 6-A would that be an intelligent management move? No, it would not. At this point, with 6-C in the condition it's in will be the effect of combining the two before 6-C is brought back up. I was involved in this in the past and frankly I have reservations as to whether or not the landowners in 6-C are amenable to bringing an elk herd up to the point that it would balance 6-A. I urge you to look at this and use caution because basically if you combine the two what you're going to be doing is doubling the pressure in 6-A and not improving anything in 6-C.

**Manuel Montoya:** I'm a landowner in Cuba, Unit 6-A. I think combining the two units would diminish the elk population in 6-A and 6-C needs to be improved first before anything else is done.

**Commissioner Arvas:** How do we improve the conditions in 6-C?

**R.J. Kirkpatrick:** As the Commission probably recognizes, 6-C has been managed for a long time to reduce/minimize numbers of elk in that country for a variety of reasons. Subsequent to the 2006-2007 license years, the Commission has made some decisions to begin a slow process of reducing the number of hunting opportunities in 6-C to start to improve it and managing it a little differently. The Commission took action in October on the level of elk hunting in 6-C for the next two years with a significant reduction in that. The way you accomplish bringing the quality back is probably significant reductions in both bull/cow harvest, let the population grow, and let those bulls grow to be bulls.

**Commissioner Arvas:** Isn't it true that the landowners in 6-C are constantly harassing about the fact that we have too many elk in there and they have a lot of depredation?

**R.J. Kirkpatrick:** There are landowners that continue to assert that there are too many elk in 6-C. In addition to that is a complicating factor although we've not gotten good clarification lately. Forest Ranger Districts in Espanola/Coyote have also agreed with a lot of the landowner assertions that there are too many elk as it applies to livestock on public grazing allotments. A conflict is the elk are eating all the grass; therefore, they've got to cut grazing allotments. Forest Service has historically felt there are too many elk there although now they may be changing that opinion.

**Commissioner Arvas:** So it's not really our purview to be able to do everything we want in terms of management goals for 6-C?

**R.J. Kirkpatrick:** As always, elk management goals and levels of hunting opportunity is the purview of the Game Commission. We try and work with all those interests and find a middle ground. My sense is that that middle ground has changed and there may be more acceptance to improving the elk hunting/population in 6-C. We'll work with all interested parties to see if there's some interest in changing the management objectives of 6-C significantly to accomplish getting it back up to par.

**Anthony Madrid:** I'm a landowner in 6-A and 6-C. For the record, I've not authorized anyone to speak for me or my family. I'm strong against combining Units 6-A and 6-C. Combining the units will only benefit landowners/sportsmen/outfitters on the 6-C side. Combining the units will really hurt landowners/sportsmen/outfitters on the 6-A side. I don't believe the E-PLUS allocation is working for all landowners in Units 6-A and 6-C. There are landowners that do have significant elk problems that probably need to be worked on, but rather than combining the units, I'd like to see the Department re-visit the allocation option that was approved for Unit 51 landowners this year. This is where a specific landowner can request a certain number of either sex authorizations with expanded hunt periods and they'd hunt only their private land. I think you'd get better results from that on the properties that are significantly affected by elk. I don't think it's a good idea to combine two units that differ so much in their quality of elk. You're going to have the better unit suffering. Myself, along with a few local landowners/sportsmen/outfitters have a petition against combining Units 6-A and 6-C. Right now we have over 100 signatures and this petition will be submitted before the next Commission meeting. There's also a lot of public land in Units 6-A and 6-C that would be affected by combining the units. I'm glad the Department has gone out with their survey to the public.

**Carlos Chavez:** I'm from Gallina. I'm frustrated with the ongoing problems in Unit 6. There are those that believe that the elk are worth something and there are those that believe that elk are not worth anything. We live with elk in the small communities and right now there are hundreds of elk. There's something wrong with the system. Unit 6-A and 6-C are managed as trophy units. They are the worst units in the state.

**Chairman McClintic:** We set up and attended that Saturday meeting and let you without any input from us get people to that meeting. I don't think you give us enough credit. I understand your frustration and how disappointed you are, but when I left that meeting, we had agreed to do a survey and we're doing that. We're not making any determination this meeting. This is for information only and it's as important to us and sportsmen in this state to do everything we possibly can to increase quality/quantity/opportunity.

**Carlos Chavez:** When I saw the survey it said it was concerning landowners only. Not sportsmen.

**Chairman McClintic:** Is that accurate, R.J.?

**R.J. Kirkpatrick:** I believe that the group Art has put together has asserted all along as a group of concerned landowners. That's who we met with in Coyote.

**Bill Graves:** I think what you're asking is who the survey went to?

**Chairman McClintic:** That's what Mr. Chavez thought, that it went to landowners.

**Bill Graves:** The survey went to landowners and sportsmen.

**Chairman McClintic:** It does say on the survey and sportsmen? Do you have a copy?

**Carlos Chavez:** My point is it didn't take a survey. It didn't take anything to pass, but now when we want this stuff passed. That's the whole point.

**Chairman McClintic:** We're trying. You may not be getting the results that you want in the timeframe you want, but believe me we're spending a lot of effort on this and we're going to try to do something to improve the hunting opportunity in your area. Give us a chance.

Let's get the survey back and get everybody's input and then let's move forward and have more meetings and see if we can do something. I understand your frustration. We're not trying to destroy hunting ability in your unit. All we want to do is improve it.

**Art Martinez:** I've been bringing this problem since 2006. We've had a lot of problems and finally people are starting to listen. It took going to the Water and Natural Resource Committee in the Legislature to have us heard, but that's the only way we got things done. The problem is we want equality for everyone in that unit. There's no way you can improve quality in Unit 6-C of that herd the way that unit is split. They split that unit right down the primary hunting country, Forest Road 103 north to south. In 2006 we brought up that we'd like to see that re-aligned east to west so there's more equality in the system. Another thing we brought up is the patrol issue in that area. The problem is that people will draw 5-B, Unit 7 and 6-E and hunt 6-A. There's no patrolling so no stopping that. They've been wanting to increase the herds in 6-A, they've not been increased as per what the Department has told us. It's slightly increased. The problem we see talking with people in both, Unit 6-A and 6-C is complaining about elk damage. Unit 6-C complained that in 2001 when they split that unit, they were never informed. There were never any questionnaires sent to them saying would they agree to the split. What they were saying is that they were having elk damage and they wanted to have an investigation and solve the problem with the elk damage. The policies that I understand for the Department is (1) serve the people; and (2) protect wildlife. The majority of landowners, the minority of the landowners in 6-C wanted all the elk killed off their land, public land, grazing land. In return they get unheard of landowner permits. A landowner with 6,000 acres receiving 74 landowner permits which are unit wide, means he can sell them for the whole unit and if the Commissioners would investigate and see where this land is, you'd see there's no way they deserve 74 landowner permits. Another complaining grantor had 3,300 acres, originally they were giving him 62 landowner permits. They dropped him down to 42, but the one with 6,000 acres from 2008 to 2009 they increased him by 32 landowner permits and there are landowners there on both sides, 6-A and 6-C, that have actual elk damage. We were never saying cultural/cultivated land. We were always saying actual damage. We were saying that these elk, these people want an investigation because there's so much abuse in the system. There are landowners with 10 acres of land receiving one mature bull tag, and another landowner with 650 acres losing 3,800 bales of hay to elk receiving one mature bull tag. Equality is not there.

**Commissioner Montoya:** I support the Department's proposal to move forward with planning/inquiries. It would shed a lot of light on some of the issues plus what you heard at the meeting you attended, and even from legislators. I think this proposal would provide us with some important data that we need to be able to make decisions. When I see what was presented, there is citizen participation throughout the process which will be beneficial because if we want to manage elk there, people that use that unit either for ownership or hunting, need to support our efforts because we can't manage a unit for more elk if Forest Service and others say we shouldn't have that many elk. This is an opportunity to bring all the stakeholders, everyone that has an interest, into the process so that we can learn in order to make intelligent decisions on these timelines. It would come back to us at our April meeting with information on whether it merits us continuing the process or stopping. If we continue, it has definite timeframes that don't put this effort 3-4 years into the future. July is when we'd be making decisions. It gives us enough time to be able to make decisions for the 2010-2011 season. I know we've spent considerable staff time addressing issues in 6-B. A lot of the staff are at the Legislature following a bill regarding 6-B. A number of meetings have taken place. The rest of the unit deserves as much attention and staff time and the Commission's time and audience and a survey and developing data as well so that we can manage the whole unit as best as we can. I think the survey is a great idea. I haven't seen the questions but it can't help but provide us with more information so that we have it at our disposal to make decisions. The last thing I ask of R.J. or Tod, I heard Art mention the year 2001. I certainly would like to see whatever information we had at that time that prompted us to split the unit in the first place. What were the conditions, what kind of pressure were we under from whatever group/Forest Service? Why did we split it in the first place? See if that still merits consideration. So if you have any of that information, I'd like to read whatever is in the archives.

**Commissioner Arvas:** Mr. Martinez, on your Speaker's Card you say you're a spokesperson, who are you speaking for?

**Art Martinez:** There are between 30-40 landowners that we've had continual meetings with and they wanted me to be their spokesperson. I'm not spokesperson for everyone but that group of people has met with the Chairman/R.J./Tod and those are some of the people that we represent.

**Commissioner Arvas:** How many total landowners are there in Unit 6-C?

**Art Martinez:** For both units probably about 400.

**R.J. Kirkpatrick:** Over 250 for the two units combined.

**Commissioner Arvas:** So you're saying you represent 30-40 of the 250?

**Art Martinez:** Plus we have petitions from people that wanted Unit 6 put back to Unit 6 and also the E-PLUS System checked into. We're saying Unit 6 is a unique area, different than any other part of the state, and the majority of the landowners are small landowners. We want an investigation because a lot of times what's happening in this area is, if a landowner applies for a landowner permit, that land is investigated to see actual damage and R.J. told me that if you look at a map, if they think there are elk on there, they'll give them landowner permits. What we're seeing is names and ranch numbers and a lot of double dipping where one landowner is getting a mature bull tag under the E-PLUS landowner system and then he's receiving another mature bull tag on the lucky draw list. That takes away from the people that actually need to recuperate their losses. These landowners aren't saying they want to make money on elk. All they're saying is they want to recuperate their losses because the way economics are going, it's hard from them to survive. One man lost 3,800 bales of hay to elk and fence damages, and the damages elk have caused is over \$30,000, and they receive one mature bull tag they can sell for \$2,500. All we want is equality. We want to lower the number of tags to make it equal. If you inspect all the landowners, 30%-40% maybe more, don't deserve landowner permits. If the Department wants to give them permits, do like they do to people that have a lot of actual damage. They're giving one Unit 9 cow tag and an 86-year-old lady shows pictures of 50-60 elk on her property almost every day and for two years she's been receiving a Unit 9 cow tag, and her neighbor has 710 acres and he's receiving three mature bull tags, two

cow tags, and two archery tags. You have to investigate the system to stop the abuse. If you don't people are upset.

**Commissioner Arvas:** You've seen the Department's proposal. What would you add to that to satisfy the people you represent?

**Art Martinez:** There are two things that need to be done. Equality so everyone be treated equal. Not only in 6-C, but we're representing 6-A side, but a lot of these landowners are saying that everyone should be treated equal and if you have actual damage from the elk they want to prove actual damage, and don't reward and punish. People in 6-A want to increase elk herds and they went along with the Department. In 6-C they were against the elk hunter. The landowners in 6-C are saying we were never against the elk. We were always for the elk but we couldn't keep feeding elk. The Department never loses. The Department would always sell public hunting licenses and when they issue a landowner permit they still sell a hunting license so they're still going to make money. These landowners are losing money. All they wanted to do is recuperate their losses. That way everything will be solved. If you take care of the number one problem which is the landowners, everything else will fall into place.

**Chairman McClintic:** Tod, we've got a depredation bill that's working its way through the legislature. At what point, to address Mr. Martinez' concerns about depredation on alfalfa/hay, does the E-PLUS Program stop and the depredation kick in?

**Director Stevenson:** The way the rule currently is as far as elk/landowner rule and our depredation rule is you have to choose one or the other. You can't participate in both systems. If you're in E-PLUS and damage gets to a level you're no longer willing to participate in, then you move to the depredation side.

**Chairman McClintic:** Not to make any suggestions, but the lady you spoke of was getting one tag in Unit 9 and she had \$30,000 a year worth of damage to her property?

**Art Martinez:** No, she's getting one mature bull. The 86-year-old lady has 206 acres overall of agricultural land. She's the one getting a Unit 9 tag.

**Chairman McClintic:** What I think we're going to have to do is if we do make it through and get the depredation bill approved, I think at that point we're going to have to give everyone the opportunity to in the E-PLUS rule, and be very specific R.J. in the depredation rule, and see which will fit best. Commissioner Montoya has pleaded with us and the Department to carry on these deals. I'll direct the Department/Commission on the same thing.

**Art Martinez:** I was told was that these landowners like the elk. They want the elk around, but they can't keep feeding the elk. If it has to be a choice between feeding elk and feeding their families, there's no decision. All they're asking is to recuperate their losses. They're willing to show you the damages, but a lot of these landowners have told me they have not seen Department personnel in over 20 years, so how does the Department of Game and Fish know? The Department doesn't even know where their properties are. All we're saying is listen to us and listen to the problems in that area. We're not telling you how to run the Department. Damage that elk are creating needs to be taken care of.

**Chairman McClintic:** Let me assure you we have heard everything. We're going to continue with everything we're doing and we're going to work on it and take other steps. We're going to try to make everybody reach common ground which is sometimes difficult. Not everyone is going to be totally happy.

**Art Martinez:** Everyone has not agreed. Landowners against the public should not comment on private lands. They wanted the written questionnaire opened up to the public so everyone could comment on it, not just who the Department decided to send the questionnaire to.

**Chairman McClintic:** I thought we had agreed and when we left the meeting they were going to let you look at the survey of what they were going to show.

**Art Martinez:** We had one more meeting after that in January and that's when we were against the questionnaire. There are also Units 5-B and 7 which have the migrating herd of elk coming on to their lands, and they should have comments on that because they have damages when the elk are off Unit 6. Unit 6 is a very unique area. A majority of those elk migrate down out of the unit or into the pasturelands where the feed is. We're trying to bring this out so people can understand the problem.

**Chairman McClintic:** You've got Commissioner Montoya's/Commission's attention and we will work with the Department to get something outlined and I'll make sure they get to you how we're going to look into all of this.

**Commissioner Montoya:** Going through this process will give everyone an opportunity to tell us what they're thinking and what they want, and the Department will have an opportunity to continue the education on the difference between depredation and E-PLUS. Landowners still associate damage with E-PLUS and they're two totally different programs. Use every opportunity you have as you're going through these processes to make sure that everyone understands the difference, because the way the rules are written you can't associate any damage with another tag. When you agree to E-PLUS, you disregard damages. You say you want elk on your property.

**Art Martinez:** Landowners don't want more landowner permits. All they're saying is they want equal distribution which means if you investigate the landowners that are not deserving of landowner permits that frees it up for others that are deserving. We're not asking to increase landowner permits, we've never asked for that.

**Chairman McClintic:** We're agreed to look into this so we're going to do that.

**Discussion item only.**

#### **AGENDA ITEM NO. 16: Rule Promulgation and Public Comment Process.**

**Presented by Bob Jenks** –Some Commissioners have been members of the Commission for some time or participated in the processes used by the Commission for promulgating rule. The Department approaches the Commission on a regular basis for particular rules either on an annual or bi-annual basis to open rules. Occasionally we open rules for specific needs, but during that intervening period we enter into a relatively fluid process whereby individuals can approach the Department, offer ideas/comments/observations/formal comments regarding any given proposed rule. We provide before the Commission takes action 30-day notice and therein the public is informed

specifically of what may be proposed and when that proposal may be acted upon. During that 30-day period the Department's process has included latitude whereby rules can be adjusted/proposed/modified prior to final action. Recently members of the public have expressed views that the process might and perhaps should be improved/alter the way by which Commission promulgates rules. There've been a number of concerns that at the time the Commission takes action there is uncertainty regarding specifically what will be acted upon. Additionally there's some question about whether there's sufficient transparency. Recognizing that the Commission/Department historically have used both formal comments to develop recommendations as well as informal or off-the-record comments to develop recommendations upon which the Commission will take final action. There's concern that there's something that is being missed and is there an opportunity for the public to know exactly what is on the table and what will be acted upon. These examples are in no way exhaustive nor are they definitive, but we want to offer for your consideration the idea that there may be a way we can formalize the process and provide utmost transparency and ensure that public comments provided for the formulation of recommendations and ultimately for the Commission's action are fully disclosed. If the Commission wishes to provide guidance to the Department we'll further refine options/alternatives for the Commission's use.

**Commissioner Arvas:** When a rule is opened up, that's where the process begins. Then it's put out for public input. Unfortunately/fortunately, there are certain negotiations by specific entities/groups made with specific individuals in the Department itself. These are ongoing throughout the whole rule-making process. When I say negotiation, there is debate/facts presented. There is a feeling by some of these groups that I made a deal with so and so. At the next meeting the deal has changed, or what was told to me did not turn out to be the deal.

**Commissioner Salazar:** What we need is transparency and that's what we're striving for. That people know exactly how the process works, it's open for public input. Anyone who has worked on laws/regulations knows that there's a lot of movement. I'd like to see it open/clear and that when comments are given we take them into account and document them. When we come to a meeting and start voting on these things, it has to be clear what we're voting on ahead of time so people know what they need to be in attendance for. We're looking for open government and clarification so we can make clear/concise decisions.

**Bob Jenks:** The process the Department has used has been fluid. It's been a lot of give/take. It has always been done with the intent to bring before the Commission the absolute/best recommendation. To do so, however, that process has provided sufficient latitude that we will be/have been communicating with our publics up until prior to the Commission meeting, but it does raise questions when there is uncertainty as far as exactly what proposal will be brought before the Commission for action.

**Commissioner Salazar:** I do think there has to be a cut-off point before the meeting so that the night before the meeting we don't have something pop up and there won't be another change. That's not to say we won't have amendments/changes during the Commission meetings.

**Commissioner Arvas:** There's another misconception that public input means that everything you tell the Department that they're going to go ahead and do. That's got to be clarified at the onset. There might be some group agendas that benefit that group and maybe they do give their input to the Department, but the Department doesn't do exactly what they say. Those are the groups that are coming back and saying well I thought we had a deal.

**Commissioner Buffett:** I agree that the Commission/public need a cut-off point. I like the formal written comment process. I think that's a healthy step and I'm willing to trade off some of that fluid nimbleness that we've had at our disposal in exchange for more trust in the way that our rule-making process is done.

**Commissioner Salmon:** Although it may slow the process down, if we err we should err on the side of the patients or stable process so that if there is a change we may have to go back and let everyone look at the change and come back and comment. The last thing we want to be accused of is rushing something through.

**Director Stevenson:** What we wanted to do is get a couple of potential process out before the Commission, have you start thinking about and then post them on the website for the public as well. We don't want to get to a decision today because we want you as Commissioners to think about this as a fairly significant change. We've heard from the public and you as Commissioners that you'd like us to get a more open and transparent process. We'd like feedback from you and others and at the next Commission meeting see if we can't get something you're more comfortable with.

**Discussion item only.**

**AGENDA ITEM NO. 17: Closed Executive Session--Agenda Item Not Taken Up—Due to No Subject Matter.**

**Chairman McClintic:** There is no need to enter into a Closed Executive Session.

**AGENDA ITEM NO. 18: Legislative Session Update.**

**Presented by Patrick Block and R. J. Kirkpatrick –** The Department provided the Commission with an update regarding legislation impacting the Department and Game Commission that was introduced during the 2009 Legislative Session.

The Operating Budget Request, Request for Capital Projects, HB 68 is the Non-Game Fish Authority, HB 143 is the Penalty Assessment Option Expansion, HB 467 which is Aquatic Invasive Species legislation, and also revisions to the law dealing with landowner takings, or depredation which has been introduced as SB 391. Given what we've seen happening with the state's economy and the general fund in particular even though we lost 100% it seems to be better to lose 100% of 1% of the budget than what we're seeing other agencies that are largely funded from the General Fund go through, so in the grand scheme of things it's probably a very reasonable cut and something we'll be able to sustain. Three top priorities which is about all the Executive/Legislative side looked at for any agency were the aircraft replace funding for the warm water hatchery completion and hopefully provision to provide enough money to complete the dam renovations at Lake Roberts. As things are looking initially, we feel there's a good chance that the aircraft replacement will be funded and

Lake Roberts dam renovation, probably not any money this year for warm water hatchery. One of the things they did in capital that's different and probably more productive this year, is we'd see projects get funded at 10%-20% of the project and agencies weren't able to move forward with them so we've reprioritized some past appropriations, narrowed the requests and we're working with both sides of the Executive/Legislative to come up with enough money to get one of the dam projects done. Lake Roberts would be the highest priority given what we know from Dam Safety Bureau at State Engineer's Office. Four bills that were part of the Commission's package, HB 6 expands the Commission's authority over non-game fish when it comes to establishing rules to protect game fish species. HB 143, Penalty Assessment, for several years we've had the ability that when we're citing people for fishing/hunting small game without a license, to allow them to exercise a penalty assessment option. HB 467, Aquatic Invasive Species bill allows the Department to take some actions in the event that aquatic invasive species are discovered in any of the state's waters. It also provides for the ability to get information out to the public to do what we can to prevent them from spreading and getting into the state's waters. The last bill approved by the Commission is the depredation bill. We've been on SJC schedule but we've been working with a lot of folks to get a consensus bill that everyone can live with. We've been working with Senate/Cattle Growers/Wildlife Federation/Farm Bureau/Northern NM Stockmen/Council of Outfitters & Guides/Trout Unlimited, so we feel we now have a substitute bill that is moderate enough in areas where folks felt like it needed moderation but also still allows the Department to work on resolving depredation issues. We're following the Valles Caldera elk authorizations. The bill would take a percentage of the overall bull elk hunting licenses that are currently issued by lottery by Valles Caldera and it would then be issued by different means. HB 163 which amends the posting/notice requirements for criminal trespass. HB 594, Feral Hog Control, basically prohibits the release/importation/transport of feral hogs for purposes of running a commercial hunting operation. It's mostly due to concerns with the spread of feral hogs and the amount of damage they can inflict on the landscape on both agricultural/wildlife resources. HB 604 would change the way State Game Commissioners are selected. This bill would change the process to make State Game Commissioners elected. It would go into effect after the next census because then that would allow the state to define districts of equal population size.

**Commissioner Montoya:** Tell us the pros/cons of that.

**Pat Block:** I will share with you what we included in the Department's analysis. Right now the law includes provisions that one member of the Commission shall represent ranching interests with wildlife species on the ranch. Another one says that at least one member shall have had background/experience in wildlife conservation. Those two things would go out the door so you could end up with a Commission that had little or no experience in either of those areas or in any areas of wildlife management, hunting/fishing or concern for conservation of those resources.

**Commissioner Montoya:** You've mentioned the downside, what's the upside?

**Pat Block:** One of the upsides I've heard expressed in committee is that right now as appointees of the Governor, you're responsible to a constituency of one. Enacting this bill would mean that each Commissioner would have a very specific constituency down to the precinct level, so the public would have direct feedback on whether they approved of the job you were doing or not. What it doesn't do is pay you like the rest of elected officials. The next bill we're looking at is HB 664 which would establish a bass fishing license plate with proceeds to go into bass management programs. HB 875, Game Hunting Outfitter Requirements, which is a bill that would take the current law that requires anyone applying to be an outfitter to have three years' experience as a hunting guide. It removes that experience requirement. On the House side, there are numerous pieces of legislation that are not bills that are worth mentioning: HJM 3, which encourages the Governor's Water Cabinet to consider environmental flows when making recommendations about water management decisions; HJM 4, which encourages agencies to share information about wildlife corridors to help in making better informed development decisions when it comes to energy/road/subdivision developments. HJM 15 requests the Game Commission to work with the Tierra Amarilla Land Grant to figure out ways they'd be able to exercise traditional use rights on State Game Commission properties that fall within the boundaries of the original land grant which would encompass the Humphries/Rio Chama/Sargent Wildlife Areas. Traditional use rights could be anything from piñon picking to timber harvesting/hunting/fishing/livestock grazing. HJM 16 would authorize State Parks Division to establish Pecos Canyon State Park through an operating agreement much like the Commission has at Cimarron Canyon/Eagle Nest/Clayton Lake/Fenton Lake/Mesilla Bosque and to a degree up at Ute Lake State Park. SB 196, State Tribal Collaboration Act, requires all agencies to designate a liaison to work on all state Tribal matters and requires Tribal interests be considered in decision making by all agencies. SB 379, Off-Highway Vehicle Program, the program was established in 2005 and housed with the Tourism Department. There has been some concern that the program is not especially effective and that it does not provide enough emphasis on enforcing the laws that came with that and also with safety information/injury prevention. This bill removes that program from the Tourism Department and transfers it into the NM Department of Game and Fish. Since this has a very direct impact on the Department, we've been working with the sponsor to make sure that they understand what we are and are not able to do in relation to implementing this bill. SB 504, Feral Hog Control, a senate companion bill to the House bill I talked about earlier, SB 669. Right now in state law there's a provision that any disabled veteran who's certified as 100% disabled due to a service-related injury gets a free general hunting/fishing license each year. This bill would remove the 100% requirement and say that any veteran who is disabled to any degree that would represent about 8-9 fold increase in the number of eligible license holders we have some significant concerns on the bill due to the potential loss of revenue both from license sale and also from the ability to count them as certified license holders which impacts the amount of federal aid we receive. SJM 49 and SM 32, they're the same piece of legislation relating to establishing Pecos Canyon State Park encourages Congress to hold hearings regarding the management system in place for Valles Caldera and encouraging them to get on with it and recognize that's it's not going to make money and just fund them. Upcoming dates that you'll want to watch and we're getting to the point that we're looking forward to March 21 at noon is the end of the session; April 10 is the final date that the Governor has to approve by signing or kill by vetoing any legislation. If he does neither, it also dies and has the same affect as a veto, referred to as a pocket veto; June 19 is the date when any bill that doesn't have a specific effective date or an emergency clause goes into affect. The press has told us that they're potentially looking at two special

sessions: one to deal with how the state will utilize federal stimulus funds just approved by Congress/President; another to look at the revenue picture once we're closer to the fiscal year starting and the state knows what kind of financial resources will be available to run state government.

**Commissioner Salmon:** What are the prospects for Lake Roberts Dam renovation and what might be the result if the funding doesn't come through?

**Pat Block:** I think they're fair. The system is beginning to recognize the fallacy in thinking that you're going to make significant progress by giving a little chunk of the money at a time. We did have half the money in place for Lake Roberts. What we had enough to do was to tear down the dam. What we didn't have enough to do was to put a new one up when we were done. We were reluctant to move forward with that first half and then the rest of the money wouldn't come in. If the money didn't come through, it would be incumbent upon us to go work with the State Engineer because a lot of the work there is being done to comply with standards they established, so the next step is to ask them what they want to do. Clearly the overall political/financial will is not there to get this project done.

**Commissioner Arvas:** On 391, is this the final version? This is what we're going into the next committee with?

**Pat Block:** Yes.

**Commissioner Buffett:** Regarding the dam renovation, has the Department been in communication with the Governor's office in terms of stimulus money? Is there an opportunity there?

**Pat Block:** Yes we have and what we don't know yet is how strong that possibility is. We're looking at anywhere the Department may be able to benefit from some of that stimulus funding. We have looked through the bill that passed. There's nothing that comes directly to the state that would be applicable to us, but we are looking at watershed/river restoration funding and that would potentially fit into some infrastructure funding.

**Commissioner Buffett:** Please keep us apprised of any stimulus opportunities for the Department/Commission. I want to make the Commission aware that HJR 6 is a constitutional amendment sponsored by Representative Nunez that would allow any rule made by a Commission/board/agency to be overturned by the legislature with a ¾ vote. There are some separation of powers issues there.

**Director Stevenson:** On the stimulus package, we're looking at all avenues. I have been in discussion with the Governor's office on Eagle's Nest. We have talked to them about Lake Roberts. We're about a year out on engineering which puts us in a box but I think the NRCS money and we've been actively interacting with both BLM/USFWS/NRCS where it looks like the majority of these dollars will come from and we'll work at fitting our projects into those.

**AGENDA ITEM NO. 19:** General Public Comments (Comments Limited to 3 Minutes).

**AGENDA ITEM NO. 20:** Adjourn.

**MOTION:** Commissioner Sims moved to adjourn. Commissioner Buffett seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative. **Motion carried unanimously.**

- Meeting adjourned at 2:50 p.m.

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s/Tod Stevenson

Tod Stevenson, Secretary to the  
New Mexico State Game Commission

\_\_\_\_\_  
April 16, 2009

Date

\_\_\_\_\_  
s/Jim McClintic

Jim McClintic, Chairman  
New Mexico State Game Commission  
Minutes Transcribed by: Katie Gonzales  
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\_\_\_\_\_  
April 16, 2009

Date