

MINUTES
NEW MEXICO STATE GAME COMMISSION
Sgt. Willie Estrada Memorial Civic Center-Main Auditorium
800 E. First St.
Alamogordo, NM 88310
October 2, 2008

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AGENDA ITEM NO. 1: Meeting Called to Order.
Meeting called to Order at 9:00 a.m.

AGENDA ITEM NO. 2: Roll Call.
Chairman Arvas – present
Vice Chairman Salmon – present
Commissioner Buffett – present
Commissioner McClintic – present
Commissioner Montoya – present
Commissioner Simpson – present
Commissioner Sims – present

QUORUM: present

AGENDA ITEM NO. 3: Introduction of Guests.
Introductions were made by approximately 200 members of the audience.
Bob Jenks: After a long and distinguished career, 1 of our valued employees, Luke Shelby, will be retiring after more than 24 years with the Department. He has served in a variety of capacities for the Department and throughout his career he has

exemplified some of the best the Department has to offer. After an extensive effort and search, R.J. Kirkpatrick will assume the Assistant Director-Resource Programs and Field Operations duties beginning November 1.

AGENDA ITEM NO. 4: Approval of Minutes (August 21, 2008--Albuquerque, NM)

MOTION: Commissioner Montoya moved to approve the Minutes of the August 21, 2008 State Game Commission Meeting in Albuquerque as presented. Commissioner Salmon seconded the motion.

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

AGENDA ITEM NO. 5: Approval of Agenda.

MOTION: Commissioner Salmon moved to accept the agenda for the October 2, 2008 State Game Commission Meeting. Commissioner Montoya seconded the motion.

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

NEW BUSINESS:

AGENDA ITEM NO. 6: Revocations.

Presented by Dan Brooks – The Department presented a list of 75 individuals that the Commission considered for revocation and have met established revocation criteria.

MOTION: Commissioner Sims moved to adopt the Department's and Hearing Officer's recommendations on revocation and point assessment for the attached list of 75 individuals for the period of time specified. Commissioner McClintic seconded the motion.

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

AGENDA ITEM NO. 7: Biennial Review of New Mexico State-listed Wildlife, 19.33.6.8, NMAC.

Presented by Renae Held - The Department presented a recommendation to the Commission regarding the status of species listed as threatened, endangered or restricted under New Mexico's Wildlife Conservation Act (WCA). This draft incorporated comments from a second, 14-day comment period. A Biennial Review is conducted every 2 years by the Department. The Department is mandated to look at status of all endangered/threatened species under the Wildlife Conservation Act and wildlife may not be added nor removed from the list during this process. The Department requested waiting on all species before making decision to open up additional public comment period, and then a final decision be made at the December Commission meeting. The additional comment period is primarily to give more consideration of proposal to uplist loach minnow to endangered.

Commissioner Sims: Are public comments/addresses/e-mails available today for public review?

Renae Held: Yes, I can make copies today for the public.

Public Comments:

Senator Tim Jennings: One thing we wanted when this law was drafted was to ensure adequate peer review of documents/public comments used by the Department to declare something threatened/endangered. If documents are not put forth by the Department, no one has an opportunity to argue about what might need to be threatened or not. The peregrine falcon has never been a problem in the state and now it shows up as threatened.

Renae Held: With respect to the peregrine falcon, surveys have lowered success v. other states so that's why we've stated the threatened level for peregrine falcons. There are more thorough comment periods when a species is added or removed from the list.

Director Thompson: We concur with Senator Jennings. We're required and do hold a repository of information that's available for this type of review as well as the more extensive listing/delisting process. More importantly, during the past 2 years we've provided for limited live-take of peregrine falcons with respect to other regulatory procedures. We've moved forward on that type of species and we've worked within an open and publicly available process.

Commissioner Nivison: Otero County Commissioner and the County has spent several million dollars on science to protect our interests and we are responsible for health/safety/welfare of our citizens. The Department takes federal money so I believe the Department is subject to those and NEPA standards. Regarding the scoping process, which we have a problem with, if you're subject to NEPA because of the federal monies the Department takes, the Department is subject to other things as environmental justice which is conducting hearings in communities that cannot afford travel. In summary, I'm suspect of what the Department is doing as far as the caliber and thresholds you're meeting.

Director Thompson: Commissioner Nivison has expressed his opinion and the Department is aware of it.

Chairman Arvas: I can assure Commissioner Nivison and Senator Jennings that their comments were heard and we'll address your concerns.

Commissioner Nivison: We're finding most listings/processes followed are not done correctly.

MOTION: Commissioner Sims moved to accept the Department's recommendation to entertain additional public comments on the 2008 Biennial Review, particularly regarding loach minnow which warrants uplisting. Commissioner Buffett seconded the motion.

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

AGENDA ITEM NO. 8: International and Tribal Requests for Pronghorn Antelope from New Mexico.

Presented by R.J. Kirkpatrick – The Department provided the Commission with proposals from the Government of Mexico and Acoma Pueblo to receive pronghorn antelope from New Mexico. Detailed information on management goals, objectives, and actions to ensure the future survival of these animals on their jurisdictions was provided within the proposals. The Commission's direction and approval was sought for planning and preparation for these captures and translocations.

Darrel Weybright: We had an initial request from the Pueblo of Acoma, but have not received anything further. We're delaying the Pueblo of Acoma request at this time. The Mexican government, through the National Commission of Protected Natural Areas, and the Department have entered into initial discussions regarding interest and feasibility of establishing a multi-year cooperative agreement mutually benefitting wildlife conservation efforts in NM and Mexico.

Commissioner McClintic: R.J., hadn't we discussed the possibility of some ranches having a desire for antelope?

R.J. Kirkpatrick: The ranches that have notified the Department of interest in receiving antelope through trap/transplant activities to augment populations are Bell Ranch in Unit 41, the Floyd Lee Ranch in Unit 9, and a ranch or 2 in Uvas Valley that are interested. The Director/Commission/Wildlife Management Division will work to determine whether we need full Commission concurrence to move pronghorn within NM and where those pronghorn may go.

Commissioner McClintic: It's important to me that we take care of our residents as well.

Santiago Gonzales: The intent is to populate northern Mexico with pronghorn and it's national program that involves states/private industry/NGO's and the U.S./Mexican federal governments understand that they can't do it all. All these entities would assist in the recovery and we're also looking at the potential and desire to establish a long-term conservation agreement or strategy with the Department to exchange and work with other species.

Carlos Monterola: We've established a good but small population and they're doing well in Valle Columbia. This is 1 of the most important endangered species programs in Mexico and the opportunity to work with and support NM.

Chairman Arvas: How many did we give Mexico to start with?

Carlos Monterola: There were 2 groups—60 animals in the first movement and then 110, 30/40 went to Nuevo Leon and the others went to Valle Columbia, so we were able to have about 100 in Coahuila.

Oscar Ramirez: This is a great opportunity to continue with collaboration efforts between NM/Mexico. It's important to state that Nuevo Leon/Coahuila/Cemex are working with landowners.

Neal Christopher: Is the deal lucrative enough for us to send these antelope away from our home territories and own sportsmen? I didn't hear what we're getting in return.

Bob Jenks: We view this as a great opportunity to assist the Department in achieving it's conservation goals both in terms of pronghorn management as well as desert bighorn sheep conservation. This proposal will not preclude opportunities for us to conduct projects in the state as well. We've identified a number of locations in the state where translocating antelope from will help us achieve those population management objectives, and understanding that we have an opportunity to further build a working relationship in terms of international conservation efforts is a great opportunity that we shouldn't forego.

Commissioner McClintic: This may be a goal but what I want explained why this is such a good deal for them? I'm not worried about the Department at this point but what we need to do with the ranching community about having a deficiency of antelope but where we have this surplus I want to have it clarified that we aren't forgetting about the people in this audience/state and that we definitely have a program directed towards them at the same time.

MOTION: Commissioner Montoya moved to approve the Department continue with planning and preparation for capturing and translocating pronghorn antelope from areas where conflicts have been occurring and making up to 300 animals available to the Government of Mexico pursuant to written agreement between the Department and the Mexican Government. Commissioner Buffett seconded the motion.

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

AGENDA ITEM NO. 9: Adoption of Amendments to the Deer Rule, 19.31.13, NMAC, the Bighorn Sheep Rule, 19.31.17, NMAC, and the Turkey Rule, 19.31.16, NMAC.

R.J. Kirkpatrick: The Department developed final recommendations and posted to website end of August. The Department has received additional input through a variety of means from end of August through Oct. 1, 2008. The Department took all reasonable/appropriate information, incorporated into the final recommendation. These amendments will establish level of hunting opportunities/season dates and other requirements/restrictions for 2009-2010 and 2010-2011.

Deer Rule: Overall we've increased deer hunting opportunity by approx 1,428 licenses. Within that there are 10 new youth-only seasons including 3 either sex whitetail deer opportunities, an increase over 1,000 youth-only opportunities statewide; an enhancement of those youth hunting opportunities extending hunt dates from 5-9 days.

Bighorn Sheep: We've combined the San Francisco/Turkey Creek hunting areas into 1 area to facilitate a more quality hunting experience for those that draw. In our final recommendation we've proposed language enabling the Department to have the ability to harvest ewes in the Pecos-Rocky Mountain population.

Turkey: In summary, GMU 2-A has been recommended to be opened to hunting except for Rattlesnake Canyon where we've transplanted birds. We've added 50 youth-only hunting opportunities to Unit 2, increased the bag limit for some youth hunts in 1 of our GMU from 1 bird to 2 that will hopefully stimulate and encourage youth to continue participating in hunting. We've opened a series of GMU's that have previously been closed including GMU's 32, 33, and 38. We've moved the youth-only Turkey season dates to the beginning of the Turkey season to allow youth to have the best opportunity at Turkey hunting. We've moved the bag limit from 2 birds to 1 during spring seasons in a series of units in the Gila region. Those are 15, 16, 21, 22, 23, and 24.

Commissioner Simpson: The last briefing I had was Sept. 26 and you informed me there'd be more changes. For the deer rule, I want you to make the Commission/public aware what last-minute changes you've made.

R.J. Kirkpatrick: The 3 rules associated with this have no changes that have occurred subsequent to Commissioner Simpson's concern.

Commissioner Simpson: You've identified sole responsibility for determining what population reduction hunts will occur/not occur, and the vagueness is I don't see that the public will be aware or have the opportunity to participate in these hunts and what manner/method they can participate other than if the area chief says this is what's going on because I'll identify them. There's no way the public can understand what's going on.

R.J. Kirkpatrick: I'll offer to direct Commission/audience to Section H under that portion of the rule—annually in the Department's Rule and Information Booklet, we publish hunting opportunities people can apply for through the special entry process, we identify population management hunting opportunities which will be identified pursuant to the Hunt Code DER-5-100. Annually people apply and their names are placed on a list pursuant to their application for that hunt code. If/when a population management hunt scenario/circumstance is warranted, public hunters would be identified off that list. I direct the Commission's/audience's attention to Section I—if those hunts occurred on public land no more than half would be identified by landowner and the balance by the Department.

Commissioner Simpson: I wanted to make sure everyone is aware because it wasn't spelled out that there is going to be a statewide list which the Department will utilize, but looking at Item 1, the balance of prospective hunters shall be identified by the Department, and that gives you a lot of latitude if you didn't want to use that list, so are we going to use that list in all instances, or you may choose another method?

R.J. Kirkpatrick: The Department's standard practice is to use this list. If we expend the hunters on this list, the Department would consider evaluating the list of hunters that've applied for deer hunts during the regular draw and been unsuccessful and we would then go down that list based on their sequence. I stand corrected. We're discussing new language from when we posted these rules at end of August.

Commissioner Simpson: There was vagueness on the last part of Section I that the Department will do that but if you read that sentence generically you don't necessarily have to do it, you can choose your own manner and method is the way I read it. It appears the Department will use a statewide list that everyone can apply on and we'll go through the process. I caution it'd be nice if you document what goes on in case someone complains and finds out something is deviating from the process you described. At least we can go back and make sure everybody is following that process. That was my main concern and I use the Roswell incident as the criteria to base that on.

R.J. Kirkpatrick: I remind the Commission/audience that this exact language exists in the bighorn sheep/Turkey rules.

Public Comment:

Bill Ferranti: I'm with Torstenson Wildlife Center-Double H Ranch. We support the youth hunt going to 2 weekends and it's 9 days that let's kids hunt for 2 weekends.

R.J. Kirkpatrick: There's a supplemental motion and the intention is that currently public draw deer hunters must draw a permit. They must also subsequently purchase a deer license and if they hunted on private property secure written permission. There are documents that a hunter is responsible for having on his person while hunting. We'd like to offer in that supplemental motion some work in the future on developing amendments to the deer rule and the license and application rule that would allow for the Department/Commission to move the application deadline for deer to the February timeframe so that it would afford the ability for us to issue successful applicants a license instead of the permit and then having to buy the license and it would also need to afford applicants the opportunity for various licensing options.

Scott Lerich: I represent the NM Chapter of the National Wild Turkey Federation. We are in support of the proposed changes.

MOTION: Commissioner Sims moved to direct the Department to develop an agenda for the Commission action at a regularly scheduled State Game Commission meeting early in 2009 that will open the Deer Rule, 19.31.13, NMAC, so that amendments can be developed that will move the application deadline for public draw deer hunts to a February timeframe. We'll eliminate that

the requirement that legally licensed deer hunters have both a deer permit and a deer license by requiring only a deer license and provide the applicant with various licensing choices that enable them to take advantage of the discounts pursuant to specific combination or especially licensed opportunities if they are successful in the drawing. **Commission McClintic** seconded the motion.

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

R.J. Kirkpatrick: The motion that was just passed was a supplemental motion. We'd still like to have the Commission entertain a motion to adopt the deer/bighorn sheep/Turkey rules as presented by the Department.

MOTION: **Commissioner Sims** moved to adopt the amendments to the Deer Rule 19.31.13, NMAC, the Bighorn Sheep Rule, 19.31.17, NMAC, and the Turkey Rule, 19.31.16, NMAC, that will establish the level of hunting opportunity, season dates, other requirements, and restrictions for the 2009-2010, 2010-2011 license for each as presented by the Department. **Commissioner McClintic** seconded the motion.

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

AGENDA ITEM NO. 10: Adoption of Amendments to the Elk Rule, 19.31.14, NMAC.

Presented by R.J. Kirkpatrick – The Department provided the Commission with final recommendations for proposed amendments to the Elk Rule, 19.31.14, NMAC, for adoption that will establish level of hunting opportunities, season dates, and other requirement restrictions for the 2009-2010 and 2010-2011 license years. Changes represented in the elk recommendation are an overall increase in elk hunting opportunity, and included in that increase is a significant increase in youth hunting.

Commissioner McClintic: We are going to split that bow hunt in Units 34 and 36 to 3 then you just mentioned it's 2 yet if you look at the summary of key changes for elk on 3 you've left it at 3 so it is 2?

R.J. Kirkpatrick: That's correct. The summary of key changes in your briefings was developed and finalized over 30 days ago. At that point the Department's recommendation was to move the archery seasons in GMU's 34 and 36 to 3 individual hunts. Subsequent to that, we received significant amount of comment from archery/sportsmen's hunting groups encouraging us to consider only 2 at least for a couple of years. A lot of people that have had success drawing that hunt enjoyed the full season and they accepted 2. Subsequent to that I discussed those concerns with the organizations that had requested originally moving it to 3 and they were comfortable moving it to 2 although they'd prefer 3.

Commissioner Simpson: In Unit 9, we've got Water Canyon, WMA crossbows allowed, give us an explanation why that's in there and why that's the only place we're allowing that other than the mobility impaired exception?

R.J. Kirkpatrick: The Department has received comment to consider creating some crossbow hunting opportunities for other than mobility impaired hunters. Annually Department staff go to conferences and there's an increasing level of interest in crossbow hunting. In an effort to address that and provide opportunity to those interests, the Department's recommendation includes that individuals successful in drawing in GMU 9, 200 antlerless licenses, they could use crossbows as a legal weapon. The other places that that crossbow allowance is available in the Department's recommendation is a muzzleloader bull hunt in Unit 48 and in Unit 6-C.

Commissioner Salmon: One of the more significant changes proposed that wasn't mentioned is the change on private land to a requirement for written permission whether or not the private land is posted and this wasn't brought up. I think many in the sporting community would like to leave it as it is and therefore I offer the following amendment that we add the words "legally posted" before the words "private land or private lands" in Section 19.31.14.9 (b), and also 19.31.15.9 (b), 19.31.10.18, 19.31.12.11, 19.31.12.12 (c), and 19.31.13.9 (e)(5). This would keep the posting requirement in line with state statute 30-14-6 to define the term legally posted.

R.J. Kirkpatrick: I understand the issue and we've discussed it with a variety of public constituents and Commissioners over the last 30 days. My understanding of what you're requesting is putting the words "legally posted" in front of every place in this elk rule where we identify where public draw licenses shall be valid. Is that correct?

Commissioner Salmon: What I read was the term "legally posted" would come before the words "private land" or "private lands" for the elk rule and the other big game draw animals that are being considered.

R.J. Kirkpatrick: We will make sure that we attend to that as we move through each agenda item where those rules have that particular language. I advise that the Commission has adopted the deer/Turkey rules and that language is what was adopted.

Commissioner Salmon: We're proposing to keep things as they are. I don't think the sporting community has had sufficient opportunity to consider this change in posting requirements for the other big game draw animals and if the Department would like to bring up these proposed changes at a future time there will be a bigger turnout.

Chairman Arvas: So the recommendation for the amended version of the elk rule is not going to be applicable to the Turkey/bighorn sheep/deer rule?

R.J. Kirkpatrick: That's correct because those rules have been adopted by the Commission in the previous agenda item. There were no significant changes in the deer rule.

Chairman Arvas: So there were no reasons to make any changes?

Commissioner Salmon: That's clear. If necessary I can bring up the term "legally posted" for each of these other animals as they come up.

Luke Shelby: Commissioner Salmon suggested it in the form of a motion so that needs to be seconded and voted on by the Commission to make the change in the elk rule, and then a separate motion to make that change in the deer rule. If the entire Commission is directing the Department to make that change, we're awaiting that direction. **Commissioner Buffett** seconded the motion.

Chairman Arvas: He hasn't made a motion yet. Why don't we hold your motion until we get public comment then we'll come back to the Commission.

Commissioner Salmon: That's fine with me.

Commissioner Simpson: That's a new thing that basically you didn't discuss when I asked for the new changes. The posting requirement for the other species would match deer and you didn't discuss that. Or did I miss that?

R.J. Kirkpatrick: Language in the deer rule is consistent with what's currently in place. Language was what created the controversy 2 years. I can go back to the Turkey rule and see if that language is in the Turkey rule.

Commissioner Simpson: You said it applied to Turkey/bighorn sheep—you said it applied to the other rules we approved so I'm just getting clarification. If that applies, that's a big difference from what is existing rule and if that's a change, we don't have to have statewide requirements—we're going to go to the requirements of posting as for the deer rule. That's a different subject and a whole new scenario that wasn't discussed in the public arena.

R.J. Kirkpatrick: On the first question, the language does not exist in the bighorn sheep or Turkey rule. As far as whether or not there was public interaction about that particular issue, there was significant public interaction, the majority of it through meetings the Department had with a variety of organizations. Several individuals have brought it to our attention and we've had discussions, so there was public input.

Commissioner Simpson: It wasn't brought up at the last Commission meeting in Albuquerque on August 21 so that's a new requirement you're putting in that wasn't vented nor discussed other than you putting in the language and somebody bringing it to our attention, is that right?

R.J. Kirkpatrick: This issue has been brought up by Bill Ferranti and the Valles Caldera 8-12 times over the course of past Commission meetings. A public draw elk hunter draws a mature bull license for GMU 13. The Double H Ranch happens to be in GMU 13. The public hunter trespasses on to the private property of the Double H, shoots a 400-point bull. If the Department's Conservation Officers catch that individual, he will have charges filed on him for trespass, if that's appropriate, but the Department doesn't currently have the ability to cite that individual for hunting without a valid license, and subsequently seizing that animal; therefore, there's not much deterrent for individuals on private properties where they know there are trophy-class animals and take them, the only risk being a potential trespass violation. We've talked to a variety of landowners in NM who've been concerned about this. We advised Mr. Ferranti that we would try to make recommendations that gave the Department the ability to seize animals that were killed pursuant to this, but more importantly, would deter hunters from doing it.

Chairman Arvas: Commissioner Simpson attended 1 of the briefings. Was he present or did you present this to him at the briefing he attended, or was this something that came up at the ones he missed?

R.J. Kirkpatrick: To the best of my recollection we spent all day with Commissioner Simpson and I believe we talked about this issue in addition to others, and this issue specifically to a variety of rules.

Commissioner Simpson: What are the posting requirements on private land that would change from the state requirements of posting, and is that the same thing as what you're saying is what applies to deer now?

R.J. Kirkpatrick: Luke/Dan can be specific about current statutory posting requirements. Posting requirements as it applies to Commission rule, we're not discussing statutory posting requirements. We're recommending that particular licenses shall not be valid if they're being used on private property unless they're accompanied by written permission.

Commissioner Salmon: My point is that with the statutory posting requirements, there would be consistency in the rules and the problem of insufficient penalty would be taken care of. If the land is posted and even 1 step on to that property whether or not you shoot anything or not, you're subject to a 3-year revocation which is a severe penalty. I'm proposing we stay with that.

Dan Brooks: There is a separation. What this rule is trying to do is to address the issue of a person legally hunting on property v. 1 that is trespassing. You can trespass regardless of what activity your undertaking if the property is legally posted. To go back to Commissioner Simpson's question, it's a 12 x 12 sign printed in English at all points of access and if the property is not fenced, every 500 ft. there will be a notice with a contact person. The issue before you today is different. It is actually an issue of properly hunting and what is required to properly hunt. The Commission has the ability to control the manner and method a person must follow when hunting. What's being presented today is that the proper way to hunt if you're going to access private property is, you must have a license and then you also must have written permission from the landowner to access their private property. So, there is going to be a different issue. From an enforcement perspective, if someone has permission from the landowner or not, the posting issue does not enter into what's being presented today.

Tim Turri: We support the 2 hunts for Units 34 and 36 as recommended. Any hunts in the next 2-year regulation that potentially could be provided down there, that those be youth-only opportunities and be limited in number. We'd also like the Department to have the flexibility to enact point restrictions in Unit 34 and other units.

Greg McReynolds: I support Commissioner Salmon's suggested language to post on the rule.

Jeremy Vesbach: Director of the NM Wildlife Federation. We support Commissioner Salmon's language in the motion.

Kent Salazar: With National Wildlife Federation. On overpopulation issues we support seeing the rancher/family get licenses to hunt on their property and remainder licenses be issued to the public.

Chairman Arvas: R.J., elaborate on your recommended change for youth elk hunts?

R.J. Kirkpatrick: We're recommending youth-encouragement hunts and the concept is that youth that have demonstrated interest in hunting by applying for big game species as deer/elk/antelope/ibex/oryx/bighorn sheep, but were unsuccessful, would be eligible to register through the web-sale process the Department has established for the hunts listed in the table. All those hunts are built either around Thanksgiving/Christmas holiday seasons. We believe all those hunts offer wonderful elk-hunting opportunities and we believe the provision would not lead to dashing the interest of youth who've demonstrated interest.

Chairman Arvas: That means that if a youth applies for an elk or any other hunts, if he's unsuccessful in any of the drawings, he will receive a cow elk permit?

R.J. Kirkpatrick: He'll be eligible to register for a variety of hunts and there are almost 2,000 of them. Most kids that are interested and don't draw will probably be successful.

Commissioner Nivison: On behalf of Otero County Commission, we had passed an elk ordinance this year. Government starts at the county level and we're responsible for the health/safety/welfare of our citizens. We took several days of testimony and that's available. The issue becomes if the county has that ability.

Chairman Arvas: Did we have any input in that ordinance?

Commissioner Nivison: Absolutely. Your staff was there many times and had many discussions.

Bill Ferranti: Torstenson Wildlife Center, also Double H Ranch. On the trespass issue, my understanding is, and the Double H is legally posted, that if you have a unit-wide permit and kill an elk on the ranch, and you tag it properly, the conservation officer does not have the ability to confiscate that elk if the hunter is caught. That's what's wrong. Another issue concerns elk in Unit 13 in that the proposal from the Department is to increase the bull harvest 47%. We'd like to preserve the quality of the bulls in Unit 13. We propose a more conservative approach to increase permit numbers by 23%.

Dan Brooks: His summary is correct. That's why the Department's proposal is that it would no longer be legal and the animal would be subject to seizure. Criminal trespass/posting is a crime found in Chapter 30 and those are the criminal statutes in NM. What we deal with here at Commission level is that you're passing rules that are under the umbrella of Chapter 17 which go back to how to properly hunt/fish/take/capture/possess game; so that's the difference between Chapter 30 and all the posting v. what you're looking at—written permission requirement. It's the Commission's prerogative to decide at what level/standard you wish to adopt it.

Adrian Terry: I'm with the NM Attorney General's office Civil Division and I represent the Commission. Is there presently a motion on the floor by Commissioner Salmon?

Chairman Arvas: No, there isn't 1 at this point in time.

Commissioner Simpson: Yes there is.

Adrian Terry: I thought there was some confusion.

Garth Simms: I'm representing the NM Council of Outfitters. We support this regulation proposal as developed and our members are comfortable with it as it stands.

William B. Keleher: Chairman of the Valles Caldera Trust. We initially proposed to charge as much as \$7,500 for people that lotteried in for this high-end hunt. We did that because the federal law mandates that Valles Caldera be financially self-sufficient 15 years from the acquisition of the Dunigan property. We have withdrawn that suggestion to ensure we interact more sufficiently with public interests regarding how hunting opportunities are offered at Valles Caldera.

Carlos Chavez: I'm interested in what the Department is proposing regarding Unit 6-A?

R.J. Kirkpatrick: The Jemez regional population recommendations which include GMU 6-A, 6-B, Valles Caldera, 6-C, and 7 before you and as recommended have not changed. The Department is going to bring to the Commission in December recommended amendments to the elk private land use rule that will allow landowners to make a decision about how they participate and how their contributions are recognized pursuant to elk in Unit 6. Based on that, our recommendation today is an objective driven by the majority of the unit which is public land and we believe that predominance of interest in conservative elk harvest within this GMU.

Carlos Chavez: As landowners, we feel that it's increasingly important that you hear from everyone. There's a major elk problem in the northern part of the state.

Art Martinez: The Department is proposing youth hunts in 6-C for a later hunt and if anyone who has hunted that area, there are no elk at that time. You will discourage youth more when they hunt for 5 days and they don't see an elk and the total success

rate for 6-C has been at 17% and 21% in 6-A. We're proposing to either re-align it or put it back to the way Unit 6 was. The success rate was 45% and it was an enjoyable hunt.

Mark Spiess: I support the work that's been done in Unit 34, bow hunt stratification, 2 is better than 3, 1 is better than 2, and I can live with 2. I also wanted to concur what's been said about giving the Department the availability of a temporary point restriction for elk.

Robert Hoffman: Could I have some explanation about what the rationale was for splitting the bow archery season in Unit 34 into stratified seasons?

R.J. Kirkpatrick: There are 2 reasons in recommending splitting those archery hunts into 3. In current rule, all the archery hunting opportunities and windows and hunt codes in the Gila units are 3. There are fewer people in the woods at any 1 time, they don't have to fight for hunting areas, it's quieter, and all the hunts are enjoyable. The other issue has to do with the ability to draw elk hunting license in general. As we moved a significant portion of the Gila to 3 archery hunts, hunters had multiple hunt codes to choose from. The perceived results of that would be that there's an increasing number of applicants applying for archery hunts in the Gila because there are more hunt choices. To offset that and do a better job of leveling the number of applicants in those pools moving a lot of archery hunts outside the Gila to 2-3 would diffuse that overwhelming distribution of applicants going to those Gila hunts and offset compounding frustrations about the ability to draw elk hunts in general.

Robert Hoffman: I support leaving a single season for archery in Unit 34.

Chairman Arvas: How would you rate the flexibility of the other weapon type hunts?

Robert Hoffman: Those time periods are set on the basis that it's easier to harvest elk with a muzzleloader or a rifle than it is with archery. For archery you have to get within 25-30 yards of bull elk to kill it. That's more difficult than for rifles/muzzleloaders. One of the things that allows this to happen is because it occurs during the bugle and if you restrict people then the methods of hunting and harvest are changed dramatically.

Angel Montoya: I support that we should not stratify Unit 34. I recommend that the Commission adopt Commissioner Salmon's motion. I also ask the Chairman to get clarification whether or not you can confiscate an animal that was taken on properly posted land.

Dan Brooks: The Chapter 30 violation which is criminal trespass and officers cannot seize any animals under that because that is a criminal statute. It's a violation, a full misdemeanor, but it's the act of going on someone's property and nothing more. If you're hunting and you're legally licensed, and you're in your unit, you get to keep that elk because it wasn't a violation of Chapter 17 in an act of unlawful hunting. The other issue is there are 2 other layers the Commission is considering. Both are under Chapter 17 and they'd be a violation of rule. So what is before you for consideration are 2 issues, the Commission is considering this layer that would mirror criminal trespass. There is a concern that the property is posted. If it's properly posted, you can still have a violation of criminal trespass, but if you adopt it in the form the discussion centering around Commission Salmon's concerns, it will not only be criminal trespass but it would also be unlawful hunting and the animal would be subject to seizure, but the property has to be properly posted. The other layer is what was presented to you by the Department—that it's not properly posted but you must have written permission. So you've got 3 different layers that you're considering: (1) no animals are subject to seizure; (2) no act of unlawful hunting occurs and it's still a trespass issue, and the property is properly posted and if you adopt that you put that language in plus you need the written permission that would subject a person to both criminal trespass and unlawful hunting—could be unlawful killing and if they take it, unlawful possession and that animal is subject to seizure; and (3) is that a person can hunt but they must have written permission and the posting provisions do not apply.

Chairman Arvas: Is that clear, Angel?

Angel Montoya: No.

Chairman Arvas: Well then after we get through with the agenda item and the Commission has had an opportunity to vote, Dan can get together with you.

Commissioner Salmon: What I've proposed would result in not only a criminal trespass violation but a game violation which could result in seizure.

Dan Brooks: That's correct, but it would only be limited to posted property.

Commissioner Salmon: I'm not trying to allow someone to kill something and walk away with it so I think my motion is as I would have it.

Dan Brooks: For clarity, if the property is not properly posted and a hunter has a license, they can go on the property and actually shoot the animal and take it with them, if it's not properly posted?

Luke Shelby: I suggest we deal with the motion and there's a lot of interest in this particular section of each rule, the validity of license and permit section. I suggest that the Commission consider adopting this rule as is and we return to the Commission at a future date. We are not in a position now to apply Commission Salmon's suggestion to each rule without a suggestion being properly fitted.

Adrian Terry: After discussion with Director Thompson, there is no record of a proper motion, so if there's to be a motion I ask that it be restated.

Commissioner Salmon: What I want to do in relation to elk/antelope/Barbary sheep/oryx, is not extend this change or not make this change to the rule. Keep it as it is which would seem to be the simplest thing and I had worded my motion to do that by putting the words "legally posted" before the words "private lands".

Chairman Arvas: R.J., would that work in terms of adding his considerations to the suggested motion that's in place?

R.J. Kirkpatrick: I understand what Commission Salmon is asking for. I caution that there may be some unintended results of doing that, especially in the elk rule where the language of written permission has been in place for a long time but the unintended consequences would take some time to think through. Luke's suggestion is probably the wisest in that it's a controversial issue, discuss it with all interested parties, and then come back and amend each of those specific sections where that language exists so that we put forth amendments that make sense to everyone and no unintended consequences occur.

Chairman Arvas: Director Thompson, am I correct in assuming that that would have to be done at a regularly scheduled Commission meeting?

Director Thompson: Yes, sir.

Commissioner Montoya: On a point of order, if Commissioner Salmon had made the motion as part of the big game rule and amended that component of the big game rule, but what we're doing here is making a motion on 1 component of the big game rule.

Chairman Arvas: I don't believe he made a motion. He had a suggested amendment, isn't that the way you posed that?

Commissioner Montoya: That was an amendment to a motion that hasn't been made to accept the big game rule and Commissioner Salmon at that point could amend the big game rule motion and offer an amendment to 1 of the components and what we have is we're making an amendment before the main motion is made which is the big game rule.

Chairman Arvas: That's right. But R.J. and Luke are saying that isn't something that you can consider at this point as a result of not having all the information you need to have that motion made then?

R.J. Kirkpatrick: Luke and I concur that our advice to you is that it's obviously a controversial issue and probably not going to get resolved at this meeting, but the Department is happy to work with interested parties and develop what that language should be, bring those specific sections of the affected rules back to the Commission to make that adjustment so that it's done correctly. That would then require the Commission to adopt the rule as presented until we work that out. The next Commission meeting would be in December 4.

Commissioner Montoya: Can you explain to us what web sales are and then it says to be determined?

R.J. Kirkpatrick: That's a provision in the various units where those exist so that the Department can monitor hunter checks and personnel in the field how particular hunts are going, whether success rates seem to be good or not, especially on antlerless elk. We then put in place additional antlerless elk hunting opportunity as warranted in those particular GMU's late in the year to address some population management objectives. The opportunity hunters have for those web sales are made available on our website, typically in October-November, and eligible applicants are people that haven't drawn anything and are otherwise eligible. It's basically a tool that allows flexibility to ensure harvest and management objectives.

Commissioner Montoya: In the north central Units 5-B, 50, 51, and 52 you indicated you had a grid/chart that increased numbers from previous estimates, can you break down previous projections of 10,000 elk in those units and now we've learned that we have closer to 22,000 and what's your recommendation in terms of those 5 units in that region?

R.J. Kirkpatrick: Population estimates for the north central region have been adjusted. The previous population estimate was provided to the Commission for public comment and established in rule during 2006. 2 years' worth of survey opportunity, 2 years' worth of mandatory harvest reporting and applied enhanced modeling capabilities, assessment is that population is larger than assessment was 3 years ago. Our harvest objective if we're going to manage that region under optimal opportunity management is the ratio of bulls to cows. We're recommending 1,655 bulls and that's more than we believe that population can sustain, but that's maximum harvest. Bull harvest is projected to be on the high end of sustainable. On antlerless, the Department's objective with concurrence of local communities over years has been to increase the size of that population to substantiate level of bull harvest. We've increased the number of antlerless hunting opportunities in the entire region so that we're harvesting toward the low end of sustainability. In each GMU involved in that region Unit 4, our recommendation reflects from current rule a 9% reduction, but that's a 5% increase, 9% increase in antlerless hunting opportunities in Unit 5-B which is now under our recommendation. The Department's recommendation in GMU 50 reflects a 5% increase in bull hunting opportunity and a 330% increase in cow hunting. A lot of that cow hunting opportunity in Unit 50 is web cows that we may or not make available depending on weather and snow moving elk into that part of the north central region. If we get snow that moves them in there, we can apply antlerless hunting opportunity so that we're accomplishing harvest. If we don't get weather or elk in there, it doesn't make any sense to put hunters in there if there's no elk. In new GMU 51 an increase in bull hunting opportunity of approximately 32% and some of that is a function of incorporating a significant amount of 5-B into 51. The unit is larger than it was before so even though that number appears high you have to consider it in the context so the unit is almost twice as big now, 61% increase in cow harvest the same explanation. The unit is almost twice as big when you compare what is 51 now to what 51 will be. GMU 52, a 5% increase in bull hunting opportunity, 11% increase in cows. Basically our recommendation

reflects harvesting more cows and more bulls to accomplish slowing that population growth and starting to address whether we need to take it backward or not.

Commissioner Montoya: On the spreadsheet the increased recommendations are increases from what you've previously recommended or increases from the last big game rule that was approved?

R.J. Kirkpatrick: The increases and adjustments are adjustments from our previous recommendation that was out for public comment.

Commissioner Montoya: Not increases from the current big game rule?

R.J. Kirkpatrick: We've made GMU adjustment boundaries. I can't compare current 51 to proposed 51.

Commissioner Montoya: Total numbers for all GMU's, last year it was 7,222 and this year it's 7,467. That's about a 3% increase although we've seen a significant increase in our population.

R.J. Kirkpatrick: I think everyone will acknowledge that if you look at that overall, the recommendation reflects a 1% reduction in bull hunting opportunity, 15% increase in cow hunting and subsequent harvest potential, and 3% reduction in archery hunting, the reductions in the bull and cow are mostly a function of the re-alignment of GMU boundaries. You've got to address harvesting an increased number of female component of these populations and that's where the bulk of our increase is in the recommendation.

Commissioner Montoya: I do see the increase in 51 because it's getting larger. I'm looking at the total of all 5 because that's how you put them out on the spreadsheet and the projected population doubles but the overall increase including bull/antlerless/ES increase is only 3%.

R.J. Kirkpatrick: You're correct that our assessment is that we have significantly more elk in this region than previously estimated, but also keep in mind that the level of bull harvest that was occurring in this region was not sustainable. We were harvesting more bulls out of that population than even this larger population could sustain. We've made those adjustments and put in place population stabilization, but we have been harvesting bulls beyond sustainable levels.

Commissioner Montoya: But in total we're going up only 3%?

R.J. Kirkpatrick: 15% on cow hunting opportunity.

Commissioner Montoya: Overall?

R.J. Kirkpatrick: In the whole region.

Commissioner Montoya: But we've doubled the population projections?

R.J. Kirkpatrick: That's basically correct.

Commissioner Montoya: Constituency has continuously told us that we have way too many elk and we're showing that in our spreadsheet but we're not providing any remedies.

R.J. Kirkpatrick: One of the most significant remedies won't necessarily appear in the elk rule but will be brought before the Commission in the form of amendments to the landowner system rule in December. It will be specific to private lands in those GMU's. Of most concern is GMU 51. I don't hear a lot of concern about elk numbers on public lands in 5-B, 50, 52, but 51 is of concern on numbers of elk on public lands so we've specifically targeted Unit 51 for increased harvest of elk.

Commissioner Simpson: I would like to postpone this until after lunch so we can have more internal discussions especially about the posting and make sure we get this straight. R.J. and the Department are suggesting that we are now going to go from where you have the situation of the deer, where you don't have to have posting requirements that meet state requirements, now you're going to push it on to the other big game species and that is a new change. I think we need to have internal discussions to make sure we have Dutch's motion submitted.

MOTION: Commissioner Simpson moved to adjourn for lunch. Commissioner Buffett seconded the motion.

VOTE: Voice vote taken. Due to uncertainty of the voice vote, a show of hands was requested. Commissioners Buffett, Montoya, Salmon, and Simpson voted in the Affirmative. Motion carried.

Chairman Arvas: Due to the confusion on the posting rule, the recommendation from counsel is that we strip that out of every one that we have now and we'll either come back at the end of the meeting and add that back in, or we'll do it on December 4 after the Department has had a chance to look at it and be sure the wording is exactly what we want to do the right thing. R.J., that means that we're going to go through every one of the rules, strip out that statement about posting, and then come back at the end of the meeting.

Commissioner Buffett: Can we have a reading of the language we're all agreeing to strip?

Chairman Arvas: Mr. Terry, does that recommendation from the Chair suit you as the Assistant Attorney General? We're going to strip out the wording on the posting rule from each 1 of the big game rules at this point in time.

Adrian Terry: That is fine.

Chairman Arvas: Then after counsel comes back at the end of the meeting and edits all of them or wait until December 4.

Adrian Terry: I suggest that at the time you approve this rule and the other rules to follow, that you say we move to approve this rule as presented by the Department subject to the following.

Chairman Arvas: So each Commissioner knows that in every 1 of the big game rules we're going to go ahead if you decide you want to approve big game rule whether for elk/ibex it is with the preface statement that we are either at the end of the meeting or in the near future come back and re-insert that wording.

Adrian Terry: Is that language also present in the deer rule that was adopted earlier?

Chairman Arvas: It was.

Adrian Terry: So you need to make a change there also?

Chairman Arvas: So then we'll have to go back prior to doing this rule or would you want to wait until after we do this rule?

Adrian Terry: You can do it at whatever timing is convenient.

Chairman Arvas: Let's go ahead and wait and do this rule first then we'll go back to the deer rule and do the same thing.

Commissioner Buffett: So is that in the record now that that's the language?

Chairman Arvas: Would you like it read into the record?

Commissioner Buffett: Yes, let's go ahead and read it.

R.J. Kirkpatrick: What will be stripped out of the elk rule 19.31.14.9, Section B, language that says no public draw elk licenses or unit-wide private land elk licenses shall be valid on any ranch-only or unenrolled private lands pursuant to the private land elk license allocation rule 19.30.5, NMAC, without being accompanied by written permission to the license holder from the landowner or landowners' designee. In GMU's 4, 5-A, 46, 54, 55-A, 57, and 58, private land ranch-only elk licenses shall be valid on other private lands within the GMU, only if accompanied by written permission from the landowner or designee.

Chairman Arvas: Is it safe to say that that could be called a posting rule?

R.J. Kirkpatrick: I do not believe so.

Chairman Arvas: What would be a safe statement?

R.J. Kirkpatrick: I would call this a written permission clarification language rule.

Chairman Arvas: There's no actual motion. It was a recommended amendment to the Department recommendation. It wasn't a motion that required a second.

Commissioner Simpson: In that language that was just stricken, insert a couple of words to make sure we matched the state posting, what that word would be so everybody knows where that insertion would go.

Chairman Arvas: It will go in the same place that we're taking it out.

R.J. Kirkpatrick: The request is the Commission would like to suggest where in the elk rule newly developed language would be inserted either at the end of the meeting today or at a later date in time.

Chairman Arvas: That's right.

R.J. Kirkpatrick: My recommendation is that new language be inserted at the end of the meeting today or at a later time in the elk rule under 19.31.14.9, Section B, in addition to any other section of the elk rule where written permission is identified as a requirement.

Chairman Arvas: Well my suggestion is write it down for us. Commissioners say exactly what you want. That does what we want now which is strip out what the language and we can either have you or Mr. Karp write that up, then we can go on with the elk rule. Is there anything else that you have left on the elk rule at this time?

R.J. Kirkpatrick: No, that would be the only outstanding issue with the elk rule and we'll await the motions.

Luke Shelby: If I understand right, what we're doing is stripping out of the elk rule just what was read there. We will come back to the Commission at a later date and I strongly advise that it be at a later date and not later today because we're not going to have time to adequately do that, come back to the Commission after we've met with all the concerned parties and come up with acceptable language for that section.

Chairman Arvas: We can't simplify this by what our Assistant Attorney General recommended, move to approve the rule as presented by the Department subject to insertion of clarified written permission language at a later date?

Adrian Terry: I'm not certain that that's where we're going.

R.J. Kirkpatrick: While the legal minds are discussing this, there are a variety of other places in this elk rule where written permission is referenced. I'm confused about do you want to strip just the new language that's a new recommendation in that section we've been talking about or do you want us to strip all reference everywhere in the rule where written permission is referenced?

Adrian Terry: Before we get to that point, I'd like to go back to the earlier question about the adoption of the rule. The Commission has several options available to it at this juncture. One is to accept the rule as proposed, 2 would be to accept the rule with some modified language that you are able to identify right now, or accept the rule minus the language that you identified and at a later date you would convene a second rule-making hearing with the proper notice at which time you would add the new language.

MOTION: **Commissioner Montoya** moved to adopt amendments to the Elk Rule, 19.31.14, NMAC, that will establish the level of hunting opportunity, season dates, and other requirements and restrictions for the 2009-2010 and 2010-2011 license years, as presented by the Department with a couple of modifications. One of them is that at the next regularly scheduled Game Commission meeting we come back and make revisions as appropriate to the written permission clarification language, and

further modify it to change a few of the numbers that were on the spreadsheet that we were discussing at the very end of the open meeting before recessing for lunch, and that's to increase the number of private land mature bull licenses by 10% and antlerless licenses by 11% in GMU 4, increase the total number of mature bull licenses by 6% in GMU 5-B, increase the total number of mature bull licenses by 11% in GMU 50, and increase the total number of mature bull licenses by 4% and a number of antlerless licenses by 11% in GMU 52.

Adrian Terry: Mr. Montoya, if this is your intention, please also state that your motion is going to delete the language in Part 19.31.14.9 that is underlined beginning with "no public draw elk licenses".

Commissioner Montoya: But my motion is not to delete it. I'd like to leave it as recommended and come back in December and make the appropriate modifications/revisions/amendments when everyone has had an opportunity to be fully informed of what Commissioner's wishes are.

Adrian Terry: I think that's fine also. I'm sorry that I misunderstood you, but yes, you may adopt the rule with that language in it if that's your choice.

Commissioner Sims seconded the motion.

Vote: Voice vote taken. **Commissioners Buffett, Simpson, and Salmon** dissented.

Commissioner Simpson: I want to have an amendment.

Chairman Arvas: You want to have a hand vote on that?

Commissioner Simpson: We can have a hand vote.

Chairman Arvas: Let's go ahead and have a hand vote then. All those in favor of the motion signify by raising your right hand. All those opposed signify by raising your right hand.

Motion carried.

AGENDA ITEM NO. 11: Adoption of the Amendments to the Bear and Cougar Rule, 19.31.11, NMAC.

Presented by R.J. Kirkpatrick – The Department provided the Commission with final proposed amendments to the Bear and Cougar Rule, 19.31.11, NMAC, as bear and cougar hunting for the 2009-2010 and 2010-2011 hunting seasons. The recommendations establish harvest limits, level of hunting opportunity season dates, and other requirements/restrictions for the 2009-2010, 2010-2011 license years. Recommended adjustments to the bear rule the Department developed a bear population assessment and harvest management matrix. That matrix is a biological assessment of what would be sustainable harvest of bears and what total sustainable mortality limits and female sub-limits would be and are identified in the recommended rule. In addition, 1 of the other major rules is that both bear and cougar seasons will close within 72 hours of when the Department has come within 10% of the total sustainable mortality limits or within 10% of the female mortality limit in each zone. The final recommendations in the cougar rule reflect continuing to allow private land to hunt cougar year round and eliminate the cougar preventative program in GMU 30.

Commissioner Sims: It's great we're extending the season for private land from April 1 to March 31, but we fall short in trying to help private landowners and their cougar problems. I have an amendment for the Commission to consider.

Luke Shelby: The amendment by Commissioner Sims includes changes to the bear/cougar rule beginning with 13.31.11.9, Bear and Cougar License Application Requirements and Restrictions Private Land Cougar Permit.

Commissioner Sims: This provides private landowners some tools for protection of their private lands and livestock.

Wendy Keefover-Ring: I'm Director of Carnivore Protection for WildEarth Guardians in Colorado. I recommend that a voluntary program until 2010 be done in NM and that the online education program become mandatory. We strongly support ending of the GMU 30 trapping program.

Bebo Lee: I'm with NM Cattle Growers. Taking away year-round hunting on the Guadalupes would hurt those individuals.

David Kincaid: Rancher from the Piñon area west of Carlsbad. Why wasn't any data included for Unit 30?

R.J. Kirkpatrick: At the bottom of the matrix, Zone Q, GMU's 28, 29, 30, 34, and 46 proposed total sustainable mortality is 46, currently we're at 45. Total female sub-limit proposed 12. There is no current female sub-limit last year.

David Kincaid: We ask for continuation of the program in Unit 30 and development of similar programs in other units where there are bad depredation problems. We oppose limiting female take.

Mike Casabonne: President of NM Federal Lands Council. We support leaving the preventive program and year-long seasons on private land in place.

Luke Shelby: Commissioner Sims' amendment reads: To Section 19.31.11.9, Bear and Cougar License Application Requirements and Restrictions, Private Land Cougar Permit. A private land cougar permit shall be required prior to taking any cougar on private land using traps or snares. This permit will authorize the take of cougar on private or deeded land only. The next is Section 19.31.11.10, Bear and Cougar Manner and Method Requirements and Restrictions. The size and type of traps or snares or other methods of take of cougars on private land will be allowed as designated by the Chairman of the State Game Commission (the Chairman can designate any reasonable method to help private landowners take cougars to be determined later). As the take of cougar on public land by the use of traps or snares contrary to rule, shall be designated as a trophy cougar and civil penalties shall apply (future change to 19.30.11 civil liability at future meeting). The next change actually is Section

19.31.11.12 not 19.31.11.11 as previously stated, cougar hunting season on private land shall be April 1 through March 31. The bag limit shall be sustainable total mortality and shall apply to the take of cougars on private land. Private landowners or their designees who hunt on private land must obtain a private land cougar permit prior to trapping or snaring a cougar on private land. It shall be unlawful for any private land cougar hunter to take a cougar contrary to the allowable manner and method including traps and snares, and all cougar hunters on private land must be legally licensed.

Wayne Derreck: Vice President of NM Trappers Association. We need a preventive program to stay because I've seen the devastation 1-2 lions can cause and the number of days/weeks it takes to catch one of these offending animals. I'd also like clarification about the take of a cougar and would it be a trophy. Is it going to change the rules of incidental take when fur trappers are trapping and accidentally catch 1 not targeting that animal? I have a concern about fur trappers and for some animal damage control trappers on an incidental take not targeting that animal.

R.J. Kirkpatrick: Trapping activities that are conducted by wildlife services that result in non-target capture are covered in agreements between the Department and that government agency--non-target species that are unintentionally caught by furbearer or trappers. I think this language would apply if the animal is killed as a result of the capture. We encourage trappers that catch non-target species contact the Department immediately so that we can assist or release that animal alive and unharmed.

Dan Brooks: Contrary to rule there is a rule that allows wildlife services/government agencies to be exempt so that part would apply. There is no incidental take provision for furbearer trappers. We do encourage them to work with us. As long as furbearers/license trappers are working and calling the Department there shouldn't be a problem, regardless of what we're talking about here.

Wayne Derreck: If I've got a snare under a fence and a cougar gets in it, am I going to have a ticket written for taking that cougar?

Dan Brooks: Simple answer, yes. When you're allowed to catch certain protected species that's what you're allowed to catch. If you call us in a good-faith effort and you release it alive, there is no ticket. If it results in the death of the animal, yes, there is a compliance issue.

Representative Candy Ezzell: The decision made today by the Commission needs to be based on sound facts and not those coming from special interest groups. People on the ground need to be taken into consideration. I support leaving the preventive program and year-long seasons on private land in place.

Joe Delk: An issue for me is the apparent refusal of the Department to cooperate/consult/coordinate with the landowners/outfitters/sportsmen in the development of the proposed amendments. I'm asking the Commission to table any action on this until the Department fulfills its promise/obligation to engage the landowners/sportsmen in the development of any proposed changes to any rules/programs involving cougar or any other major predators that can ultimately have a profound impact on property rights protection will, not to mention human safety issues. Any unbiased and objective evaluation undertaken by the Department with the direct involvement of landowners/sportsmen will produce a reasonable and acceptable assessment of the situation and present a clear consensus of any needed changes to the rules.

Jess Gilleland: Houndsman from Tularosa. Who's going to educate us how to tell the difference between a tom/female?

R.J. Kirkpatrick: The cougar identification course that's been discussed over the past couple of months, Colorado Division of Wildlife has developed a web-based course, is about the life history of cougars and identifies the differences in pelage between females/males that's readily identifiable when they're in a tree/rock ledge so that's the course that's been suggested that we make available on our website.

Jess Gilleland: We've been looking at 15-30 cats a year. I haven't killed a female in 15 years.

R.J. Kirkpatrick: I think a significant number of people that know a lot about cougar hunting or are already able to identify cougars very well. This course would be for those that want to become adept at it or curious about taking the course.

Jess Gilleland: We can't hunt furs during bow season and now they want to take the next bear season away unless we're looking to draw an elk tag.

Commissioner McClintic: On our high-demand quality hunts in areas where there are very few tags, when we go to a camp we have 1 licensed elk hunter and we end up with 8-10 bear hunters. We've had instances in our revocations where we've had elk set up in these areas where people have shot and they've been ticketed for shooting illegally. We've had instances where all they possess is a bear tag. I'm not trying to eliminate bear hunting but it would be prudent if we didn't have bear hunts in that 5-day period just to have people hunting elk with a muzzleloader or bow in that specific quality high-demand hunt. I don't know if you think that hurts your business dramatically by losing those 5-11 days of that bear hunt with muzzleloader elk hunts. We've not addressed that. You're bringing that to our attention now.

Jess Gilleland: I don't have a bear hunt. You're taking my hunt and opportunity away for the bow hunts. I accepted that. Now you're taking it away for the next hunt?

Commissioner McClintic: I don't think that's what we have now, but I agree, once you start taking somebody's opportunity away where does it stop?

Jess Gilleland: I spent over \$100 a year. I have no intention of killing any of your animals. I just want to work with my dogs.

Commissioner McClintic: We're making recommendations and giving you an opportunity to speak on that recommendation that you don't like it, it doesn't work for you, and if the majority of people in this state believe it's not a good thing, then we won't do it. We're trying to give everybody a voice.

Jess Gilleland: Another thing is the 10% on the quota. Is that just cutting the quota by 10%? You call in if it's within 10% before the season.

Commissioner McClintic: What If we're allowed 30 cats in that area, we've got 27 down that are confirmed, there's a huge lag time from the time those cats are brought in and that's why he's trying to do that 10% because the problem is they're afraid that from the time that 27th cat is taken, by the time they come in and get the deal done and the 30th cat is taken, they've killed another 4-5 cats and we've had 35 taken when we only want a limit of 30. It's a safeguard. R.J., you're not permanently going to stop at 27, you're going to go ahead and after that's confirmed then you're going to allow the other 3 to be taken or you just stopping it at 90%?

R.J. Kirkpatrick: The zone would close 72 hours after the 27th cat was reported as harvested.

Commissioner McClintic: The gentleman's question is very specific—after that 27th cat is taken and it's closed for 72 hours, if there are no other cats taken, are they going to be allowed to take the other 3 cats?

R.J. Kirkpatrick: Under their current language in the recommendation, no. Once the zone closes, it won't re-open.

Commissioner McClintic: Then I think we need to amend that because if you're going to have a limit of 30, what you're actually telling the man is he's only going to be able to take 27 cats.

R.J. Kirkpatrick: I agree with you if in fact these were quotas but they are not. They are harvest limits so they're basically up-to numbers but there's no language in rule or recommended language that suggests that that number of cougars must or shall be removed. It's that number of cougars may be removed or up to that number of cougars may be removed.

Commissioner McClintic: If we have a limit you consider sustainable, I think we ought to let these people harvest that limit and not 90% of it.

R.J. Kirkpatrick: I can demonstrate that in the majority of the zones in NM we rarely approach getting the limits.

Commissioner McClintic: We don't want to restrict this gentleman if we say this will sustain 30 days that we're only going to tell him after he's got his 27th cat that he's done.

R.J. Kirkpatrick: Just a point of clarification but keep in mind that there's a provision in rule and in the recommendation that allows the Director with concurrence of the Chairman to increase those total sustainable limits or those female sub-limits based on circumstances we're discussing.

Jess Gilleland: I liked it the way it was because if they put the quotas on females or sows it's less on boars because females are what sustain the population.

R.J. Kirkpatrick: He's correct. The total sustainable mortality limits are all sexes. The smaller number/lower limits are always going to be the females and that's persistent in the bear/cougar rule.

Kent Salazar: National Wildlife Federation. We support the education program remaining voluntary.

Sam Henderson: Agent for Van Cleve Ranch. Mountain lions are not an animal that was in this part of the country and is here due to the increase of population in the northern part of the state and it forced these lions down into country that could not support them so instead of eating deer, they started eating sheep.

Senator Tim Jennings: I was driven out of the sheep business by the Department and mountain lions. You've violated the trust which you asked the legislature for.

Neal Christopher: I support Commissioner Sims' amendment but let's explore the public land system. The recommendation from southeast NM—sportsmen/business owners/landowners is leave it as is, adopt this amendment, and we keep this in check.

Representative Nora Espinoza: I support what has been said and look at this seriously.

Charlotte Salazar: I'm a concerned citizen. Joining me is my son, Jose Salazar, Jr., a 5-year old boy who was attacked by a mountain lion on May 17, 2008. I want to know what the Department is doing to protect humans?

Director Thompson: Regulations before the Game Commission are perhaps not as directly connected to this particular situation as it might sound at times. What's before the Game Commission includes a variety of things incorporating increased limits for cougars statewide, and also as important that many people are not as aware of, is that there are already multiple tools available via provisions of the statute that Senator Jennings mentioned, the capabilities we have working with private landowners more than that are actually available right now—the hunting programs. We need to pledge and continue to work with you and many other individuals to address as many different situations as possible, but we have no ability to provide a guarantee that there wouldn't be an injury associated with wildlife.

Charlotte Salazar: These amendments directly affect our situation. It's my understanding that you have programs that have been recommended or in place but have not been acted on.

Benjamin Salazar: Do the right science and don't take the numbers from someone else. Take in the landowners and the government and sit down and discuss the way to proceed with this.

Preston Stone: Our deer population in NM in the last 10-15 years has dwindled down to nothing. The mountain lion population is thriving and doing well. Until you take a stand to control that predator, it's going to get worse.

Tom White: I support year round lion season statewide.

Laura Schneberger: I support not removing this GMU predation hunt and consider allowing other depredation hunts in other areas and start taking into consideration local expertise.

Joel Alderete: I'm with NM Farm and Livestock Bureau. You have a serious lion problem in this state. Lions if you read the biology are a solitary animal, they stay away from humans at all cost. You're seeing way too many lions. They've overpopulated and we have a problem with them. It seems a couple of years ago we tried to run a bill to take the lion off as big game and put it back as a varmint. Look for that bill this year. It seems to me that with all the problems we're having with lions, I don't understand why we're trying to change everything. Commissioner Sims, while we appreciate the effort on your part, but traps and snares only is that what that's saying?

Commissioner Sims: Any take.

Joel Alderete: If someone has a problem with a lion on their property and they get their dogs and run them down, that's also included, then we're fully in support of this. We are not in support of a mandatory class.

Debbie Hughes: Leaving traps/snares on your private land is great, but this is a checkerboard state and we have federal land ranches. This preventative program has proved it works.

Gentry Hughes: Brian Nygren was not able to be here but sent a letter which states that if this program is terminated we will see a negative impact on our deer herd and an increase in lion depredation. We also need to look at the nearby national parks, Carlsbad and Guadalupe National Parks, and see the low density in near absence of mule deer and occupied lion habitat.

Mark Sultemeier: I'm a rancher in Corona. I support Commissioner Sims' amendment. We need to remove the lion as a big game animal.

Pete Gnathkowski: I'm a rancher in Lincoln County. I appreciate Commissioner Sims' suggestion that traps/snares should be used. We need to get some sound science and involve the people that actually have something at stake in this issue instead of listening to the animal protection groups in Santa Fe/Espanola/Silver City.

Commissioner McClintic: This is an extremely difficult thing for me. When a recommendation is made, and I talked to you Debbie last week, I have as much concern. There's a faction in this state that doesn't want to see a single mountain lion killed. There's another faction that thinks that every one of them should be wiped off the face of the earth. The only way we can come to something that makes sense, is to listen to every side. The thing that bothers me the worst and I'm irritated with is that we have tremendous pressure from the environmentalists, animal protection, and not 1 of them got up to this microphone and spoke. You're in the audience, you solicit me. Do you have any idea how that affects some people? You want to get people to serve on these boards because we don't get paid. Do you think I enjoy coming here and have people in this audience think I want to put you out of business? We want everybody to have the right but we can't have 200 people wanting us to wipe all mountain lions out and nobody speak for the mountain lion. Give us a reason why we're going through all this.

Debbie Risberg: Wildlife Partners Manager with Animal Protection of NM. We had nothing to do with the science on the cougar habitat map. All we did was pay Birds Eye View. The gentleman who did that work is a GIS specialist. We do not believe that every single mountain lion should be saved, we just want to protect lions for conservation in general because they help the environment which in turn helps humans. We're all part of a system. We support the Department's recommendations on the female sub-limits, voluntary hunter education, and on closing GMU 30 program because there already is the depredation program across the state.

Commissioner Sims: Do you support this amendment?

Debbie Risberg: I would like to take it back to my organization and discuss it. I thought you could already trap on private land? We should all get together and talk with the Department.

Commissioner McClintic: There seem to be some organizations/ranchers in this community that don't believe we're giving them an equal opportunity to talk with the Department. I'm going to recommend to this Commission that from now on the lobbying has to be minimal and if we're going to listen to an issue we're going to give equal opportunity and time to everyone involved. So for certain people to have the opportunity to talk to R.J. and make recommendations and other people that are absolutely affected by it don't have the opportunity because we get those complaints.

Debbie Risberg: I called the Department to set up meetings. They didn't come to me. Anyone can do the same thing.

Wendy Keefover-Ring: I'm with WildEarth Guardians. We don't support Mr. Sims' amendment.

Director Thompson: Something important to mention was that many of these comments seem to be coming from a belief that the Department was proposing something different that we're making massive changes and removing options. The proposal before you first of all provides even greater lion harvest options and harvest limits in NM. There's a provision to end 1 mechanism but the overall options remain. People aren't aware of those and in particular there's quite a bit of discussion about using traps/snares particularly to protect deer and other interests in protecting livestock. In fact, without changing any regulations, those are already possible. The Department in the past year has begun doing some of that with respect to deer management where there's selective use of traps/snares. I mention this now so that the entire audience is aware that much of what they fear or are concerned about is in fact available to be done under current regulations. The proposal is not about taking things away, or unduly protecting cougars.

Commissioner Montoya: Luke and R.J., could there be potential prevention programs not only in Unit 30, but across the state or give the Department the tools needed? We might be the impediment.

Luke Shelby: One of the things we identified was the lack of the ability of the Department to go in and effectively do some preventative control in other areas of the state outside of Unit 30. The part of this rule is the Director with the verbal concurrence of the Chair or his designee may also modify the season dates. In the previous manner and method of take rule, we didn't have the means to facilitate target removals or imbedded quotas for cougars/bears in specific areas or zones for ungulate protection, or conflict minimization in densely populated residential areas. The recommendation I can make regarding this is that we should strike in densely populated residential areas and any area that we have identified as a place that we can do some preventative control. If we strike in densely populated residential areas, it will cover that.

R.J. Kirkpatrick: To add to that, this provision is in current rule. We can sustainably harvest under 500 cougars in NM. At current levels of harvest which include Unit 30 preventative control program we're harvesting less than half of that. Is that resulting in significantly enhanced cougar populations in creating conflicts and concerns for ungulate protection? It could be. The crux of moving from a harvest limit to an imbedded quota is probably going to require altering the manner and method of take. That's not going to be accomplished in southern NM with dogs or still hunting. That provision has been in place and maybe the Department is remiss in not making sure that everyone is aware of this provision/ability. There's got to be some processes, but this does provide the Department with the ability to deal with cougars through quotas. It's been in place for a while and my assessment is everybody wants to manage cougar population so that they're vibrant and healthy and within the bounds of their carrying capacity. We don't want the populations to explode, to become unbalanced with prey base. The language currently in rule gives us the tools. Maybe what we need is more awareness and willingness to apply it.

Commissioner Buffett: Since I've been grappling with these rules, I've tried to find other sources of information from biology experts on cougars. One document I found is Cougar Management Guidelines. This was written by over a dozen cougar biologists and wildlife managers with over 200 years of cumulative experience in cougar management. I found that according to their experts, they determined there is no scientific evidence that suggests that sport hunting reduces the risk of cougar attacks on humans. What we're deciding today in terms of sport hunting levels doesn't address the cougar/human threats. In fact, they also say that when you overhunt a cougar population, you're more likely to have young cougars emerge and that will create more negative interactions with humans than having an older stable population. R.J., what's your interpretation of what this will do for the numbers of cougar take?

R.J. Kirkpatrick: In harvesting cougars within the sustainable limits we've established through our assessment of population/recruitment/availability, the only way those levels of cougars are going to be harvested in NM is through alternative manner and method of take. That will mean snaring and/or trapping. If those cougars are warranted to be removed, that will probably be the only way that that can happen in a lot of places in NM, especially southern NM. We're comfortable with the credibility of the matrix and our populations assessments based on habitats, and as long as that take stays within those sustainable limits, there shouldn't be any concern or potential jeopardy of the populations.

Commissioner Buffett: The matrix has been helpful. It is based on a 20% removal for each zone. How does that compare to other states' guidelines that manage cougars?

R.J. Kirkpatrick: The Department's recommendation is a standardized management objective that keeps populations at sustainable levels. The best science we've relied on is Logan's San Andres Wildlife Refuge Study in NM and other research with regard to the level of a population that can be removed that Sanderson/Lindsey worked on in Wyoming. Both research studies indicate removing 20% of the population on an annual basis is well within sustainable limits. When we move to the female sub-limit, those same research endeavors indicate that as high as 30% of that total sustainable take could be females. The concern is how many of those females are reproductive? We've taken more of a reasonable recommendation to the Commission that 25% of that total number of cougars could be females because we don't have good data about what the age structure has been of females we've taken. Within a year or 2 we will be more comfortable with what that is and we may come with a recommendation to increase that to 30% total sustainability.

Commissioner Buffett: Are there any other big game animals where we give the Chairman the sole ability to work with landowners to decide method and take?

R.J. Kirkpatrick: There are a variety of rules that contain language that indicates that the Director with the verbal concurrence of the Chairman may adjust the level of licenses/permits/mortality limits/sub-limits by as much as 20% up or down based on population changes/precipitation/habitat availability. In these instances human safety considerations/unnatural densities/distribution of animals there are rules where level of adjustment is more than 20%, but most is standardized at 20% on an annual basis.

Commissioner Buffett: Are the methods defined or is so vague as to say that the Chairman can designate any reasonable method?

R.J. Kirkpatrick: The manner and methods are not defined. The Chairman and the Director have full authority to determine what those are.

Commissioner Buffett: I find that language concerning because we are a 7-member body and we're all here to weigh in on these issues and while I would rather not see any amendment, I can live with the amendment if we consider re-wording some of that section under the bear and cougar manner and method so as not to give 1 person on this Commission the ability to decide how cougars will be taken. You might want to think about unintended consequences of that?

Commissioner Simpson: The biology sometimes isn't well-stated how we take and control big game or predators like mountain lions. I share Commissioner Buffett's comments that when you delegate the 7-member Commission to 1 person designating, you do not have a Commission, you have a dictator whether it's good/bad/indifferent. I'd like to delay this to a November meeting where we can take everybody's comments and have more evaluation.

Commissioner Salmon: Can Dan Brooks comment briefly on what a person may legally do to protect himself/herself from cougars without being in conflict with illegal kills?

Dan Brooks: There have been several references to the law where a person can protect their property, but within that law is also the ability for a person to protect themselves or others. That's probably based on a common law principle. In NM, if a person is in immediate jeopardy, they can protect themselves. We're going to look for evidence and information.

Commissioner Salmon: I assume that includes lethal response?

Dan Brooks: Correct.

MOTION: Commissioner Sims moved to adopt amendments to the Bear and Cougar Rule, 19.31.11, NMAC, that will establish total sustainable harvest limits, female harvest limits, the level of hunting opportunity, season dates, and other requirements and restrictions for the 2009-2010 and 2010-2011 license years, as advised by the Bear and Cougar Population Assessment and Harvest Matrices, dated October 2, 2008, and as presented by the Department with the suggested amendment that is on the screen now which reads Bear and Cougar License Application requirements and restrictions private land cougar permit. A private land cougar permit shall be required prior to taking of any cougar on private land using traps or snares. This permit will authorize the take of cougar on private land or deeded land only. Bear and Cougar Manner and Method, 19.31.11.10 Bear and Cougar Manner and Method requirements and restrictions size and type of trap or snares or other methods of take of cougars on private land will be allowed as designated by the Chairman and Director of the State Game Commission. The Chairman and Director can designate any reasonable method or help private landowners to take cougars to be determined later. 19.31.11.11, Cougar Hunting Season, cougar hunting season on private land shall be April 1 through March 31. The bag limit sustainable mortality shall apply to the take of cougars on private land. All cougars taken on private land shall count toward the sustainable mortality limits on the total female and mortality sub-limit for the zone in which the private land lies. Take of cougars on public lands by the use of traps or snares shall be unlawful and violators may be subject to the enhanced civil assessment penalties pursuant to prospective future amendments to 19.30.11, NMAC. It shall be unlawful for any private land cougar hunter to take a cougar contrary to the allowable manner and method including traps and snares. All cougar hunters on private land must be legally licensed.

Commissioner McClintic seconded the motion.

Commissioner Montoya: In NM, the ratio of public/private land is disproportionate. This motion doesn't address this. I emphasize to Department staff that we need to do something on public land with the language you previously showed us and not allow for situations to get to a point where there are human safety concerns in certain parts of the state that are public lands and where the public frequents. I'd encourage you and if we need to come back to the Commission for further authorization to do something on public land as well.

Commissioner Simpson: Please clarify who has authority to designate what?

Commissioner Sims: The Chairman and Director have the authority.

Commissioner Simpson: So it's my understanding that the Chairman and not the Commission will direct all this stuff?

Commissioner Sims: It's the Chairman and the Director.

VOTE: Voice vote taken. **Commissioner Simpson** dissented. **Motion carried.**

MOTION: Commissioner Buffett moved to direct the Department to make cougar sex identification training available on the Department's website and through other means as applicable, such that prospective cougar hunters may become proficient at determining the sex of a cougar before it is harvested. At this time this is a voluntary program. **Commissioner Simpson** seconded the motion.

VOTE: Voice vote taken. **Commissioner McClintic** dissented. **Motion carried.**

AGENDA ITEM NO. 12: Adoption of Amendments to the Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC.

Presented by R.J. Kirkpatrick – The Department provided the Commission with final proposed amendments to the Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC, for adoption. The amended rule established Barbary sheep, oryx, and Persian Ibex hunting for the 2009-2010 and 2010-2011 hunting seasons. The Commission received final recommendations from the Department regarding amendments to the Barbary sheep, oryx, Persian Ibex Rule, 19.31.12, NMAC that will establish the level of hunting opportunity, season dates, and other requirements and restrictions for the 2009-2010 and 2010-2011 license years. In summary Barbary sheep hunting in the southeast area, GMU's 30, 29-37, excluding Unit 35, the recommendation is to move Barbary sheep hunting currently over-the-counter to a limited entry public draw system with 600 licenses available in each of those separate hunt windows. The recommendation includes the standard population management provisions which include Section 9 which has been discussed earlier. There is language in this recommendation that establishes where public draw Barbary sheep licenses will be valid. It includes legally accessible public lands where hunting is allowed, and private lands with written permission. The recommendation is that off-range oryx hunts maintain 60 licenses per month currently available and adding 20 youth-only licenses to each of those months.

Commissioner Salmon: Regarding oryx, I understood that there would be some limit to the number that could be taken off-range, or is it totally over-the-counter?

R.J. Kirkpatrick: Off-range oryx hunting opportunity shall be conducted for public hunters through the public draw. The number of licenses available each month will be restricted to 60 adults and there will be 20 youth-only for each month so it's limited.

Commissioner Simpson: I received comments about trying to minimize or eliminate oryx all together on off-range that said that they'd like to have some sort of a viable oryx population off-range and it seems those were ignored. I haven't seen anything of why Barbary sheep goes the other direction. We want to have a viable population off-range or in a core area because certain landowners want it, but when it comes to oryx, we're going the opposite direction. We have a conflict basically of policy. I think you ought to limit off-range hunting to number 1 only a few months out of the season where you at least maintain some level of population and you also offer some sort of quality hunting off-range for sportsmen.

R.J. Kirkpatrick: The recommendation before the Commission takes into account all those perspectives. Adding 20 youth-only hunters to the current level of 60 individuals per month does not create significant increases in depredation complaints or minimization of oryx presence off the range in any meaningful way. As we apply hunting pressure and military activities, they will continually come off of WSMR, so managing a population off the range is somewhat unrealistic in that you have such a huge core reservoir of oryx on WSMR. As far as comments from BLM about whether or not they are impeding or negating natural species outside of that, I would argue that the Department would probably attest to that.

Tim Turri: On private land off-range oryx, is unlimited, reduction with 50% being public, right?

R.J. Kirkpatrick: Correct. There's a population management provision for oryx but private landowners can hunt fairly liberally month by month on their deeded private property.

Tim Turri: Our recommendation is that the person wanting that license on private land has permission in advance of being able to purchase that license and we think that'd be done at a Department office. We'd also like to start dialog with bringing the resident quota system into these exotic species including the bighorn.

Jeremy Vesbach: Executive Director of NM Wildlife Federation. We support keeping some sort of hunting opportunity off-range. Cut back from 60 regular tags and 20 youth to 50 regular tags and 15 youth.

Joel Alderete: We support this. For clarification, is the balance of the prospective hunter identified by the Department? Are people going to be sent to the private landowner for approval?

R.J. Kirkpatrick: Correct. We met with Livestock Bureau and Cattle Growers. They brought that to our attention that there could be some concerns from private landowners about Department-identified hunters. I've asked the Commission to keep in mind that even though that population management provision is in place, the Department has tried to build flexibility in all of our hunting that the need for this tool is relatively seldom.

Joel Alderete: Is there any way we can supply that to the landowners that might potentially be impacted before you even start making the calls?

R.J. Kirkpatrick: We can accommodate that.

Jim Griner: Regarding the landowner population management oryx license, can you make those private land permits good for the entire ranch rather than just the patented land?

R.J. Kirkpatrick: The current language allows the area chief to designate the hunt area, so under circumstances that would be justified/warranted that opportunity could exist.

Anthony Manfredi: On off-range oryx, I'd like clarification on why the difference with the population management hunts and how Barbary sheep and oryx are going to be different in that any proposed population management hunt with Barbary, half of the hunters are going to be designated by the Department on private land when apparently that's not the case with oryx. The oryx private land depredation hunts were going to be designated entirely by the private landowner. Is that correct?

R.J. Kirkpatrick: That's not correct. The provision under the Oryx Population Management is the same exact language as Barbary sheep/elk/deer.

Anthony Manfredi: How is designating hunters being done by the Department going to be beneficial?

R.J. Kirkpatrick: The perception is that it is public wildlife, it so happens to exist on private property. When you allow private property owners to dictate that he's got a population issue with species on his property, allowing that private landowner to make decisions about who shall come could lead to economic incentives. The perception is that we don't want to do anything that creates economic incentive for landowners to complain about levels of wildlife on their property. On the other side of the coin, we recognize that private landowners have inherent private property rights and should be able to contact the Department and express concerns about undue levels of wildlife. We've attempted to come to the middle with that issue and split the difference. If the landowner has property damage occurring because of levels of wildlife on their property they'd likely be interested in lowering that number of animals on that property so that there's no continued private property damage. There's no economic value from taking your statutory authority and killing those animals.

Troy Omness: With Rio Hondo Land and Cattle Company. We ask for a longer season to help us solve some of our problems. By talking with the Department they've come up with this population management hunt which sounded good and then last week I was contacted and now want to give half the hunts to public hunters. The problem is that we have lots of safety concerns on the ranch, and some of those are irrigated fields which makes the hunter come in contact with highways/irrigators/people so a lot of the hunters in that area are guided. I can't give my guides away for free. Hunters would have to pay for a guide that day to get this done.

R.J. Kirkpatrick: The final recommendation resulted in something that could be difficult for his ownership. As with Valles Caldera, the Department doesn't have any jurisdiction over determining the fees charged to access that property. Maybe we could work with Troy if we identified the need for population management hunts on his property and forewarn hunters as we contact them that there may be a reasonable fee to be able to access the property because of legal liability issues and give them the choice. Public hunters are more interested in the opportunity than they would be concerned about a reasonable fee so I suggest we work this out at least for a couple of years and then come back with something better.

Bebo Lee: The numbers on oryx are good. I'd like to see them increased on that end of the range. How many animals might be coming from around White Sands? Can they contract CWD? If they then came in contact with our cattle would Risk Management apply to this?

R.J. Kirkpatrick: We've worked diligently with McGregor to BLM to put in place provisions to determine who hunters are and pulling hunters off of lists to ensure the maximum number hunt on both McGregor and the military portion of that area. Keep in mind, the Chairman/Director have the ability to increase the level of licenses by as much as 20%. In discussions with BLM, they'd like to affect a significant oryx reduction on McGregor. Currently, there are 50 oryx-hunting opportunities established in our recommendation. Regarding oryx transmitting CWD, to my knowledge there's no evidence oryx have ever contracted CWD nor could they transmit it because we're not sure how CWD is transmitted.

Chairman Arvas: Do you have any reason for your concern?

Bebo Lee: I was wondering not really knowing how it's transmitted or if it could be?

Chairman Arvas: I don't know who the district officer is in your area but he should be familiar with the signs of CWD so the next time you see him, visit with him.

R.J. Kirkpatrick: On a point of clarification, there's science out there indicating how CWD is being transmitted. We're just not 100% sure.

Senator Jennings: Why can the military determine they get 50 hunts and they get to pick who their 50 hunters are, and as a landowner I don't and I own the land?

R.J. Kirkpatrick: Under the recommendation before the Commission you will have full authority to decide how many oryx are or aren't hunted on your private property.

Senator Jennings: If they're animals that belong to the state, military doesn't pay taxes to support wildlife, I have a difference of opinion because the Department claims all the animals out there, so why should the military get to pick 50 hunters on military reservation and not give whatever percentage to residents. I don't understand why they get preferential treatment over citizens of the state.

R.J. Kirkpatrick: Military reservations are controlled by DOD and there are areas where clearances are required because of unexploded munitions, etc. Like Valles Caldera or private landowners, they do have autonomy to decide who should be able to come on to their properties, many times require military clearances to be on those properties. The other side is we hope significant numbers of military individuals are sportsmen and like public hunters interested in hunting these species, maybe they are no different than regular public hunters. It's that they have the clearances/authority to access those properties through this draw process.

Senator Jennings: As a private landowner, I have unexploded ordnances on my land and I'd like the same privileges as private landowners. The federal government might claim ownership but the land belongs to the state.

Commissioner Montoya: I heard a comment on the 78/22 residency preference and I didn't realize that exotics didn't apply, is that true?

Dan Brooks: That's true. In the Terk decision, which we lost, the court ruled that we could not apply a quota to bighorn sheep/oryx/ibex. That's why the quota does not apply to those 3 species. Later the legislature passed the 78/22 split, we went back to court and tried to get that lifted and were denied. We apply the quota to all others.

Commissioner Montoya: Why will it apply to 1 species and not to another?

Dan Brooks: Because the initial ruling applied to those 3 species and when we went back to court, they said that because the legislature decided that, that didn't change their mind. They upheld their decision for those 3 species only. Because they were in the initial suit that Terk brought, that's what he made application for late 70's early 80's.

Commissioner Montoya: Is it time to test that again?

Dan Brooks: It will cost the Department. Once the court ruled, if we go back, Terk has to defend himself and if we lose again, we get to pay his bills and ours.

Commissioner Simpson: Senator Reid a couple of years ago passed an amendment that overturned that and gave the rights to the states to set quotas. I've made numerous verbal requests to the Department to look at what Congress passed because Arizona is a good test case. They were sued and lost all the way up to the State Supreme Court. After Reid passed that, they annulled it and went back and Scarantino, the lawyer that sued them. Says we haven't got a leg to stand on and we can probably apply into NM. I don't think the Department has looked into what Reid or Congress said the states have the right to set a quota system and how the Terk case is negated now.

Dan Brooks: You are correct, we haven't looked at that court ruling. That would take some energy, time, and probably a request from the AG's office.

Chairman Arvas: So are you saying that if you do an inquiry into that, that would be applicable to the elk rule? There wouldn't be any connection between elk/Barbary sheep/oryx/ibex as far as that rule is concerned?

Jim Karp: There is nothing in the federal legislation that in any way negates the effect of the Terk decision. We're still bound by that decision. The federal legislation just indicates that the state has the right to manage and authority to manage wildlife issues, but it doesn't in any way overturn the effect of that decision.

Commissioner Simpson: I think a more thorough review needs to be done based on what other lawyers have said.

Jim Karp: We'll continue to look at it.

MOTION: Commissioner Simpson moved to limit the numbers which the Department states are 60 and 20, to 50 adults and 15 youth, for oryx only in Section C, pages 10-11, for statewide off-range. **Commissioner Salmon** seconded the motion.

Commissioner McClintic: R.J., we've got concern about that 50%. Do we do that with any other species in any other instance where we give more permits but 50% of them have to be public hunters on private land?

R.J. Kirkpatrick: No, sir. Currently in rule landowners may provide the Department with a list of prospective hunters for the Department to consider to license. The recommended language is new language where sportsmen feel they'd like to have the opportunity to participate in those instances where a population management hunt is warranted no matter if it's on private land or not.

Chairman Arvas: Commissioner Simpson, for clarification, if you agree with the Department recommendation and add your amendment to it.

MOTION: Commissioner Simpson moved to adopt amendments to the Barbary sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC, that will establish for each species the level of hunting opportunity, season dates, and other requirements and restrictions for 2009-2010 and 2010-2011 license years, as presented by the Department with amendment of oryx statewide off-range reduced from 60 adults to 50, and from 20 youth to 15. **Commissioner Salmon** seconded the motion.

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

Commissioner Salmon: I have an amendment.

Chairman Arvas: To that motion?

Commissioner Salmon: No, to the main motion.

Chairman Arvas: His amendment now became part of the main motion. If you want to amend the main motion, which is what Commissioner Simpson's motion was, go ahead with his permission.

Adrian Terry: I can't hear what's going on.

Chairman Arvas: The problem is that Commissioner Salmon has a concern about the posting rule that we had for the elk, and he wants to include that into this motion also.

Commissioner Salmon: If it's necessary. If it's not, I won't.

Director Thompson: At this point it would be best if you got through all of these regulation decisions and then came back with a single motion to cause that to occur throughout all the applicable regulations.

Adrian Terry: That's fine.

AGENDA ITEM NO. 13: Adoption of a New Rule Titled the Antelope Private Land Use System Rule (A-PLUS), 19.30.12, NMAC.

Presented by R.J. Kirkpatrick – The Department provided the Commission with a final draft of a new Antelope Private Land Use System Rule (A-PLUS), 19.30.12, NMAC. This item recommends the Commission adopt final recommendations for a new rule titled the Antelope Private Land Use System Rule. The Commission directed the Department develop an antelope private land use system rule. Before the Commission is the recommendation on a rule establishing a sound resource based approach determining the level of pronghorn populations in NM on a regional basis, level of sustainable extraction of those resources, level of hunting opportunities it would take to achieve that level of harvest and how we would go about distributing those opportunities equitably between private land interest and public draw hunters.

Commissioner Montoya: I'm not sure about the time allowed to establish A-PLUS. I imagine we've all received numerous comments on the confusion in terms of understanding. They're requesting more time. I know we have to get the Proclamation distributed, but is there a possibility of allowing more time?

R.J. Kirkpatrick: The option of deferral, of course, lies with the Commission. The next scheduled meeting is December 4. That would cause a significant time constraint in our developing the RIB to get out on the street but we think we can accomplish that with extra work.

Commissioner Sims: I concur with Commissioner Montoya. I've had a tremendous amount of calls and there is strong dislike to it, the main reason being they didn't understand it. Whether it's a good or bad plan, the misconception in not understanding it, is just too early to go forward with this.

Commissioner Simpson: It's my understanding that based on R.J.'s work in trying to put something together, the first time anything was put in writing was at the August 21 Commission meeting in Albuquerque. Landowners/hunters that looked at it said more time is needed and would rather spend the whole year and look at this. I recommend that we postpone this and everyone/Commission look at this for a year and come up with a good plan.

Commissioner Salmon: I too received cell phone calls expressing confusion and they didn't have a handle on the program and would like a deferral.

MOTION: Commissioner Montoya moved to postpone or table any action on A-PLUS, the antelope private land system 19.30.12, NMAC, until our next regular meeting which I believe is December 4, which I know Mr. Chairman and R.J. that it puts you in a bind. I know you're exhausted now after all these big game rules, but get some help from the individual that will replace you and maybe in a couple of months you can make the contacts that are necessary to all the interest groups, the landowners and sportsmen, and if at all possible get it out in time to incorporate into the Proclamation or do we need to include it in there? There is language in there correct?

R.J. Kirkpatrick: Correct. The Rules and Information Booklet that hunters will use for application and hunts for 2009. This information would need to be in there, but the Commission will need to adopt some kind of pronghorn rule for sure by December so that we can inform the public about pronghorn hunting.

Commissioner Montoya: So my motion is to our next regular meeting.

Commissioner Sims seconded the motion.

VOTE: Voice vote taken. All present voted in the Affirmative, except **Commissioner Simpson dissented. Motion carried.**

AGENDA ITEM NO. 14: Adoption of Amendments to the Pronghorn Antelope and Javelina Rule, 19.31.15, NMAC.

Presented by R.J. Kirkpatrick – The Department provided the Commission with final proposed amendments to the Pronghorn Antelope and Javelina Rule, 19.31.15, NMAC, for adoption. The Department suggested the Commission defer action on this rule and wait to see what happens with the Antelope Private Land Use System as they are intricately tied together.

MOTION: Commissioner Simpson moved to postpone the amendments to agenda title 19.31.15, NMAC, that will establish for each species a level of hunting opportunities, season dates, and other requirements and restrictions in 2009-2010 and 2010-2011 license years, as presented by the Department. In other words, we're going to postpone this until we decide in December, so we're just going to postpone this and defer it until we make a decision in December.

Luke Shelby: We can go ahead with the Javelina portion. We can defer, if you so choose, the antelope portion. There are 2 species in rule 19.31.15. We'll postpone the antelope portion until December.

Commissioner Simpson: I amend my motion to say we will postpone only the antelope portion of 19.31.15, NMAC, and we will address the Javelina issues.

Commissioner Salmon seconded the motion.

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

Chairman Arvas: Now we'll go to the Javelina rule which is 19.31.15, NMAC.

R.J. Kirkpatrick: The Javelina hunting season portion of 19.31.15, NMAC, begins with Section 19.31.15.14. The recommendation includes an addition of 2 weeks or youth-only hunting, Jan. 1 through Mar. 31. The hunt dates for this youth hunt include all GMU's where hunting is allowed so youth are going to have an additional 2 weeks statewide to hunt Javelina.

We have recommended 2 bow-only seasons. Currently, the hunt structure is that archery hunting can only occur a couple of days in the middle of the week. The recommendation includes 2 bow-only seasons with 300 hunters in each, 1 in the Bootheel and 1 in the rest of the state. The number of Javelina licenses available in the Bootheel have been reduced by 300 because of concerns about potential population decline in that part of NM; however, the statewide regular season has been increased by 400 licenses so the net gain is 400 licenses.

MOTION: Commissioner Sims moved to accept the Javelina Rule as presented. **Commissioner Salmon** seconded the motion.

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

AGENDA ITEM NO. 15: General Public Comments (Comments Limited to 3 Minutes).

Public Comments:

Terry Scarafiotti: Retired Conservation Officer after 26 years, 8 months with the Department here on behalf of the NM Conservation Officers Association. The NM Conservation Officers Association does not support the direction of the Department of Game and Fish Director Bruce Thompson has taken regarding his unlawful hunting incident in November 2007 and believes he should step aside and let a qualified and trustworthy person take the reins.

Senator Timothy Jennings: You need to do something about squirrels because they're all over the state and if you don't you're going to have a problem every time you go get a permit to go shoot the damn things and they are a destructive animal and you ought to have some liability with them if you don't do something about it. I'd like information from your Department on the salary of game and fish officers. I wish you'd change locations of your public hearings because every time we have a public hearing it's in Albuquerque or somewhere else. What you're paying State Land Office is not fair to the beneficiaries of the State Land Trust and you need to raise your contribution to the State Land Trust to pay for those lands.

Representative Candy Ezell: Hunting and fishing bring into the State of NM \$1.2M a day which comes to \$456M a year. I have a problem with the depredation process. I've got over 600 head of antelope on this ranch and it makes it damn tough for me to make a living.

S. T. Spencer: When you come back in December, we can make adjustments to the access issue. The antelope hunting system in place today is the most equitable to the private land owner the Department has.

AGENDA ITEM NO. 16: Adoption of Amendments to the Hunting and Fishing-Manner and Method of Taking Rule, 19.31.10, NMAC, the Boundary Descriptions for Wildlife Management Areas Rule, 19.30.4, NMAC, and the Hunting and Fishing License Application Rule, 19.31.3, NMAC.

Presented by R.J. Kirkpatrick – The Department provides the Commission with final proposed amendments to these rules for adoption. In hunting and fishing manner and method of taking, the Department's recommendation is to take all the language and strike/delete it and the Department insert a definition for what written permission means. The intent is to make it easier for hunters to be required to have a permit/license/written permission on their person. The final recommendation includes 2 new definitions—bag limit and newly written permission. The Department amended several GMU boundaries including 5-B, 41, 45, 51, 52, 54, 55, and 55-B.

Commissioner McClintic: I've been thinking about giving hunters a better chance of drawing for hunts in this state without being elitist. If we can cut down the applications by 30%, not lose any revenue, and give sportsmen a better percentage opportunity to draw and hunt, it's worth the effort. I want to require all license applications, both resident and non-resident for all hunts, be required to pay up front in addition to the application fee, full license fee, with hunters not drawing the license getting full license fee refunded. Also, all of our quality, high-demand hunts in this state because people complain they're so minimal, I'd like to incorporate into our regulations that if you draw a high-demand hunt this year, you're ineligible to apply next year. You have a 1-year waiting out period. It's not going to disqualify you from applying from all our other hunts. This is another way to make the odds better for drawing a quality, high-demand hunt. Item #6 says enable implementation of a birth-year bonus drawing enhancement program. I don't think that works because if you go over a 4-year period, 2 years you're going to have a 50% more chance, 2 years you're going to have a 50% less chance, so over a period of time, it's not going to benefit anybody over a 4-year stretch, so I want to eliminate that. I'd also like to strike #6.

Commissioner Simpson: These are all things that have been thrown out, they are sudden changes, and it'd be my preference that you submit these in writing but that we defer them to the December meeting where we have more people. We need to give the public the opportunity to look at the suggestions and comment.

Public Comments:

Kent Salazar: I might go along with some of the recommendations, but we need to give the public the opportunity to comment. Another issue is the last time we were taking the money up front, DFA was charging an administrative fee for holding/processing refunds, and that was causing a loss to the Department.

Commissioner McClintic: I don't have a problem with that. Of course, there are going to be more fees and we want to proportionately make it more for non-residents on big-ticket items as opposed to residents on small-ticket items. We could put in writing that if we do it this way, instead of an \$8 application fee it's going to be \$12 and \$4 will be lost if you don't draw.

MOTION: Commissioner McClintic moved to defer Item No. 16 to the December 4 meeting. **Commissioner Buffett** seconded the motion.

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

R.J. Kirkpatrick: There were 2 motions with that item. The first motion was to adopt the recommendations presented to the Commission for those 3 rules. The discussion that ensued was pursuant to the supplemental motion. Did the Commission act on the first motion?

Adrian Terry: There was no motion on the first suggestion.

MOTION: Commissioner Salmon moved to defer the entirety of Agenda Item# 16 until the December meeting. **Commissioner Simpson** seconded the motion.

Adrian Terry: I'm unclear as to where we are based on reactions from the Department. It appeared that there was a presentation on the rule and there was a suggested motion on the rule, and then there was a supplemental suggested motion. I believe there was some discussion about the supplemental suggested motion by Commissioner McClintic, there was a decision to defer any Commission action on the supplemental suggested motion, but there was no action taken with regard to the primary suggested motion and I'm not certain the Commission decided that they were going to defer that also, or if they could act on that this evening.

Luke Shelby: We're requesting the Commission take action regarding the primary suggested motion in the briefing, which does not affect Commissioner McClintic's motion or vote regarding those supplemental items, so we can take action on the rest of the rule.

MOTION: Commissioner Salmon moved to adopt amendments to the Hunting and Fishing-Manner and Method of Taking Rule, 19.31.10, NMAC, the Boundary Descriptions for Wildlife Management Areas Rule, 19.30.4, NMAC, and the Hunting and Fishing License Applications Rule, 19.31.3, NMAC, that align with big game and Turkey rule amendments for the 2009-2010 and 2010-2011 license years, as presented by the Department.

Adrian Terry: I'd like a moment please before we continue.

Patrick Block: I thank Commissioner McClintic for his motion to put it off until December because if we do something that entails a change in application fee, that's going to require noticing and opening a different rule. The application fee is set by the Commission in rule and that's in a rule that was not open today.

Adrian Terry: I've discussed with Mr. Karp and there's concern that if we take action on 1 part and not on another, then we'll have to re-open the rule at a later time, so it might be in the best interests of the Commission to defer this.

MOTION: Commissioner Salmon moved to defer until the next meeting Agenda Item No. 16, agenda title being Adoption of Amendments to the Hunting and Fishing-Manner and Method of Taking Rule, 19.31.10, NMAC, the Boundary Descriptions for Wildlife Management Areas Rule, 19.30.4, NMAC, and the Hunting and Fishing License Application Rule, 19.31.3, NMAC, and the supplemental suggested motion that's attendant to that. **Commissioner McClintic** seconded the motion.

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

AGENDA ITEM NO. 17: Adoption of Amendments to the Depredation Assistance Rule, 19.30.2, NMAC.

Presented by R.J. Kirkpatrick – The Department provided to the Commission the final proposed amendments to the Depredation Assistance Rule, 19.30.2, NMAC. Amendments incorporated into the recommendation are clarifying the depredation definition, eliminating the requirement of a landowner who faces circumstances of an immediate threat of damage to determine if the damage will exceed the value of the animals before taking action, clarifying the good cause definition, and adding the requirement that the landowner must provide written grounds for rejecting interventions that we would offer within 10 days. Improving the speed and efficiency with which a landowner can report by establishing a toll-free phone number that would be available to anyone 24 hours a day.

Joel Alderete: I'm with NM Farm and Livestock Bureau. I like the idea of the 800 number. That speeds up the process but then you slow it down again by giving 10 days to respond, then a landowner 10 days, and then 5 days to do something so now we're at 25 days.

R.J. Kirkpatrick: Those timeframes are established by statute. Any landowner that has depredation, the Department will try to respond in a timely fashion and offer and implement interventions

Joel Alderete: The exceptions about disposal, it's hard to get hold of game wardens, and I'm wondering if there's any way we can get a list of people within the local community who want these animals. That way the landowner can start calling from the list to pick up the animal.

R.J. Kirkpatrick: We'll look into the feasibility of making that possible.

Joel Alderete: I've got a problem with the nuisance game animal problem—Section C, D, Causing a Nuisance Game Animal Problem—intentionally baiting/feeding or otherwise enticing game animals. I'm concerned that's worded and how some normal ag practices sometimes entice but not on purpose.

R.J. Kirkpatrick: The Department will pay due diligence to make sure we're not assessing common regularly applied ag practices in what we purport to be negligence and those cases where agricultural common standard practices regularly apply. I don't think we'd deem that negligence but there are cases where agricultural practices or other practices create depredation situations that are unnecessary, so we're trying to clean that up.

Senator Timothy Jennings: On private property, I don't think the Department can demand by rule/regulation to give anybody access.

MOTION: Commissioner Salmon moved to adopt amendments to the Depredation Assistance Rule, 19.30.2, NMAC, that facilitate landowner reporting, clarify landowner responsibilities, improve the likelihood that carcasses of animals killed are salvaged, and improve the ability of the Department and landowners to be more effective and efficient at mitigating or resolving depredation complaints, as presented by the Department. **Commissioner Simpson** seconded the motion.

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

AGENDA ITEM NO. 18: Prospective 2009 Legislative Initiatives Update.

Presented by Luke Shelby and Patrick Block – The Department provided the Commission with an update on prospective 2009 legislative initiatives. The Department is awaiting interaction with Executive Branch regarding the legislative package as previously identified by the Department. They are: legislation regarding expanding authority on aquatic invasive species/non-game fish regulatory authority/wildlife habitat consideration/energy development decision making/Commission bonding authority/adjustments to depredation statutes/provisions for reliable conservation funding/increasing violations eligible for penalty assessment option/creation of Pecos Canyon State Park involving Game Commission properties/clarifying wildlife conservation authority in 1 location in Chapter 17.

Senator Timothy Jennings: I'd like to see a copy of the items you're going to present to the legislature.

Director Thompson: The Department and Commission have taken a more open approach this year. This is the fourth Commission meeting where we have addressed the prospect of statutory changes including receiving suggestions from the public. What you see in that list are 9 items that developed and emerged. You and other legislators will in fact see more interaction with Department and Commission regarding suggested statutory changes. Those items don't exist in detailed form. These are topic areas that have been developed and will be prepared in a form available for review.

Senator Timothy Jennings: I haven't seen the 9 items yet and I suggest trespassing. They have a responsibility to know where they are.

MOTION: Commissioner Salmon moved to direct the Department to further develop, assure appropriate review by the Commission legislative subcommittee and Governor's staff, engage in interim legislative committee hearings as pertinent, and prepare for bill introduction during the 2009 Legislative Session salient topics as identified during May, July, August, and October, 2008 Game Commission meetings. **Commissioner Simpson** seconded the motion.

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

AGENDA ITEM NO. 19: Adoption of Policy on Notification of Commission Members for Chairman/Director Concurrence Actions.

Presented by Bob Jenks – Department staff presented a suggested State Game Commission policy statement regarding assurance that any actions requiring Game Commission Chairman and Department Director concurrence, under regulations, will be communicated to all members of the Game Commission. A policy for the Commission's consideration is being offered that would effectively appoint the Director as the responsible official for insuring Commission notification within 72 hours of such action.

MOTION: Commissioner McClintic moved to approve the Game Commission Policy Statement regarding assurance that any actions conducted under regulation that involve Chairman and Director concurrence are reported on a timely basis to all members of the State Game Commission. **Commissioner Salmon** seconded the motion.

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

AGENDA ITEM NO. 20: Importation Denial Appeal for Captive Elk.

Presented by Dan Brooks – The Department denied the importation application for captive elk from the Patterson Ranch in Sisters, Oregon, on August 20, 2008 because the elk herd did not meet the requirements established in 19.35.7, NMAC, for importation into New Mexico. The Department made the denial to the Ansleys which then invokes them the ability to come before the Commission and then the Commission either upholds the denial or grant the appeal and allow for importation of elk. They have to have verifiable documentation that all animals that have been killed have been tested for CWD. The ranch did submit the test, but there were 7 that were unsuccessful, so we require all of them to be successfully submitted except for 2, and

instead there were 7. The Commission considered this action and the information provided both in writing and orally, and upheld denial.

Commissioner Simpson: Unsuccessful were 7 meaning what?

Dan Brooks: They were unsuccessful in their submission meaning they could not read the samples. The Whole Herd Testing requirement came about with some intensive public involvement around 2002. That goes back to that elk/deer cervids are susceptible especially in captivity. I had to deny. We developed a stringent rule to safeguard CWD from coming into the state. It is here but because it's here the Department still has a responsibility to keep it from spreading.

Carol Ansley: The importation request we're here to appeal involves 1 of the most respected herds in the U.S. You as our Game Commission have the power and authority to approve our appeal with the information provided.

Commissioner McClintic: Dan, does everyone that wants to import a herd, is it a very difficult thing to do? Is there something the Ansleys did that prohibits them from getting this? Is the testing procedure accurate or is inconclusive? What are the roadblocks to import elk to their ranch?

Dan Brooks: The procedure is difficult because we have created requirements to reduce the risk exposure of CWD. We have a stringent standard in that we require whole herd testing, so that means that the rancher/elk operator must test every animal that's killed either by hunter/accident/taken to slaughter. We've done that because there are a lot of unknowns about CWD and it has low prevalence. There are still states that aren't accepting animals.

Commissioner McClintic: What's their recourse?

Dan Brooks: Their recourse is to wait 6 months because that's when they'll be in compliance on June 15, 2009. What they're asking for is to bring the elk in about 6 months early. The rule doesn't allow that.

Carol Ansley: The reason for that is horn growth begins in February so you start with the velvet. So they're in velvet and then they go into rut/hard horn from August until November. Cows can't be moved from August to November because they're bred they can't be moved during that period. Calves cannot be moved from May to August because they're too young and August and September you're weaning calves. The optimum period for moving them is December-January.

Commissioner McClintic: The rule doesn't allow us to do what you want. Correct?

Dan Brooks: Correct. I cannot issue them an importation permit because it would be out of compliance with the importation rule.

Commissioner McClintic: Are you asking us to make a new rule, or change the rule so that you can do that?

Carol Ansley: I'm asking the Commission to give me a conditional importation quarantining the herd.

Commissioner McClintic: The rule doesn't allow us to do that.

Dan Brooks: As the Commission, you can overturn the Department's decision, but it will weaken our rule and then others will challenge it. This is applied to elk/deer. They're the cervids in the game parks, and other people that have Class A parks are going to want to bring in elk and want a similar consent and that's wherein the problem lies.

Carol Ansley: I think the quality of this herd has been proven with the exception of a slaughterhouse in 2004, putting down animals without the technique of saving the obex.

Commissioner Simpson: A few years back if you had CWD, it's almost impossible to disinfect that pen because CWD comes into this herd and they're positive, then there's a high potential that pen will permanently be a zone for CWD. Is that right?

Kerry Mower: That's correct as far as we know.

Commissioner Simpson: Now we've got a permanent problem with that zone that's contaminated and you can't sterilize it and use it over because it's a mechanism for spreading to other animals. We've already got a problem within NM as it is and I think we ought to stick our rules.

Carol Ansley: What we're looking at is 160 acres of quarantined area. If we did come up with a positive CWD, yes, there would never be any elk or deer allowed back in that area. That area would be double fenced and no wild animal could ever get close to it and none of our cervids would ever be allowed into it.

Adrian Terry: I have not read 19.35.7, but I recommend the Commission follow its own rules. I believe the Ansleys are asking for a form of relief that does not exist. If they want to change the rule, they can petition for a rule hearing, have it heard in December, and the Commission could take action at that time if it was so inclined.

MOTION: Commissioner Buffett moved to uphold the Department's denial of Donnie and Carol Ansley's importation application for captive elk based on the deficiency in whole herd testing requirements as per Importation Rule, 19.35.7, NMAC.

Commissioner Simpson seconded the motion.

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

AGENDA ITEM NO. 21: General Public Comments (Comments Limited to 3 Minutes).

Public Comments:

Senator Timothy Jennings: You have a problem you're going to have to address with the confidence between the Director and the members of the officers association.

