

**MINUTES**  
**NEW MEXICO GAME COMMISSION**  
 State Capitol Building  
 419 Old Santa Fe Trail – Rm. 322  
 Santa Fe, NM 87503  
 Thursday, February 21, 2008

**CONTENTS:**

Agenda Item No. 1:	Meeting Called to Order.....	1
Agenda Item No. 2:	Roll Call .....	1
Agenda Item No. 3:	Introduction of Guests .....	2
Agenda Item No. 4:	Approval of Minutes (December 12, 2007—Roswell, NM) .....	2
Agenda Item No. 5:	Approval of Agenda.....	2
Agenda Item No. 6:	Organizational Structure of Game Commission.....	2
Agenda Item No. 7:	Designate Reasonable Notice to the Public for Commission Meetings during 2008 .....	3
Agenda Item No. 8:	Revocations .....	4
Agenda Item No. 9:	Presentation of the FY '08 2 <sup>nd</sup> Quarter Depredation Report for Approval .....	5
Agenda Item No. 11:	Biennial Review of New Mexico State-listed Wildlife (19.33.6.8, NMAC).....	7
Agenda Item No. 12:	Wildlife-associated Recreation Efforts on Wildlife Management Areas, including Amendment of 19.34.3, NMAC.....	7
Agenda Item No. 13:	Protecting Important Fish and Wildlife Habitats and Populations in New Mexico during Energy Development Activities on Federal and State Lands.....	11
Agenda Item No. 24:	Identifying Most Important and Cherished Areas for Fish and Wildlife Conservation, Sportsmen, and Outdoor Enthusiasts in New Mexico .....	13
Agenda Item No. 14:	Oil and Gas Exceptions Subcommittee Report.....	15
Agenda Item No. 16:	Closed Executive Session.....	19
Agenda Item No. 18:	Proposed Change to the Manner and Method Rule 19.31.10, NMAC, Limiting the Number of Flies on a Single Line .....	19
Agenda Item No. 15:	General Public Comments (comments limited to 3 minutes).....	21
Agenda Item No. 17:	Big Game and Turkey Rule Development Process-Rule Opening.....	22
Agenda Item No. 19:	Proposed Changes to the Fisheries Rule, 19.31.4, NMAC .....	23
Agenda Item No. 20:	Approval of Quail Habitat Guidelines.....	23
Agenda Item No. 21:	Land Conservation Appropriation Update and Action as Needed.....	25
Agenda Item No. 22:	Legislative Session Update.....	25
Agenda Item No. 23:	General Public Comments (comments limited to 3 minutes).....	28
Agenda Item No. 25:	Adjourn .....	28

**Agenda Item No. 1: Meeting Called to Order.**

Meeting called to Order at 9:00 a.m.

**Agenda Item No. 2: Roll Call.**

Chairman Montoya – present  
 Vice Chairman Arvas – present  
 Commissioner Buffett – present  
 Commissioner McClintic – present  
 Commissioner Salmon – present  
 Commissioner Simpson – present  
 Commissioner Sims – present  
 QUORUM: present

**Agenda Item No. 3: Introduction of Guests.**

Introductions were made by approximately 60 members of the audience.

**Agenda Item No. 4: Approval of Minutes (December 12, 2007—Roswell, NM).**

**MOTION:** Commissioner Sims moved to approve the Minutes of the December 12, 2007 State Game Commission Meeting in Roswell as presented. Commissioner Buffett seconded the motion.

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

**Chairman Montoya:** A former Commissioner is here who has completed a term with us and I'd like to acknowledge him. I'd like to recognize the presence of Terry Riley.

**Commissioner Simpson:** Even though I replaced Commissioner Riley, I cannot replace his credentials and knowledge, and his policy and understanding of the big picture all the way down to New Mexico. I know TRCP is working on a nationwide basis and have a new representative that works both in New Mexico and Colorado, so we open all the discussions and open a transparency to make sure the Commission and the public know what the real impacts are and how to develop oil and gas but also how to protect our wildlife resources and water. It's a critical component that we deal with the issues of habitat loss and competing oil and gas. There has to be balance and I'd like to see a common sense approach. It's going to take a lot of effort for the Game Commission and other state/federal agencies to make that happen. Thank you, Terry.

**Commissioner Salmon:** I hope he continues to stay active with the Commission/Department to work on a broad range of wildlife issues.

**Commissioner Buffett:** I'd like to thank Terry. In the short overlap we had I learned a lot from you and appreciate your expertise and look forward to your continued expertise serving us in a new role.

**Commissioner McClintic:** It was a pleasure serving with you and you brought a lot to this Commission. Your balanced approach to subjects, you seem to dig into our agenda before our meetings more than anyone up here and I've started taking after you in that aspect of reading and getting involved. I thank you for your workmanship on this Commission.

**Director Thompson:** I offer on behalf of the Department staff and myself that we gained a valuable and productive acquaintance with Terry during his time on the Commission. I anticipate that that will endure.

**Chairman Montoya:** Terry represented us extremely well and in a respectful and professional way with the organizations that we belong to at the national/regional levels and made us all look good.

**Agenda Item No. 5: Approval of Agenda.**

**Director Thompson:** Item No. 10 will not be presented because the audit has not been released. Item No. 24 that involves the TRCP should follow Item No. 13, and I request that the Executive Session begin as close to 11:00 a.m. as possible. Those are the suggestions for your consideration.

**MOTION:** Commissioner Arvas moved to accept the agenda, as amended, for the February 21, 2008 Game Commission Meeting. Commissioner Sims seconded the motion.

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

**NEW BUSINESS:**

**Agenda Item No. 6: Organizational Structure of Game Commission.**

**Presented by Game Commissioners** – State Game Commission members considered nominations and elected a Chairman and Vice-Chairman for 2008 per regulations for State Game Commission action.

**Chairman Montoya:** I'd like to take the opportunity at this point to resign my position as Chairman of the Commission and then pass the gavel on to Director Thompson so that he can initiate efforts for re-organization. I'd also like to express my appreciation to my fellow Commissioners and Commissioner Riley in the audience for the respect and support you have extended to me throughout my tenure as Chairman. I appreciate your input, insight, patience, and cooperation. We've done well as a Commission. We have good relations with the Director, Department staff, and the general public. I'd also like to thank the Director and Department staff for their patience, respect, cooperation, and support in assisting me as Chairman. I'd also like to thank the audience that participates in our meetings.

**Director Thompson:** I am pleased to do this. I acknowledge that as Secretary to the Commission I can handle this brief and pleasurable task. The first aspect of this item is to take nominations to elect Chairman and Vice-Chairman.

**MOTION:** Commissioner McClintic moved to nominate Commissioner Arvas as Chairman of the New Mexico State Game Commission. Commissioner Simpson seconded the motion. Chairman Montoya moved that nominations cease and that Commissioner Arvas be elected Chairman by acclamation. Commissioner Salmon seconded the motion.

**VOTE:** Voice vote taken. All present voted in the Affirmative and accepted the nomination by acclamation. **Motion carried unanimously.**

**Chairman Arvas:** I'd like to say to outgoing Chairman Montoya, we've been together for 5 years, and I can tell you that we are very thankful to Alfredo for all the work he's done not only this past year as Chairman but all the previous years. The Commission was very fortunate to have him as Chairman and I express my personal appreciation working with him as Vice-Chairman for the past year.

**MOTION: Commissioner Simpson** moved to nominate M.H. "Dutch" Salmon as Vice-Chairman of the New Mexico State Game Commission. **Commissioner McClintic** seconded the motion. There were no other nominations.

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

**Chairman Arvas:** I'd like to say that this Commission is your Commission. I certainly invite any suggestions/recommendations you might have, the general public/staff and the Chair will always be open to listen to what you have to say. If for some reason I fail in that capacity, please remind me.

**Agenda Item No. 7: Designate Reasonable Notice to the Public for Commission Meetings during 2008.**

**Presented by Jim Karp, Esq. –** Section 19.30.3.8(A)(1), NMAC, requires the Commission to take action at its first annual meeting to continue or amend its existing practice to determine what is reasonable notice of Commission meetings under Section 10-15-1D, NMAC, of the Open Meetings Act. The Department recommended continuing the present practice as contained in Section 19.30.3.8, NMAC. The Open Meetings Act and associated regulations require the Commission at its first regular meeting to establish what will constitute notice of meetings for the ensuing year. Presently in effect is a regulation that provides that for regular meetings there will be at least 10-days notice, for special meetings at least 3-days notice, and for emergency meetings at least 24-hours notice. This notice has to be given to the newspapers, television stations, wire services and with respect to emergency meetings to the Associated Press by telephone and if possible faxed or hand-delivered to a newspaper of general circulation. The Department recommends and requests that the Commission adopt the existing notice provisions for this current year.

**Commissioner Buffett:** I'd like to point out there's a typo in the suggested motion which should read 19.30.3.8, "NMAC", not "NMSA".

**Jim Karp:** Yes, that's correct.

**MOTION: Commissioner Buffett** moved to adopt the notice provisions for State Game Commission public meetings presently contained in Section 19.30.3.8, NMAC, as reasonable notice to the public as applied to public meetings held by the State Game Commission in the year 2008. **Commissioner Montoya** seconded the motion.

**Commissioner Salmon:** When we have meetings that don't involve the whole Commission, for example next week we're going to have a meeting regarding Gila trout management in Silver City, there will be Department personnel, I'll probably be there, but it's not a Game Commission meeting *per se*, so what's the requirement for public announcement? Is that contained under this or is that something else?

**Jim Karp:** If it isn't a regular meeting of the Commission, then these notice provisions would not apply, but if you have a quorum of Commissioners at that meeting and any Commission business is going to be conducted, it would constitute a regular meeting that would have to be noticed, or a special meeting at least.

**Commissioner Salmon:** So the issue of a quorum is the deciding factor as to whether you would need to notice the public in a certain way?

**Jim Karp:** That would be the initial consideration and another consideration would be whether any business would be conducted.

**Commissioner Salmon:** I would encourage the Department that whenever we have these lesser meetings which don't involve a quorum that we be as open as possible about announcing them so that we can involve the public as much as possible.

**Chairman Arvas:** I'd also like to state that 1 of the things that have happened in the past is that whenever we do have a Commissioner in attendance at a meeting that he feels is a meeting that would be important to the Department and the Commission, that all the members of the Commission are made aware of that meeting. So what I would do if a Commissioner is having a meeting somewhere where he'll be in attendance in his official capacity as a Commissioner, he should notify the Director and have the Director notify the rest of the Commission that there is a meeting of that sort going on.

**Commissioner McClintic:** I understand what Chairman Arvas is saying but Commissioner Salmon, you didn't set up this meeting. They were having the meeting and asked you to attend, is that what this is about?

**Commissioner Salmon:** Regarding the fisheries in Silver City, yes. I didn't set up the meeting, but it was the logical thing for me to attend or will be.

**Commissioner McClintic:** So it's basically up to the people setting up the meeting and I think what Chairman Arvas is trying to say is that as long as they do invite a Commissioner any meeting that that Commissioner should respond to the rest of the Commission and tell them that he has been invited and he is attending.

**Commissioner Salmon:** I think that's a good idea and again my concern is to maximize public involvement for those who might be interested in the issue at hand.

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

**Agenda Item No. 8: Revocations.**

**Presented by Dan Brooks** – The Department presented a list of individuals that the Commission considered for revocation that met established revocation criteria from 19.31.2, NMAC.

**Chairman Arvas:** One of the concerns I've had is the amount of time and effort expended by the Department in a process that probably we're wasting more time than we should. I'd like for you to come up with a list or recommendations to the Commission at the next meeting as to how you feel we could avoid this unnecessary burden of work on the Commission to make the outfitter compliant with his insurance responsibilities. The way I understand it is that there are other states that mandate that as of January 1 every outfitter will have his insurance policy.

**Dan Brooks:** We did meet with the Council of Outfitters/Guides. January would be tough because they're being registered April 1 to March 31 to try and get them with a January registration because we're asking something unique over a 12-month period. I do think we can come up with some solutions and come back to the Commission.

**Chairman Arvas:** So, April 1 might be another possible date that you would consider that all the outfitters have all their insurance?

**Dan Brooks:** Yes.

**Commissioner Simpson:** It seems to be that these guys won't get insurance if they don't book clients? Is that what's occurring?

**Dan Brooks:** No, that's not quite right. What's happening is the outfitter industry/individual is basically a business person. So, 1 may have their insurance that expires in June and they get another in July. Others may actually get theirs in April and it expires in March; another may do January so they're not in sync with each other but they are maintaining some kind of liability insurance. Part of it is they are not providing us with the proof. The rule actually requires that and we don't know if we're not provided with the proof.

**Commissioner Simpson:** So basically you have to hound them right? Are you giving them a chance?

**Dan Brooks:** Yes, we give them notice.

**Commissioner Simpson:** How much time is this taking—how many man-hours and staff time to try and facilitate the guides to make sure they've got proof of insurance?

**Dan Brooks:** I did not estimate that but I would bet that we're doing around 280 notices annually, so we're probably doing about 1 hour each by the time the first notice is given and second notice to make sure they're in compliance—so probably 280-300 hours.

**Chairman Arvas:** I don't believe it's necessary for us to expend that amount of effort when it's their responsibility. Dan, I'd also like for you to come up with a penalty of sorts if they're not in compliance. Once the penalty is in place I don't think we'll have non-compliance to that degree.

**Dan Brooks:** For clarification, the statute does allow the Department through Commission approval to charge an administrative fee, not necessarily a penalty, to recover costs and I will pursue that.

**Chairman Arvas:** That's exactly what we want.

**Commissioner Simpson:** Would you remind everyone what that administrative, what the process is and how much the administrative fee is? Whatever time it took?

**Dan Brooks:** We'd have to look at the time and the expense and that's all that is, trying to recover our costs.

**Commissioner Simpson:** So it's a flexible scenario? Whoever is doing this their hourly wage plus whatever it takes, so there's no set fee?

**Dan Brooks:** Correct. It's unique to the amount of work that we're doing and the cost of that work.

**Commissioner Simpson:** You being the manager of this, do you get involved and deal with this?

**Dan Brooks:** Yes.

**Commissioner Simpson:** Your name and fee would go on to that too? You have not charged administrative fees in the past?

**Dan Brooks:** Correct, we have not.

**MOTION:** **Commissioner Montoya** moved to adopt the Department's and Hearing Officer's recommendations on revocation and point assessment for the attached list of 63 individuals for the period of time specified. **Commissioner Sims** seconded the motion.

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

**Agenda Item No. 9: Presentation of the FY '08 2<sup>nd</sup> Quarter Depredation Report for Approval.**

**Presented by Barbara Coulter** – The Department presented the FY '08 2<sup>nd</sup> Quarter Depredation Report for approval. The report described the depredation complaints filed and resolved with the Department in accordance with 19.30.2.11, NMAC, for the 2<sup>nd</sup> Quarter of Fiscal Year 2008. This agenda item reported the total number of depredation complaints filed and resolved within the Department in accordance with 19.30.2.11, NMAC, for the 2<sup>nd</sup> Quarter of Fiscal Year 2008. During the 2<sup>nd</sup> Quarter of FY 2008, October 1, 2007 through December 1, 2007, 77 complaints involving 14 species have been filed with the Department; 20 have been resolved and the remaining 57 complaints are unresolved at this time. Intervention methods to resolve these complaints are currently in progress. Of the 77 total complaints filed the top 5 species complaints are raccoon at 26.6%; beaver at 12.5%; elk 10.9%; antelope 9.4%; deer 9.4%. The majority of raccoon complaints were from the northwest area; beaver complaints were equally split between the northeast/northwest area; elk and antelope complaints were both from the northeast area. Deer complaints were most often from the southeast area. For the 44 complaints filed in the 2<sup>nd</sup> Quarter of FY 2007 that have reached 1 year, 38 have been resolved; yielding an 86% resolution rate. Those unresolved within 1 year involve elk, deer, and raccoon. Resolution efforts continue with all of these complaints.

**Commissioner Sims:** When you talk about the number of complaints as in antelope and there were 9 complaints total from the last quarter's complaint, do you see the same people from the last quarter to this quarter complaining?

**Barbara Coulter:** I haven't been with the depredation program long enough to track that trend. I have noticed when we've issued D-1 permits that those particularly when it comes to antelope, deer, and elk oftentimes will reoccur several years down the road. Some complaints we're good at resolving but some carry on year after year.

**Commissioner Sims:** I think we need to look at recurring complaints. If it's quarter after quarter of the same thing, then we need to look at different avenues to go about resolving those.

**Commissioner Simpson:** I would like to see a more thorough analysis. If we're going to solve these recurring complaints we need to know how long they've been going on, and more detailed reports of what the circumstances are.

**Chairman Arvas:** You might take a moment to tell us what this report does for the Department? There have always been some concerns about what happens with this report. Who does it go through and what significance is this report to the Department?

**R.J. Kirkpatrick:** There are a variety of people that have great interest in what these quarterly reports represent. Commissioners as they've adopted in rule over the years have expectations that the Department is addressing complaints as they come to our attention and applying resolutions or interventions that make sense and are successful. So, from the political side of it the Legislature has great interest every quarter in that are we doing what we're supposed to do with the money that was made available to us, and the Commission is addressing complaints in a timely and efficient manner. From the Department's perspective I look at all of them and daily juggle personnel and fiscal resources to make sure we're accomplishing resolutions or making progress with the variety of problems. Other entities as Animal Protection of New Mexico have engaged the Department in wildlife services in some creative ways to resolve beaver depredation issues so there are a lot of people that look at these and provide us with assistance as well as us evaluating whether we're doing our jobs correctly and appropriately.

**Commissioner McClintic:** In this report you say the number of complaints on elk is 13, you say number of interventions 14, number killed 0, yet we as Commissioners get letters and reports all the time of ranchers and people killing elk. So, when you put number of elk killed as 0, is that the number that the Department has killed or is that the number that have been killed on these complaints?

**R.J. Kirkpatrick:** The number of complaints is of individuals that complained of elk to the point that they filed a formal wildlife complaint with us. So, yes, there is an ever changing number of property owners that complain about elk, but if they don't formally file the complaint with the Department it doesn't register as a formal complaint that we would keep track of pursuant to statute and rule. As far as the listed number of complaints and number of animals killed as a result of that, that's just in relation to those complaints that we've taken as formal complaints.

**Commissioner McClintic:** It's confusing because you look at the number killed as 0 and yet we do know there are elk on properties being killed.

**R.J. Kirkpatrick:** Current practices within the depredation and nuisance abatement program from the Department's perspective is, rarely do we issue harvest/kill permits. Where you see or hear about elk being killed pursuant to a private property's complaint are instances in which an individual hasn't chosen to file a complaint but rather taken his statutory ability to kill those animals for property protection. If there's no complaint on record with us or they've chosen not to, we've engaged those people but there may not be a formal complaint.

**Commissioner McClintic:** I thought most of those people--the rancher by Grants--I thought they said you've had ongoing conversations with them and they've taken the matters into their own hands. That's not true?

**R.J. Kirkpatrick:** In Unit 10, Zuni Mountain, there are a variety of individuals that have engaged the Department at different levels with elk complaints, but those individuals that did harvest elk pursuant to their statutory ability did have a wildlife complaint in place but the killing of those animals wouldn't be represented in this quarterly report. The most recent complaint was when an individual killed some animals in the Luna area on the Arizona state line and I don't believe that's represented in this quarterly report. I don't believe he filed a complaint, but I'm not sure.

**Commissioner Simpson:** Would it be a burden on the Department to show for transparency for the public how many people took it on their own and their statutory authority to kill these animals and make that part of the public record?

**R.J. Kirkpatrick:** It would be work. There is a lot of detail and variety of Department staff that are involved in every single complaint. The more complex complaints, i.e., elk, ungulate complaints involve significant numbers of individuals over the course of applying resolutions to them. We can pull that information together and present as a summary. Do you want every single 1, or high-profile species? It would be a full-time task for Barbara to pull all that information in a summarized format that would be beneficial.

**Commissioner Simpson:** I personally would like big game species and we have an understanding of what magnitude and what's going on to see how effective the intervention is working. I think it's important we address that issue and identify because that affects the public's wildlife. It needs to be part of the public record.

**Director Thompson:** The primary value of this is that we have an annual performance standard that is set within the Appropriation Act regarding depredation resolution. This reporting is part of our statutory obligations as well as our attempt quarterly to report on accomplishments under that performance measure set by the legislature. I think that's important for the entire Commission to be aware of, and the other that I'll offer is that we'd be very pleased if any Commissioners have a suggestion regarding the formatting of this report that you receive quarterly. I think that might address what's been mentioned.

**Commissioner Simpson:** Let me be more specific—I want to see the individuals' names and how many animals and what animals have been killed and I think that should be part of the public record.

**Chairman Arvas:** I think what we need to do then R.J. is that when is it the most desirable time to obtain those figures? Is that during the spring/fall, when do we have the problem most representative?

**Luke Shelby:** We can provide that to you, Commissioner Simpson. Normally, when landowners exercise that option we hear about it. We do have some that are very vigilant that when they exercise that option they call us right away so that we can salvage that meat, others sometimes are not cognizant of the rule or the requirement that the Department be involved to salvage the meat but just to help move the meeting along, we can provide that on the next quarterly report. To help with Dr. Thompson's comments about the significance of the report, when we first started providing reports to the Commission, it was on a yearly basis and the Commission saw more value in being apprised of a very important task that the Department performs and required us to provide a quarterly report, and that was strictly updating the Commission so that they could become familiar with the depredation process and where we spend a lot of our time.

**Commissioner Simpson:** I want to make sure this is part of the public record. People who volunteer, is it a requirement for the landowners to notify the Department?

**Luke Shelby:** It is a requirement in rule that they notify us when they exercise that option.

**Commissioner Simpson:** If they don't what are the penalties?

**Luke Shelby:** If they don't, then they are in violation of that rule.

**Commissioner Simpson:** What are the penalties other than being in violation of the rule are there any penalties or recourse?

**Luke Shelby:** Yes, there are. I don't know off hand what those penalties are. I don't know if that's under §17-2-10, NMSA, 1978, or if it's a standard \$500 fine and 6 months petty misdemeanor-type violation, but there is a penalty for violating that rule.

**Chairman Arvas:** R.J., what I think I'll recommend we do at the next meeting if you have a quarterly report similar to this quarterly report is that we could at least have an idea of the numbers and as a Commissioner Simpson requested, of names if possible and that way we'll see if we really have a problem that we need to address as a Commission.

**R.J. Kirkpatrick:** Would you like all species or specific species?

**Chairman Arvas:** Why don't we try all species and see what happens and then we can narrow that down after we see that first report. We don't want to bog you down with so much work that we don't get done what we need to be getting done, but I do think it's an item of interest to the Commission that we at least have some idea of the numbers.

**R.J. Kirkpatrick:** Do you only want the individuals and the nature of the complaint that resulted in the killing of an animal or do you want the names and nature of the complaint for every single complaint filed or just those that ended up with a kill?

**Chairman Arvas:** Those that ended up with a kill.

**Commissioner Salmon:** Where a furbearing animal in prime fur is amongst those that have been killed as part of this depredation, is there any salvage, or what's done with those potentially valuable animals?

**R.J. Kirkpatrick:** In the rare case that that occurs with other than raccoons, typically those carcasses or furs would be sold as required by law. We have to sell them. The individual that killed the animal is not able to purchase.

**MOTION:** Commissioner Sims moved to accept the Fiscal Year 2008 2<sup>nd</sup> Quarter Depredation Report as submitted by the Department. Commissioner Montoya seconded the motion.

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

**Agenda Item No. 11: Biennial Review of New Mexico State-listed Wildlife (19.33.6.8, NMAC).**

**Presented by Renae Held** – The Department proposed opening the initial 90-day comment period on the first draft of the 2008 Biennial Review. The Biennial Review is required under the New Mexico Wildlife Conservation Act (Sections 17-2-37 through 17-2-46, NMSA, 1978), in which a review of the status of all listed wildlife is conducted to determine if each species should retain its status, be downlisted from endangered to threatened, or uplisted from threatened to endangered. This 90-day comment period is the first of 2 public comment periods on the Biennial Review, which is scheduled to be completed in October 2008. An overview of the Biennial Review that is conducted every other year to assess the status of all wildlife listed under the Wildlife Conservation Act, status may be changed from endangered to threatened which is downlisting, or threatened to endangered which is uplisting, and is based solely on biological and ecological factors. During this every 2-year process, wildlife may not be removed from nor added to this list during the Biennial Review. That's a separate process that we initiate at a different time. To give you an idea of the procedures that we have established, this is established by regulation. The intent is to conduct the review as announced at the Commission meetings, we then draft a Biennial Review that we advertise and comments are placed in a public repository. Based on those comments we then develop revised drafts of the Biennial Review and then complete it. To give you an idea of the timeline, we start with our first draft that goes out for public comment which is a 90-day minimum public comment period on that initial draft. This year we will be putting that draft out for public comment on March 12 and the period will end June 16. The next phase is to take those comments from that public comment period and develop a revised draft Biennial Review and that process is going to take place June 17 through August 20. We will then submit that revised draft to the Commission for review by August 21. After the Commission reviews that draft we start a minimum 14-day comment period and that'll be our second comment period. That will extend from August 21 to September 4. Finally, when we have all the public comments in from those 2 comment periods and the Commissioner review, we have a final meeting on October 2 and that will be the first Commission meeting after the 14-day comment period. The Commission will hear the final recommendation and they will approve any regulation with status/name changes. Through document review we will have the Biennial Review available starting March 12. The public may request a hard copy by contacting me at the Department or you can e-mail me for copies. It'll also be posted on the Department's website under Conservation Services Division tab. The repository for public comments is at the Santa Fe office and they can either be sent by mail or e-mail to me.

**Commissioner Simpson:** Would you give me and the public a refresher on how this process was started and what statutory authority have to do anything or is it just a listing or what the courses of action are other than listing the species? What is the interaction between the federal agencies or what goes on? We list them and what recourse or any requirements on the ground or is it just the list?

**Renae Held:** This is a listing according to our statute and the Biennial Review process is to look at the existing species listed—threatened and endangered—and to make any changes in uplisting and downlisting and if we want to make changes to add or delete species, that's a different process.

**Commissioner Simpson:** Once you have these species listed, what course or reaction or is there any result other than just listing?

**Renae Held:** Yes, there is a course of action. We do have action over take for species in New Mexico. We do not have any protection over habitat in New Mexico, but we do have regulations on take for species.

**Commissioner Salmon:** At what point do you detail/document the recommendations you might have for managing these listed species? I take it that that's not part of this review? When does that come in?

**Renae Held:** We do have recovery plans that go with several of these species and we have either developed those or in the process of developing recovery plans with specific actions. There is some information within the Biennial Review for recommendations on how to conserve those species, so there is limited information.

**Commissioner Buffett:** To clarify, the public should only be contacting you regarding those listed already for upgrade/downgrade, not for new listings or delistings, correct?

**Renae Held:** Correct. We only take comments on either uplisting/downlisting as a completely separate process for adding species to the list or taking species off the list. It's a longer/lengthier process about 2 years and there is public comment and outside review during that process.

**MOTION: Commissioner Salmon** moved to open the 90-day public comment period on March 12, 2008 for the first draft of the Biennial Review of the New Mexico State-listed Wildlife and to begin the 2008 Biennial Review process. **Commissioner Montoya** seconded the motion.

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

**Agenda Item No. 12: Wildlife-associated Recreation Efforts on Wildlife Management Areas, including Amendment of 19.34.3, NMAC.**

**Presented by Luke Shelby and Mike Gustin** – The Department presented a briefing on the launch of Wildlife-associated Recreation/GAIN initiatives on Wildlife Management Areas statewide for the 2008-2009 Season. In addition, the Department presented for adoption amendments to 19.34.3, NMAC, Use of Department of Game and Fish Lands, which will

provide broad requirements and prohibitions associated with the use of these wildlife management areas. At the November, 2007, Commission meeting in Raton I provided you with an update on this effort and now let me present to you what has been accomplished so far and what you can expect to see in the next 6 weeks or by April 1. Since our November Commission meeting, several public meetings have been held across New Mexico explaining the GAIN Program in presenting our suggestions for additional wildlife-associated recreational opportunities on many of our state's wildlife areas. Before you is a summary table of what we're expecting to provide at each area listed. Sometime ago all our wildlife management areas were assessed to determine what wildlife-associated recreational opportunities other than hunting/fishing/trapping could be provided that would not interfere with the purpose of those areas or violate deed restrictions. Nearly every wildlife management area was considered for some type of additional wildlife-associated recreational opportunity except for those being identified for disposal. We found that nearly all of those wildlife areas considered could provide some supplementary type of activity. Since November, public meetings were held including Chama/Albuquerque/Portales/Silver City/Cimarron and we piggy-backed on another public meeting in Las Cruces and presented our suggestions. Comments overall were supportive of the program and some of the comments centered on better coordination with our friends in State Parks and the Colin-Neblitt Wildlife area. Some other comments concerned people that hold a hunting/fishing license should not have a GAIN permit. There were other comments about suggestions for other allowable activities such as firewood cutting, not really wildlife-associated recreational opportunity, and also about restricting motor vehicle use and closures of wildlife management areas to GAIN activities during hunting seasons. Also, State Parks provided some additional comments that we've incorporated into the new motion that you'll be seeing shortly. At our November meeting in Raton, I informed the Commission that we would be bringing forth a rule that would establish specific acceptable activities in associated limitations for those activities such as dates and things like that. We determined that a better course of action is to take advantage of the current wildlife management area rule that provides a flexible system that will accomplish the same objective but not burden the Commission when we need to make minor changes, add activities, or season dates. The existing rule allows for and has allowed for the Director to designate activities on wildlife management areas including season dates and other conditions. The Director may designate properties on which wildlife-associated recreation may take place when/where access for such activities/times/places occur. Another part of the rule is that the Director has the authority to close Commission-owned/managed lands, or to otherwise restrict those wildlife management areas. Therefore, we propose to provide to the Director these activity authorization forms on letterhead specific to each wildlife management area that provides season dates and other requirements and prohibitions. In this manner, additional opportunities can be quickly provided by simply requesting the Director to authorize it and we can quickly take action on errors/omissions if those occur.

**Mike Gustin:** The amended rule is in your packets, 19.34.3, NMAC, Use of NM Department Game and Fish Lands—this amended version provides for clarification and new terms in the definition section. It clarifies that the GAIN permits correspond to our currently established license year. It establishes that holding a GAIN permit is a privilege and it can be subject to revocation and it also consolidates some of the game permit fees. Some of the activities summary in the rule establishes a suite of activities that would be considered unlawful on all of the WMA's. Examples are no driving off of established roads/no removal of rocks/plants or other resources/no disturbing nor removal of cultural resources/and only certified wheat-free hay be used on all WMA's. Under the commercial permits, it also amends the rule to establish guidelines and fees for commercial activities and limitations to those permits and activities.

**Luke Shelby:** I've provided a different motion than appears in your briefings. I assure the Commission that the changes are clarifying in nature and don't change the intent of the proposed rule amendment. We'd like to provide that to you now and get that taken care of so that we don't have to come back to the Commission in the future to clarify some of these things.

**Chairman Arvas:** I'd like for you to make a short comment on GAIN itself and how the program is developed and who is involved. We have a full-time/part-time employee now?

**Luke Shelby:** We don't have anyone yet. As it begins to blossom more there may be a need for that but we're still not quite there yet. What we determined is that many of our wildlife management areas can provide other types of opportunity/activities outside the realms of the traditional hunting/fishing/trapping that some of them do provide. We look specifically at wildlife-associated recreational opportunities such as opening some areas to hiking or riding a mountain bike that hadn't been, riding horseback in certain areas, and some of these other activities that you would get to perform on a national forest but not on a wildlife management area. We took a very close look at all these activities and ensured that they weren't impacting the wildlife at certain times, we made certain that they weren't impacting other recreational opportunities. To give you an example, we have our Sargent Wildlife area near Chama, very popular area with trophy elk-hunting area, and what we're suggesting that that area be opened for hiking/biking on established roads/trails but not during elk-hunting season. The intent of the program is to provide additional opportunities not only to hunters/anglers, but to people that typically would not buy hunting/fishing license, and let them have an opportunity to enjoy those wildlife areas.

**Commissioner McClintic:** Should we have at the end of this motion that shouldn't the Chair of the Commission be the 1 with this power other than the Director.

**Luke Shelby:** That is always within the purview of Commission to do that, but in my opinion, the beauty of this is that the Director is in our office and if we have to make a change quickly we don't have to hunt the Chairman to do that. We have functioned with this part of the rule in place for many years and it's worked very well. Part of the problem is that sometimes we have to make a quick change that we hadn't thought of before and if the Chair is not available, the Director typically is. I would prefer that that ability still rest with the Director.

**Terry Riley:** I wanted to see if there was an opportunity to expand recreational shooting on some of our wildlife areas. I know it isn't always compatible with some goals we have for wildlife management on those areas, but I know other states do have opportunities to target practice or do other things on state wildlife areas, and I didn't know whether that was clear with respect with what we do on each of our wildlife management area.

**Luke Shelby:** We did not specifically address shooting. There are a lot of activities that we haven't specifically addressed because we are lacking some of the infrastructure to address that so we feel that at this point it would be premature to open an area for a certain activity that we don't have the right ability to handle—shooting is 1. Also, for horseback riding, people would expect corrals and other facilities that we don't have in place on the ground. Now, there's a process we have to plan for those activities, there's funding available through some of our capital expenditures that we have to make some of those improvements to those areas, but that was our thinking on that. Basically, here's what we can do right now and we'll continue the effort to provide other activities as long as they are compatible with the use of that area and don't violate deed restrictions.

**Chairman Arvas:** Terry, would you like to amplify your concern as to why this is a problem?

**Terry Riley:** I think that if someone comes to the state and wonders whether they can have recreational shooting on our public wildlife areas like they perhaps experience in other states, it would be nice to have that at least in the regulations or perhaps somewhere that states recreational shooting and what type of target practice or something of this nature is allowed on those wildlife areas. I would like to see more information provided on whether those activities are actually authorized or not and if not, why not?

**Chairman Arvas:** Luke, would you explore that and if possible by the next meeting come back with a response?

**Luke Shelby:** Yes.

**Commissioner Simpson:** I notice a requirement that there's horseback riding allowed that you would require weed-free hay. One of the things that I've been told is there's very limited or no sources of weed-free hay, did you check that out before you made that a requirement?

**Mike Gustin:** Tracking with what the Forest Service is doing, and talking from our farms to NMDA and it's a growing ability—people are getting into certifying their farms as weed free. The availability I don't know.

**Luke Shelby:** I think the need to ensure that we have some measure of control over invasive weeds on the wildlife areas is important and I cannot address the perceived lack of certified weed-free hay.

**Commissioner Salmon:** At the public meeting I attended on GAIN in Silver City, they had a fee structure for access to these lands. Has that been settled and those of us with fishing/hunting/trapping licenses, are we part of that fee requirement or have we already paid our fee?

**Luke Shelby:** Before you is the draft amendment to the rule and the fees are included in that draft amendment and as Mike Gustin indicated we did consolidate and in our opinion improved some of those fees, we added a temporary 5-day permit and the 5-day permit is \$5, the annual permit is \$20, and users of the wildlife areas like hunters/anglers would have to have that wildlife management and access validation so that adds another \$4.

**Pat Block:** The language that is contained in the rule amendment is an up-to amount and so it's a maximum of \$20. What we had planned for implementation in the license year that begins April 1 is a fee of \$15 and then when that's combined with the \$4 habitat management fee and \$1 fee that a vendor will charge you for their time in issuing that license, the total would be \$20 so the numbers in the amendment before you are a maximum. The \$20 is what a person purchasing the annual permit would be paying.

**Luke Shelby:** For the 5-day it was \$3 and then the habitat stamp and the vendor fee on top of that.

**Commissioner Salmon:** Yes, I think those are the same numbers that I saw at the presentation and then the person with the hunting/fishing license would not have to buy these additional fees I take it?

**Luke Shelby:** That is not entirely correct. If a person were on a wildlife area with a hunting license and they have the license for that area, of course, there would be no GAIN permit, but outside the hunting season if they want to come back and participate on that wildlife area at some activity that is approved they would have to have the GAIN permit.

**Commissioner Simpson:** To resurrect what Commissioner McClintic said I think there need to be checks/balances so I suggest and recommend that the Chairman have authority to make these changes. If he's not around then go to the Director but I don't think there are emergencies that require drastic action and if he's out of pocket 2-3 weeks then that can be relegated to the Director but the Commission needs to be apprised and have some idea of what's going on. I'd also like to know how much money we've collected. Is there any kind of summaries or data of what we're making on this? Is there opportunity in access? It would be nice in the future that we understand what kind of monies we're receiving or how to track some of this stuff. I've heard numerous complaints and I understand the need for weed-free hay but the point is that even the Forest Service backed off

because there's no weed-free hay certified people in New Mexico and I was told verbally they backed off. If you're going to make a requirement, say it's open for trail riding, I suggest that you do some research and say especially for people coming in from out of state and in state on the website here are the sources for weed-free hay whether it's bagged at feed stores but at least give them some sources so they can go be in compliance. I've seen too many people show up at Valle Vidal and other places and they don't have any weed-free hay and they're not commercially available is all I'm trying to stress.

**Director Thompson:** I'd like to provide clarity and answer a question raised earlier. The background for this Gaining Access into Nature Program emerged from the Governor's Summit on Wildlife-Associated Recreation in 2004 and subsequently a state statute was approved that specifically identifies the Gaining Access into Nature Program. You had asked earlier about where this emerges from and that hopefully helps all the Commissioners be aware of its origin. The other thing that's important is that this is a program regarding wildlife-associated recreation and I stress that because this is a major step that the Commission is taking today in implementing that statute and gaining much more of a grip and control on the wildlife areas and protecting the resources that are there. Questions regarding the shooting program that former Commissioner Riley raised are certainly good ones and we'll examine that but shooting in and of itself is not part of the GAIN Program. Gaining Access into Nature are wildlife-associated recreational experiences, even regarding horseback riding. Horseback riding is associated with accessing a wildlife-associated recreational experience. The clarity is that this is something that's been several years in the making and this regulation is a key step in implementing that control and bringing the wildlife areas into the fold.

**Luke Shelby:** The motion before you and Commissioner Simpson's concerns about the Chair and the weed-free hay would also have to be in the form of a motion and perhaps 2 motions would make more sense.

**MOTION: Commissioner Montoya** moved to support the Department in implementing GAIN activities on the State's Wildlife Management Areas and accept the Department's recommendation to amend rule 19.34.3, NMAC, that will provide broad requirements and prohibitions associated with the use of these Wildlife Management Areas, and in Section 3.13(c) to include that after a temporary 5-day GAIN permit add a valid park permit issued for state park associated with that wildlife management area, and in Section 3.13 add a new Section L that reads that these restrictions are subject to terms and conditions imposed on state parks pursuant to agreements between the New Mexico Game Commission and Energy and Minerals, Natural Resources Department, and in Section 39 strike the word "cancellation" and insert "revocation", and in Section 3.14(b) strike the entire section and insert "a commercial permit is valid from April 1 to March 31 each year unless specified otherwise and each permit shall expire on March 31 regardless of the date it is issued, and in Section 3.14(g) strike the words "during the permit year", and in Section 3.14(j) strike the word "cancellation" and insert the word "revocation", and at the end add "operators shall be subject to the procedural provisions of Section 17-3-34, NMSA, 1978. **Commissioner Sims** seconded the motion.

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

**Commissioner Simpson:** So I can address that appropriately, where is the requirement under what section we have to amend to address the weed-free hay? How would you propose to address that to deal with that issue?

**Luke Shelby:** It's 3.13 under use of Wildlife Management Areas, letter I, third page of the amended rule.

**Commissioner Simpson:** Page 5, under Section 19.34.3.13 (I)? Luke, based on my comments and my comment knowledge unless you've got otherwise, I've been told by the Forest Service that there is practically none or no certified weed-free hay and then we're going to make it a requirement without listing because of limited resource where people can get those so they can be in compliance otherwise it's fruitless to allow horseback riding. I see that as maybe a dilemma as how we're going to go forward, and still require weed-free hay or you wait or do it at a later time and say you strike this right now until you can make sure that there's weed-free hay available, so that would be the options that I would think that we strike this until you really find and make sure that there's available sources so people can get it before you move on.

**Commissioner Sims:** We need to be very cautious in even considering striking weed-free hay. I farm hay and my hay is not a good hay to bring into these environments. We're very careful on where our hay goes and the fact is that we've got a biny weed and it's virtually uncontrollable and you cannot destroy it. We're getting into a very dangerous thing interjecting a non-native species of grass that we can't control and if we can't find commercial weed-free hay then we can't do it but we can't subject our wildlife management areas to those kinds of noxious weeds.

**Commissioner Simpson:** Based on a recommendation by Mr. Karp and maybe to side step the issue, I know there is some packaged hay that's a revegetated or halfway digested hay so it's packaged feed would be suitable to feed so horse pellets and all that I think that meets the requirements grain—as long as it's packaged and then you get out of this problem of in other words you can only say packaged feed for these horses can be used in these wildlife areas and then we side step the issue because there is some limited packages of halfway digested alfalfa that's kind of digested and then there's other pellets and other things that are available and then that would put everybody in compliance. So I would make that suggestion that you strike the words weed-free hay and only packaged or certified feed can be supplied for horses in our wildlife areas so that leaves it open and gives people an option. That's what I would recommend.

**Commissioner Sims:** Whether it's in a package or whether it's in a bale, or whether it's in the horse—

**Luke Shelby:** Perhaps it would be to our advantage to help move the meeting along that we bring this back at the next meeting to give us an opportunity to work on it. We'll work directly with Commission Simpson to draft some good language and get to a point where we can make this go.

**Chairman Arvas:** I would certainly prefer that route. Commissioner Simpson you work with Luke. Now, with concurrence from our AG attorney, we need to revisit our action regarding the Minutes.

**Commissioner McClintic:** On page 7 of the December 12, 2007 Game Commission Minutes in Roswell, Item Agenda No. 10, I was partially quoted in my reply. What was written into the record was that I replied "I can only speak for myself but as far as I'm concerned we will never have a successful wolf reintroduction", and in reality what I said was "I can only speak for myself but as far as I'm concerned we will never have successful wolf reintroduction program until all sides of this issue have reached some common ground." It's important to me that that be included in the minutes.

**MOTION: Commissioner Montoya** moved to approve the December 12, 2007 meeting Minutes as amended by Commissioner McClintic. **Commissioner Buffett** seconded the motion.

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

### **Agenda Item No. 13: Protecting Important Fish and Wildlife Habitats and Populations in New Mexico during Energy Development Activities on Federal and State Lands.**

**Presented by Rachel Jankowitz** – Many millions of acres of federal and state lands in New Mexico have been or will be leased for energy development. Studies have shown that these developments (roads, power lines, power poles, fences, well pads, etc.), and related human activities can have significant deleterious effects on fish and wildlife and their habitats if not conducted with suitable awareness and sensitivity. Department staff briefed the Game Commission on current efforts to work with BLM and the State Land Office to ensure that energy developments do not threaten fish and wildlife and how the Department is or will be monitoring fish, wildlife, and habitat impacts. The Department described how to explore prospects for review of lease sales prior to public announcement of the sale so that early determinations can be made about whether proposed lease sales and subsequent development will affect important fish and wildlife habitats.

**Chairman Arvas:** We have an oil/gas sub-committee of the Commission.

**Rachel Jankowitz:** I was not aware of that.

**Chairman Arvas:** On that committee we have Commissioner Buffett, Commissioner Sims, and Commissioner Simpson replacing Commissioner Riley. I want you to interact with them as much as possible because that's how we're going to stay on top of this issue. As you know, this is a front burner issue as far as the Game Commission is concerned.

**Terry Riley:** One of the issues that has to be stressed is that the Department has to make an effort in getting involved with the leasing stage. By the time everything is leased a lot of your capacity to do anything is very much gone particularly with respect to teeth in law in negotiating prior to the point that the BLM actually advertises these leases. There's a very short window once they are advertised and they're going to be sold unless you can stop them and the Commission and the Department are responsible for wildlife and fish and we have heard numbers such as goals for big game species. We don't have that for non-game necessarily but it is extremely critical that we realize that if all of a sudden there is a lease that might lead to 10,000-15,000-20,000 wells over a fairly large area plus all the roads and other infrastructure that are put in, it could decimate a population of big game animals. In Wyoming there's at least 1 area where the herd size has declined by 50%. In New Mexico, the hunters/anglers are going to be pretty upset with the Department and with the Commission if something wasn't done, particularly about putting strong stipulations in place prior to leasing. I'm just saying that it's extremely important to get involved in that leasing stage before they are ever offered for sale.

**Jerry King:** One thing disturbing to me when I saw the blank slide with the State Land Office in the presentation. I know for a fact that we've collaborated on 3-4 different projects, funding on wind energy, not necessarily oil/gas, but we do have a lot of collaboration with the Department. In relationship to wind energy, we did do studies with the Department. One thing I'd like to say about oil/gas, and I think Commissioner Sims can be helpful on this, you have a sister agency on this with Energy and Minerals called the OCD. The OCD can require or not require different stipulations or they cannot issue permits at all based on who leases what or where, am I correct, Commissioner Sims?

**Commissioner Sims:** That's correct.

**Jerry King:** The 1 positive thing I heard at least as far as having collaboration between OCD when they know a permit is going to go into an area you have the place within your own agency to comment to the OCD to say to the OCD that this is what is going to affect it. They're the only agency that has the authority to do that. As far as our leasing, it's statutory and those leases go out for nomination. The other thing I'd like to say is that I was not aware of your oil/gas committee and Mr. Simpson is also on 1 of our advisory committees. I think that we need to start a dialogue with you on oil/gas. One other thing that I'd like to say is that in 2004 Commissioner Lyons withdrew 109,000 acres from leasing and we looked at renewing that while everybody else was studying it. So we have taken an area and not leased it and said here is a restriction, so I want to say that we've done that and I know that we've worked with the biologist in the Clovis area and we'll continue to. If you have any questions that I can answer in

relationship to what I know about oil/gas leases or energy development on state trust lands and how they interface, I'll be glad to answer those.

**Commissioner Simpson:** Rachel, in regard to Terry's and the State Land Office's comments, OCD does have some regulatory authority for additional stipulations. How much have you coordinated or tried to coordinate or is that allowed at this stage and say here's some special areas or how are you even monitoring what's going on to coordinate with OCD?

**Rachel Jankowitz:** In addition to the rules I mentioned and the spacing regulations, OCD does process the applications for permission to drill on non-federal surface lands. We have participated in rule making, reviewed those abatement plan notices, and I think we had 1 contact from OCD regarding the desert bighorn habitat initiated on their part and referred to our southwest area office and that is the only coordination that I'm aware of.

**Commissioner Simpson:** So basically OCD has the authority to also allow infield drilling which then further impacts our habitat and our wildlife. So is there a need and do you have staff and that's maybe why the direction of your question goes to the Commission is what is your priority when we have impacts on large areas of New Mexico where BLM is leasing. Does the habitat specialist and you and whatever have the capacity to interface with BLM and State Land Office and OCD?

**Rachel Jankowitz:** I believe that I would agree with you that such coordination would be valuable and useful toward our goal of protecting habitat and populations. A mechanism does not exist for that coordination and I don't believe it can be initiated at the habitat specialist level but I think it would be something that could and would be valuable to develop.

**Commissioner Salmon:** As a general comment, amongst the conservation groups traditionally we have been concerned with mountainous areas, places with pine trees and running streams and so forth and grasslands have tended to be neglected and developed without much opposition but that is changing and in the last few years in my part of the state some conservation groups have sprung up in particular to try to protect places like the Nutt grasslands which have not as yet been developed so this is a growing concern to the public to protect at least some portion of certain grasslands in their natural state. I'm always interested to hear from Mr. King that the State Land Commissioner had exempted 109,000 acres and so this is something we could work for as a Commission and the Department to save some of these pristine grasslands.

**Commissioner Buffett:** I first wanted to clarify because the State Land Office controls over 10% of the state, is there collaboration on oil/gas issues specifically because your presentation said no there is not, but I wasn't sure from the audience as to whether there was an assertion that yes there is collaboration on oil/gas issues?

**Jerry King:** Maybe we don't have a pure process that we say we start collaborating because we don't but I know Mike {Gustin} is here and about 3-4 years ago we had a problem on Jackson Wildlife Area where Excell wanted to come in and build a pad and nothing has ever been drilled and we worked it out. We've done things on a case-by-case basis as they've come up when Mr. Jenks was with us. Usually it's Mike/Luke from the Department calls Deputy Commissioner Garcia or the Commissioner and we do collaborate but as far as a full collaboration no, but I know that we would be more than glad to start any dialog that we need to.

**Commissioner Buffett:** I'd like to find ways for more collaboration with the State Land Office on oil/gas issues. Rachel, it's too bad we did not get the FTE {full-time employee} position for oil/gas in our budget, but short of that what can you recommend to have more communication and more coordination with OCD and the other agencies on oil/gas issues and habitat?

**Rachel Jankowitz:** Can I get back to you on that?

**Commissioner Buffett:** Yes, that's fine. Can you get me that answer in 2 weeks?

**Chairman Arvas:** Rachel, you'll be working with the sub-committee a lot more now.

**Commissioner Sims:** I'm going to commend the State Land Office. They've taken action on their own to be pro-active in a lot of areas that benefit wildlife in New Mexico. As far as communicating with the State Land Office, I personally have never had their door closed to me and it sounds like maybe that collaboration is because we're not pre-emptive in going and asking them.

**Commissioner Simpson:** As everyone has stated and Terry Riley as a former Game Commissioner in his current position with TRCP, if you don't get ahead of the game and look at the leases on a quarterly basis and determine what wildlife has been impacted which I believe the Department does not play that game, is that true, Rachel?

**Rachel Jankowitz:** That's correct, we currently do not do that.

**Commissioner Simpson:** That is an example of how the Department can do more pro-actively. In other words after they lease it it's almost gone, OCD has been unwilling in the past to put additional stipulations unless it is in the regulations so I suggest that as a sub-committee of the Commission that we get together and iron out and identify for the public and the Commission some avenues to address some of these issues and make everyone understand that we're going to work on this. Get hold of the State Land Office and BLM and come back and evaluate this and saying here are the weaknesses/strengths and what do we have with our current budget/staff and try to do something pro-active instead of sitting around and letting it deteriorate.

**Chairman Arvas:** Director Thompson, would you like to make a comment relative to Commissioner Simpson's comments?

**Director Thompson:** I think that statement certainly has merit and there are additional things that can be done. We have been working in a number of ways. That's why Rachel is giving this presentation that's emerged in the past several months because the Commission has requested more attention be given to this topic and perhaps to help Rachel in part answer the question she needed to defer on. We have not stepped away from attempting to put positions in place particularly to work with BLM. That is

still underway and I think that may be mentioned in later presentations. These are important things and the Commission has been giving direction. There is a sub-committee that has been formed and I think we clearly understand that direction and identifying some of those mechanisms is a part but not the total of that work.

**Matt Wunder:** I'd like to comment in response to Commissioner Buffet's question about developing the relationships and, I point out that for essentially the last 5-6 months, the habitat section of the Conservation Services Division has been without an assistant chief and that position would be a focal point in developing and maintaining those sorts of communications with these outside agencies. We are in the terminal phases of identifying and selecting a candidate to fill that position, so I would anticipate within a month to have a person in that position that would be able to provide that direction leadership. I commend Rachel for her work over the last 5 months since I've been in the Division. She has carried the load in terms of the energy development issues and I'd say beyond the requirements of her position because we've not had an assistant chief in that position. We are in the process of remedying that particular situation.

**Chairman Arvas:** Rachel, I think after this morning's comments you can appreciate the position the Commission has and we'll be looking forward hopefully at every meeting to an update on oil/gas if possible and try to keep the Commission and sub-committee active as far as this issue.

**Discussion item only.**

**Agenda Item No. 24: Identifying Most Important and Cherished Areas for Fish and Wildlife Conservation, Sportsmen, and Outdoor Enthusiasts in New Mexico.**

**Presented by Steve Belinda and Ross Tuckwiller/Theodore Roosevelt Conservation Partnership (TRCP)** – The pace of energy development is accelerating in the Rocky Mountains, with New Mexico receiving substantial landscape effects. Interests of the conservation and sporting community are not well represented in energy decision processes. TRCP representatives described how to work with assistance from the Department of Game and Fish and the conservation/sporting community in New Mexico to identify the most important areas for fish and wildlife conservation and those which are most cherished by sportsmen and outdoor enthusiasts. This effort included visioning of what New Mexico should look like for fish/wildlife/sporting interests in the next 30 years to assist in energy planning and allow for development to take place in context with natural resources. Examples were illustrated of how using the Comprehensive Wildlife Conservation Strategy for New Mexico, current habitat and resource maps, and GIS data analysis identified and mapped important areas of New Mexico from sportsmen's perspective.

**Steve Belinda:** It was extremely clear to me that the needs of hunters and anglers are not well represented. At TRCP, we were talking about ways that we could express our value as sportsmen so that we could prevent some of the conflicts ahead of time and be pro-active. It led to 1 of our initiative managers in Montana who handles the oil/gas situation for us went to the Montana Fish, Wildlife and Parks and said can we work together on this to identify areas that recreation particularly hunting/fishing is extremely valuable. It will allow us to pro-actively manage ahead of the curve as we heard earlier and make sure that we maintain hunting/fishing/wildlife/outdoor recreation values in New Mexico if adopted here. We have just received funding to do this in Wyoming and we are presenting this to the Commissioners in both Utah and Colorado because the Rocky Mountains are where a lot of the energy focus is going to be. We present this to the Commission for your consideration. If there's a partnership to be had we can provide boots on the ground, we can provide the coordination and coalition building that some of us are involved in and we would seek assistance with some of the technical aspects that we don't have the ability particularly the mapping digitizing and future management that this can help us out with.

**Ross Tuckwiller:** Over the next year I'm going to be working as a field representative in New Mexico engaging sportsmen on the issue of energy development and making sure their voices are heard throughout the process. I offer my services to the Commission and the Department as well in making sure that their voices are heard throughout this process.

**Chairman Arvas:** How do we incorporate your skills and talents with the Department?

**Ross Tuckwiller:** The first thing we would need is a commitment to produce some of the maps and provide the base layers and then the ability to speak with probably the regional Department staff as we start to focus on certain areas and then we would build the coalition beyond that. I know Commission Simpson is part of a coalition that TRCP/TU/NWF has that will be reaching out to local rod and gun clubs over the next year that we can incorporate this process into. So, we would be asking for the ability to have some maps and some expertise for the project and we could outline that further if need be as to what exactly that would entail.

**Chairman Arvas:** Director Thompson, how do you foresee developing this relationship to the next step?

**Director Thompson:** I don't see any difficulty at all given that for some time we've stressed something called conservation and management in context. This is yet another contextual view of things so until we identify that there's substantive costs, everything that has been described is something that I think we can do. We can incorporate through connection and communication with Department staff and identification of specific electronic data and prospectively maps.

**Commissioner Buffett:** I'd like to ask if you would consider in addition to working with the hunting and gun clubs would you be open to having some conservation groups provide their input as to where they believe the high value habitat areas are?

**Steve Belinda:** We're not looking to exclude anyone. What we're trying to do is make sure that something that's missing is provided to those who have to make decisions on oil/gas. This effort could be used for all sorts of development even for future pro-active management from the Department particularly as maintaining access for things that are hit with drought/wild fire/other things that could help the Department take care of their constituency which is the sportsmen.

**Commissioner Simpson:** Mr. Belinda, the Western Governors Association passed a resolution and maybe the Director can add on to this after my question, but could you reiterate for the public and the Commission what wildlife corridors and other aspects and how other states are working trying to address this issue and how this map may tie in and what the different state agencies are doing?

**Steve Belinda:** The resolution in process that Commissioner Simpson is referring to is the identification and mapping of crucial movement areas for mostly big game species so that you can maintain those migration and movement corridors so that the animals can get between seasonal habitat requirements. What this could bring into is the use of animals on the ground either consumptive or non-consumptive use because we at TRCP and most of the sportsmen community feel that it's not good enough to maintain animals out there, we have to be able to use them. Sportsmen across the country want to make sure the opportunities to hunt/fish are kept at the same level or enhanced particularly in times of declining hunter/angler numbers. We're not going to recruit folks if we don't have quality places to hunt/fish. This project could easily be compatible with that project and also with other non-wildlife use projects that are starting up. We're going to have to produce energy in New Mexico. Wyoming and the other Rocky Mountain states are going to lead the way, so we don't want to lose our heritage and culture particularly from the things we all love about these states in the process.

**Commissioner Simpson:** Could you explain the President's Executive Order that directs BLM to work with the game and fish agencies, the sportsmen's agencies, and other NGO's. This seems like that would be a legitimate criteria to make sure there's evaluation and something is missing?

**Steve Belinda:** The executive order that you're referring to is an order that directs the federal agencies to work with the NGO's and states in facilitation of hunting for the projects and activities that take place on federal lands, either maintaining access, enhancing opportunities to hunt and fish to a lesser extent, but it's aimed at hunting. I think this would be part of that and I think we could approach the federal land management agencies in a way that shows that this is in cooperation with that order. They're working on a couple of policy and technical papers now that will be presented at a White House conference on the executive order this fall. I don't see why we couldn't in the Rocky Mountain states, New Mexico in particular, push to have something like this included in that effort.

**Commissioner Salmon:** We tend to think of these public lands for their recreational and aesthetic values, but the recreation that attends these lands is very important to the local communities economically. If these lands are ruined for hunting/fishing/hiking/camping it's a great economic loss as well, so we're not only protecting aesthetics but protecting local economies at the same time.

**Steve Belinda:** Along those lines, we're actually in discussions with some of the livestock owners/permittees/ranchers in Wyoming. They're interested in doing something similar to this from their perspective because they do have sensitive pastures and lands that they wouldn't want to see impacted, particularly their lambing/calving pastures that in some parts are getting hit pretty hard.

**Chairman Arvas:** I think you've heard convincingly that we're interested in what you have to offer, you just have to show us how you want to do it.

**Terry Riley:** One of the most important things about this process and the reason we got into it was that when we have started into the process of protesting leases when they do involve important fish and wildlife habitat, but when we went to BLM and talked to them about this they often said well we considered wildlife and fish because we consulted with the state agency. Yet when we went into the details, a lot of the state fish and wildlife agency consultation didn't involve protecting important fish and wildlife habitats. BLM offices have told us that you have to come up with some new information, something that we didn't consider, and in most cases they have never mentioned hunting/fishing in their environmental assessments when they look at the impacts of a proposed action such as oil/gas development on the resources that are there and the human use of those resources, so it's extremely important to get to the point that even the state agency understands where those important areas are. Secondly, I'd like to say Ross is going to be here to work on issues in New Mexico and begin to pull this stuff together under Steve's leadership. I'd like at least Ross to work with Commissioner Buffett and the rest of the Commissioners who are on that sub-committee and hopefully they can create a dialog so that they understand what he's doing and with the Director and perhaps his appointee.

**Discussion item only.**

**Agenda Item No. 14: Oil and Gas Exceptions Subcommittee Report.**

**Presented by Bob Jenks** – The Oil and Gas Exceptions Subcommittee was established at the December 12, 2007 Game Commission Meeting in Roswell. The Subcommittee is charged with reviewing and determining the consequences on wildlife and habitat resulting from the approval by the Bureau of Land Management (BLM) of exceptions to resource protection stipulations as provided for in BLM resource management planning documents. Subcommittee discussions were summarized and initial recommendations were presented. The sub-committee is a consequence of what I'd perhaps term an escalating concern regarding the practice of BLM using exceptions to what is normally termed timing restrictions in designated areas. The Commission, because of that escalating concern, established this sub-committee during its last meeting in Roswell in December. As it was composed, the Committee effectively wanted to review and evaluate the consequences to wildlife and habitat from the BLM practice of allowing exceptions. This committee focused on the Farmington Field Office for this, at least initially. When you go through the documentation as well as when you converse with a variety of folks, you hear a variety of terms being used. To bring about a common understanding for the Commission as well as those in the Department and audience that are involved and may potentially be engaged in this issue, I illustrate a couple of terms that have been used interchangeably but perhaps need to be recognized for their own discreet purpose. A stipulation as used in BLM parlance is a requirement that's included in a lease. It's something that ultimately is a contractual obligation between the grantor/grantee and BLM lessee. Timing limitations are seasonal restrictions as used by BLM is what is in question here and that is a consideration that's given to a particular geographic area that may limit uses/activities within that particular area as relates to fluid minerals leasing. Also, for the purpose of this sub-committee's efforts an exception is an approved temporary deviation to a timing limitation or seasonal restriction. Specifically designated areas/SDA's are what those geographic areas are termed broadly. Also to bring about a common understanding for Commissioners that had not or have not participated in the discussions associated with the sub-committee's work, I provide background regarding how this has evolved, where we are, and what has brought us to the point of where exceptions are practiced by BLM more than likely was established or perhaps Executive Order 13-212 which was approved in May 2001 which effectively provides the catalyst for BLM to move forward. In effect, what that Presidential executive order requires is for the federal agencies, in this case BLM, to move as expeditiously as possible to encourage and allow for domestic energy production on public lands. BLM-Farmington Field Office went through a process starting in 2001-2002 and ultimately in 2003, of revising their Resource Management Plan and as a consequence, developed a process in that Resource Management Plan wherein they could first identify SDA's as well as allow for exceptions in those 11 SDA's as identified by BLM-Farmington Field Office. Subsequent to issuance of the revised or finalized RMP in 2003, BLM in October 2003 established an Exceptions Criteria Committee. Effectively that committee was charged with identifying criteria by which they could evaluate applications for exceptions. The committee was comprised of industry representatives, public land user interests, Department of Game and Fish, as well as BLM representatives. As a consequence of the efforts of that committee, and I have to note that it was more of a consensus driven process wherein the outcome or the criteria that were developed reflects the participation or input from all those that were involved in that committee. The procedures provide an application process by oil/gas companies to request an exception. It defines those kinds of activities that would be covered by exceptions as well as identifies those activities that would be exempted or excluded from requiring an exception, such as routine operation and maintenance activities on existing leases. The process also identified various specific qualitative/quantitative criteria by which they could evaluate the applications. Those include animal density within the respective area or particular area wherein an exception is requested, severity of the winter particularly snow depth in that geographic area, the length of the proposed action, the condition of surrounding habitat and its general suitability for supporting wildlife under the existing weather conditions as well as amount of existing disturbance within the existing area. Again, some of these are qualitative/quantitative, but ultimately the procedures also require that BLM process a request for these exceptions within 24-72 hours. That's important to note as relates potential cooperation and collaboration with others. I mention the escalating interests concerning the issue of exceptions and the Department had recognized that there were some issues and concerns probably mid-late 2006 which ultimately culminated in a process wherein we engaged BLM-Farmington Field Office in a dialog expressing specific concerns regarding their practice of allowing for exceptions. Subsequent to that meeting with BLM representatives we sent a letter to them outlining those concerns that include better documentation of requests that they received as well as the considerations on how they were ultimately approved. Documentation is clearly limited related to that. We asked that they increase monitoring and enforcement, that they look at and revise as appropriate the quantitative criteria they used for allowing exceptions, and we specifically asked that we have an increased involvement or role in that process. As a side note, in August 2007 the Department for a variety of reasons developed the Oil and Gas Development Guidelines which has served as a basis for ongoing discussions. Ultimately, where are we in terms of the sub-committee? Sub-committee Chair Buffett I am sure will want to add to this, but what we took away from the committee's meeting which was held in mid-December 2007 included the need to engage BLM. We did this by corresponding with the BLM's State Director asking that we be involved. BLM Director responded to our request and effectively acknowledged that there is an opportunity for us to work with them and identified ways in which we may do so including the identification and designation of individuals that will serve as a point of contact/liaison on the BLM side. We corresponded in kind and identified Department staff that will serve as a contact point/liaison with the BLM. Ultimately, the

question is what are the next steps, where shall we go from here? One of the things we've been working on is engaging those individuals both on the Department side as well as on the BLM side, to be actively involved in each step of the exception process. As well, we've been actively engaged with BLM trying to identify how we may allocate full-time human resources to this. Director Thompson indicated that we have been communicating with them and what we're hoping to do is establish a cooperative relationship wherein there are shared costs with BLM and ultimately designating 1-2 individuals that will serve in a role of BLM energy development liaison on a full-time basis. We also envision through these designated contacts a process where we'll continue to review and analyze timing restrictions to determine their effectiveness. I know the sub-committee is quite interested in that but up to this point we haven't been able to compile that information. Also, it's important that as we identify opportunities to improve on the application of exceptions to those restrictions, we intend to be an advocate for revisions as may be warranted. Then ultimately we need to look at suggestions and recommendations that the committee has made as well as former Commissioner Riley that the Department be engaged in another step of the leasing process and that is in the pre-leasing stage of BLM's oil/gas development leasing process.

**Commissioner Buffett:** My recollection from the phone call before the holidays was to prepare a letter to BLM which happened and also the Department would make recommendations about what staffing level or what staff person's job description could be reworked to be in charge of monitoring these things. The folks mentioned in the letter of February 14, are they the ones identified by the Department or has that not happened yet?

**Bob Jenks:** Yes, the 4 individuals identified in the letter in addition to Ms. Jankowitz are those that we've requested that BLM coordinate and cooperate with.

**Commissioner Buffett:** So could the sub-committee get the job descriptions of those folks so that we have an idea of the burden they're already carrying and how this is going to add to their job description.

**Bob Jenks:** We'd be happy to share information regarding the range of responsibilities that they currently have. I will note in the most general terms in each respective area in the northwest, 1 of the individuals is a habitat specialist. There's a sergeant in the Farmington area, Officer McKim; in the Southeast Area, Mr. Farmer, is the habitat specialist; and Mr. Novosak is the game manager; so, to a certain extent I suspect you are all familiar with the range of responsibilities of individuals who hold those positions. It's also important to note this is an important step but it may not be the end step. With the support of and we fully expect to receive it, BLM will be able to identify folks that will be able to focus full time on this.

**Commissioner Buffett:** Since the January 10 letter has there been any information flowing to the Department about exceptions that BLM is considering?

**Bob Jenks:** No, and I don't anticipate that to have started until we've identified the contacts for the respective agencies which just occurred in the last week or so. Subsequent to that, however, in the intervening period, the last week, I don't know if that has yet occurred.

**Commissioner Buffett:** So, since we did send them the contacts on February 14 we still haven't gotten any indication as to information flowing to us from BLM on exceptions?

**Bob Jenks:** No, not yet.

**Commissioner Buffett:** Do we have any sense as to whether exceptions are happening in that period that we're not being informed about?

**Bob Jenks:** I do not know but I surmise based on what the history has been, that it's an ongoing process.

**Commissioner Buffett:** At our December call we talked about reviewing and analyzing the exemptions that have been issued that the Department would do as an internal survey about the magnitude and real habitat impacts of a sampling of those exceptions and will we be getting the report on that at the April meeting?

**Bob Jenks:** Certainly as those data are available we'll present those to you. As you realize, we are just now ramping up human resource capacity to deal with that question.

**Commissioner Simpson:** It would seem prudent that you ask BLM to give you the data so that we don't have to wait another 2-3 months to gather it up. I know Forest Guardians did a Freedom of Information Act and finally got the data and she's asking for additional data. Somebody in this pecking order of things and it's been going on since November/December would request the data and start analyzing it. You've known about some issues for over a year and the Department is basically saying we're just going along and allocating resources. All I'm saying is I'd like to expedite and get after and evaluate this situation because it's gone on for a long time. We need to get the data, we need to analyze what the impacts are but even though drilling isn't allowed everyday operations and maintenance trucks are going in. I witnessed that in 2004-2005 in the Rosa area. So there are cumulative impacts in the number of wells they've allowed to put in there and the industrial disturbance is almost like why do we even have restrictions when you're allowing everyday activity 24-hours a day depending on road conditions yet we're only worried about well you can drill, you can't drill during these closure times then BLM is giving them right/left. There needs to be some serious impacts if these are special areas that have a heavy influence controlling the number of wildlife or making sure that they survive. That's why we need to seriously sit down and allocate some resources because that's good trophy areas of elk/deer/antelope. Wildlife is our responsibility and the management of it and making sure BLM is accordingly responding so that's the disconnect that I see that I think we need to solve both as a sub-committee and the Department needs to come up and

reassess the staff and allocate some time because it's not only in the northwest part of the state but it's going to be everywhere. We need to seriously look at the impacts because we're going to have it all leased up and say well where did we go and where's what's left. We need to reassess what's a priority within the Department.

**Director Thompson:** We've primarily focused our efforts on what I believe the sub-committee asked us to do and that was to be forward looking. We have demonstrated a number of accomplishments. The other things that have been requested have been part of the discussion but we simply haven't gotten to all of that yet but we will. I hope we've made a good translation of what the sub-committee was looking for and we did put our efforts specifically on working with BLM and setting something in place that we can then begin working, but we haven't devoted effort thus far to assigning a monitoring of a past effort.

**Commissioner Buffett:** I'd like to express that we do need more rapid response on these issues. The letter from BLM Director was written January 10 saying we can't do anything until we have a counterpoint in your Department, and it took a month for us to send a letter responding here are the contacts in our Department. It seems like that could have been done at the end of the week after receiving the letter from Linda Rundell.

**Bob Jenks:** I'm not sure that's quite correct. I believe the original correspondence to BLM went out in early January and we received a response from the BLM-State Director in early February and then responded to the BLM-State Director within a week or so.

**Commissioner Buffett:** This is right in the middle of the closure season and I know the legislature was going and I know people had other concerns, but it seems like a phone could have been picked up and said what do we need to do to expedite this instead of cordial back/forth.

**Commissioner Montoya:** I agree with the comments in regard to the urgency with this and how we need to see if we can mobilize the resources that are necessary. These things are happening so rapidly that it deserves our full attention. The series of presentations that we've had regarding oil/gas seem to indicate that there is some urgency to this. In regard to the Presidential Executive Order that you mentioned where federal agencies were asked to work as expeditiously as possible to approve sites but there was another executive order mentioned that directed federal agencies to work with agencies like ourselves that work with wildlife. They seemed to counter each other, 1 seems to say work expeditiously and get this done and the other seems to say consult with game and fish agencies in regard to wildlife.

**Commissioner Simpson:** Presidential Executive Order 13-221 says BLM is responsible for oil/gas development and they're to work directly to resolve conflicting issues and make sure that we've got hunting/fishing. That was 1 of the original letters before I became Commissioner and this is why we need to do this and this is why the Department needs to get involved. It says BLM will work with game and fish and hunting agencies and other conservation organization—end of story—to resolve these conflicts.

**Commissioner Montoya:** My last comment was that I'd like the committee to consider working on issues beyond exceptions. There's a pattern more recently and 2-3 years previous requesting that sites be approved through BLM and others, sites that won't be able to be developed for years into the future, but I think because of the political possibilities or the political climate changing they are being approved in anticipation of this political climate change and I'm not sure there's a deadline by which once you get a site approved that you have to be doing work on it or if these were blanket approved for work into the future which might take 3-5 years. I'd like to know more about that issue as well as the exceptions.

**Chairman Arvas:** Bob, would you be able to provide us in the near future with a summary of exactly where we're at and what our next steps will be in this process?

**Bob Jenks:** Yes.

**Terry Riley:** A lot of these exceptions are negotiated with BLM and also with the energy industry in the room. That's unacceptable because what happens is the energy industry carries so much clout during those negotiations that the Department might say we need a protective stipulation from December through January and then industry says we can't do that. That's just not acceptable so then they take away the opportunity to negotiate this with BLM because they stand in the way of that negotiation. I recommend in the future that when BLM negotiates protective stipulations with the Department that they don't have anybody else in the room unless it's something that's important--another agency or something but not somebody who's going to benefit and has the capacity to overrule in some cases the protective stipulations so that it's so modified it doesn't have that possible protection that you need. The other thing is that the way this was originally developed was when an exception was desired, the industry had to come forward with a description of what that exception is and then provide the proof that it wouldn't have an impact on the wildlife to be protected through the specific stipulation and now the burden of proof is going in reverse. It's up to BLM and the Department to prove that their proposal is not somehow going to affect fish and wildlife and I think that's got to go back the other way. The burden of proof should be on the industry to prove that their proposal to go beyond what a stipulation requires or circumvent that stipulation they can show that they're not going to have an impact on the specific fish and wildlife that was protected. It's amazing how these stipulations get so watered down. It might take them an extra couple of years to get them done but they get them and by then your wildlife populations have been decimated and because there is so much activity and so many wells and so many roads and some of these involve thousands and thousands of miles of roads which then increase the traffic. I think it's critical that the Department work hard to make these stipulations so that they protect the wildlife.

**Chairman Arvas:** From your point of view then, we're not on top of things?

**Terry Riley:** I think that's true probably. We don't even know how far we can go. There aren't any teeth in the laws that allow the Department or the Commission to move forward and stop/control things. I think that if an industry wants an exception, they can push pretty hard to get it and unless somebody is watching those closely, including the Department, nobody is there to stop it. So, yes, I think we still need some work and a lot of the stuff that has been requested by Commissioners to try and get the Department staff more engaged and find out how we can come up with the staff time to actually do this is exactly where we need to go and working some of the NGO's and other individual citizens that are concerned about this. I don't think anybody here is trying to say that we want to stop oil/gas development. It is fact that we've got to have a better understanding of what oil/gas development and the infrastructure that goes into place and all the activity around that, what impact it has on fish and wildlife and where do we go to make sure that we can ameliorate those impacts to a point that we're not significantly affecting our fish and wildlife populations and the use of those populations.

**Chairman Arvas:** We're going to be looking to your group to keep us on the straight and narrow and we'll try to do the best we can with what we have.

**Nicole Rosamarino:** I'm pleased that I don't have to convince the Commission that oil/gas development is perhaps the foremost threat against our state's wildlife. I would like to see the Commission and the Department take a strong stance publicly *vis-à-vis* the BLM in terms of these exceptions. I've read the correspondence between the Department and BLM from 2007 and again in 2008 and I don't believe that they're willing to change on wildlife exceptions because they're not even willing to admit that there's a problem. Linda Rundell, the State Director, has publicly stated that there is no problem. In BLM's last letter to the Department dated February 4, BLM charges the Department with not providing specifics in terms of why the Department is concerned about wildlife exceptions, but we've had a report publicly available since December on the internet. BLM has seen it and we've chronicled dozens of specific examples of how wildlife exceptions are wrong for New Mexico's wildlife and how they show BLM is simply not meeting its promise to the public that it made in the Farmington Resource Management Plan to provide 350,000 acres of SDA's with protections for wildlife through these timing restrictions. The evidence is clear that BLM is aware of it but they're continuing to deny. One of the arguments they've used publicly is that the activities that they are excepting are low impact—drilling a well, constructing a pipeline, constructing roads are by no one's imaginations low impact. These are very impacting activities going on during crucial winter and breeding months when pronghorn/elk/mule deer are struggling to survive, so the least that they can do is enforce these wildlife exceptions. They've admitted the horrific habitat conditions in the Farmington Field Office. In 1 area that set aside that's considered a high priority area--the Rosa—there is on average a well every 50 acres and of the 11 SDA's we've been talking about, 4 of them have those astronomically high well densities. We cannot expect these ungulates to survive in this landscape that is littered with well pads/pipelines/roads. Publicly the Department and Commission should ask BLM to stop granting these exceptions. Commissioner Montoya was right in that there is a break-neck pace going on here. When the oil/gas industry has a drill rig they want to use it immediately. Well, it's not BLM's/Department's obligation to deliver these new wells to do more construction in 1-3 days. The responsibility of the folks here is to protect our wildlife and as we know 1 of the foremost threats is oil/gas so slow down that pace. Ms. Jankowitz was very correct there are problems in terms of regulatory authority and I request that the sub-committee look broadly. I request you tell BLM to stop granting them. I think it's important for the committee to look at all of the places that oil/gas is doing harm both spatially and in terms of timing during the season and what steps we can take to protect wildlife populations from that harm, so do an exhaustive review of your regulatory authority and where you need more authority get it or try and get it. We've been taking on BLM's leasing program since 2003 and we've gotten to the point where BLM-New Mexico is openly dismissive of our protests that are based sometimes on their own data and often GIS analysis and so the Department would publicly get involved in BLM leasing. In addition, the State Land Office is leasing as much or more acreage in some years as BLM, so every month sometimes they put up 10,000 or more acres for oil/gas development. What I've also heard today is that the Department needs to get involved leasing, hunters need to get involved in leasing, what we really need since we're dealing with a federal agency is for this agency to abide by federal environmental law which is the National Environmental Policy Act. BLM-New Mexico is not as a rule doing environmental analysis or environmental impact assessments on the leasing decisions but these are crucial decisions so we need hunters/landowners/scientists/Department/public to more broadly have a voice. Push BLM publicly on opening up the leasing decisions to this analysis before they put these valuable wildlife habitats literally on the chopping block.

**Chairman Arvas:** Well, Bob, publicly involved—did you hear that statement over and over again? Do we have a program in place to do that?

**Bob Jenks:** Depends exactly on how you wish to define that, but to be an advocate in terms of policy change, we probably need that direction.

**Chairman Arvas:** Then I would implore the Chair of the sub-committee to start thinking public involvement.

**Commissioner Buffett:** I want to first convey to all staff of the Department that at least, on behalf of this Commission, that they have our full support to be pro-active, aggressive, communicative directly to us as to how we can best get a handle on this to let all staff know that this is a priority and that we have your back and please tell us what you need in more capacity for us as a Department. I would also like the Department to, perhaps our attorney can compile a recommendation as to where do we currently have regulatory authority and where we don't have authority how do we get it? For example, do we need to make the

Department's oil/gas guidelines binding and how do we do that? What statutes need to be changed? How do we have formal standing in terms of OCD/BLM/State Land Office in these leasing arrangements?

**Commissioner Simpson:** Nicole had some very good points. In my prior time before the Commission I said you need to identify the statutes and rules to make this necessary because guidelines don't do a thing but sit on the shelf. We've had numerous sets of guidelines over the years and it hasn't done a thing. The Department basically I thought says leave their hands off and let them do whatever they want to and that's quite apparent from all our previous past history. Other game commissions from Montana and others is a good example that they're taking pro-active actions and getting serious and working with sportsmen to address these issues instead of saying I'm a bureaucracy and I can't do anything and drag their feet. This is a very high priority, tremendous lands for which fish and wildlife are being destroyed to expedite energy production. In my other working job I've said point blank, you can have energy production but you need to make them responsible. They've had numerous documents and BLM has numerous documents, best available technology, and you name it, they can do it right but when you look out on the ground nobody requires them and in New Mexico the Department is not making sure that we have wildlife and making sure that the federal agencies provide the habitat or limit the energy production. In these wildlife areas you could have had directional drilling. You could have done a number of things to keep people out of there going on a daily basis by having remote sensing or piping fluids out of there instead of going in and trucking them out and basically eliminating the density. But all along none of those requirements were put on these special areas. If you look at the aerial photographs over time it shows what's been going on and our neglect to consider what's going on or even putting up the Rosa area and saying we're going to get rid of the areas because we can't do anything and let them destroy so we don't have to deal with the issue. The time is to deal with the issue now because we've got a lot of other public lands and our wildlife is going to be threatened so we need to take a stance, we need to get organized and we need to figure out a budget and staffing and get serious about this. We need to work cooperatively and the President's executive order says that. We can't ignore this anymore and this is top priority and you need to get serious instead of dragging your feet. You need to identify these issues. They should already have been identified these issues over the years.

**Chairman Arvas:** Bob, what I think we'll do between now and the next meeting in April, maybe you and the Director and the sub-committee can get together and come up with a presentation to the Commission exactly where we're at in relation to the concerns that Commissioner Buffett and Commissioner Simpson have stated. I think the Commission would look forward to that report. Now you have a new player on board—TRCP—is willing to help you so it looks like we have a lot of people that are concerned. I think with making it not necessarily a mandate but to put you in the right direction by April you can give us an update as to where we're at in this whole process.

**Discussion item only.**

**Agenda Item No. 16: Closed Executive Session.**

**MOTION:** Commissioner Montoya moved to enter into Closed Executive Session pursuant to Section 10-15-1, NMSA, 1978, of the Open Meetings Act in order to discuss litigation, personnel matter, and acquisition or disposal of real property or water rights. Commissioner McClintic seconded the motion.

**Roll Call Vote:**

Chairman Montoya – yes

Vice Chairman Arvas – yes

Commissioner Buffett – yes

Commissioner McClintic – yes

Commissioner Salmon – yes

Commissioner Simpson – yes

Commissioner Sims – yes

**Motion carried unanimously.**

**Chairman Arvas** entered into Open Session and stated that the record reflect that no action was taken during the Closed Executive Session, but several items were discussed by Legal Counsel and the Director.

**Agenda Item No. 18: Proposed Change to the Manner and Method Rule 19.31.10, NMAC, Limiting the Number of Flies on a Single Line.**

**Presented by Mike Sloane** – The Department received concerns about anglers using up to 4 flies per line on the San Juan River, and that these additional flies are causing damage to fish resources. Further investigation by Department personnel confirmed this practice is problematic where it occurs. A rule limiting the number of flies allowed on a single line was proposed for adoption by the Commission to address this issue.

**Chairman Arvas:** Director Thompson had a doctor's appointment he couldn't get changed so we excused him and Deputy Director Bob Jenks will be here now, and he'll take over the role of Secretary.

**Mike Sloane:** I'm here to present a proposed change to the Manner and Method Rule relating to a number of flies that can be used on a single line. This proposal arose out of an e-mail we received raising concerns about fish getting ensnared in break-off lines and waterfowl getting ensnared. We investigated the comment with our own personnel and felt there was some validity. We limited it to flies largely because there's not a real expectation that somebody is going to try and cast 2-3 of the larger lures. We did undertake a public involvement process, posted it on the web and asked for input, and we had 1 public meeting in each area. The public meetings were generally very poorly attended although the 1 up by the San Juan had 12-14 people. We received a total of 158 comments, 68 were in favor, 60 in favor of the proposal on the San Juan, and 30 were opposed. The public comment in general the folks that were for it brought anecdotal observations that there was resource damage. They were concerned about the long-term health of the fishery with the potential for multiple hookings and the fish getting even when you land them the rest of the hooks could injure the fish, and also there was some discussion about the effect of new technology. One thing to note on public input is that we have not received any formal letters from any of the New Mexico trout groups either for/against this. The only formal trout club letter I've received is from the TU Chapter in Durango in favor of the proposal. In terms of people that expressed opposition, they cited no scientific evidence which is true. Largely we're basing it on anecdotal information and the expected potential effect that it would be very difficult to enforce, that they would result in less success on their fishing trips and some of them cited that other states don't limit the number of flies.

**Commissioner Simpson:** When you say hooks, is that flies or is that general hooks—bait hooks, what kind of hooks.

**Mike Sloane:** I believe they treat it as hooks and where a treble hook is treated as a single hook, a fly would be single hook.

**Commissioner Simpson:** Anecdotal evidence, how many flies are being used in the San Juan?

**Mike Sloane:** The numbers I've seen or heard are 3-5, and that's not every fisherman but those are the numbers that were raised as concerns.

**Commissioner Simpson:** All of a sudden this came up and this is not an information meeting. Usually you have informational meetings, then why did this all of a sudden come up without any indication of further research and saying now the Commission needs to act on it?

**Mike Sloane:** It was raised as a concern to us, we discussed it with our personnel who did feel it was a concern. We went through a formal process of public input, receiving more public input on a fishing rule than I've ever received on any fishing rule, and brought forward for Commission consideration.

**Commissioner McClintic:** I've been a lifetime member of New Mexico Trout and you said you got no correspondence from them whatsoever?

**Mike Sloane:** New Mexico Trout the entity I did not. From individual members of that I believe I did. I did see an e-mail from Mike Maurer. It was in the string of e-mails from the last 1 I believe was Bill Ferrangos discussing their concerns about it and opposition to it, so they were included on the list opposed. In terms of New Mexico Trout or Trout Unlimited in New Mexico, I did not receive any formal correspondence though I think there are some folks in the audience that may provide that today.

**Commissioner McClintic:** I've got a lot of correspondence on this from a lot of people which is surprising to me that you wouldn't get it and I would.

**Mike Sloane:** I've gotten it from individuals but not signed that New Mexico Trout is opposed or supports this. I haven't gotten an official letter from the entity itself.

**Commissioner Simpson:** When you public notice, do you have a list of organizations that you contact that you'd like information or you put it on the web and say if you happen to go over and look on it that's all they get?

**Mike Sloane:** Each area fisheries manager contacted a list of folks they knew would be interested. For example, I knew Eric Fry contacted the Enchanted Circle, Trout Unlimited Chapter, the fly shops in Taos/Cimarron/Eagle Nest. I know each area contacted folks that they thought would be interested in commenting on the rule.

**Luke Shelby:** We also publicize those public meetings in our news release as well as the actual rule that is being contemplated so we do go through a process to insure that all the publics are informed that this is an issue that we're receiving comment on.

**William Schudlich:** As someone who fishes the San Juan, I'm not in favor of this. My second comment is that making a statewide rule I think would have a bigger impact on people that maybe fish lakes and may use what's considered abrasive flies which may be a team of 3 flies or on some of the other rivers. If we're talking about this for only fly fishing, then that would be a concern of mine why we're not talking about it also for bait fishing and other things where you may have more hooks in line.

**Larry Johnson:** In addressing the Commissioners, Department, and administrators that are going to support this proposed change that it would be ultimately to the benefit of the asset that we have especially on the San Juan of such a high fish count to limit the number of hooks or flies. I agree with Mr. Schudlich that it shouldn't be just flies, it should be hooks and the state in its wisdom has actually appropriated a part of the river where they can bait fish, spin fish, use treble, we call it the any method; so, this isn't precluding people from going out and doing a different type of fishing and making it more an egotistical type of fishing. The reason it's come up lately is it's been brought in by other people teaching this method of 3 flies and to date we haven't seen a problem. I support this change even though it might be a detriment of the number of fish I catch, but I know in the long run it's

going to be to the benefit of the state. This is not a rule change that's going to impact anyone's fishing on a day out especially on the San Juan. They've given their clients/visitors a better experience.

**Dr. Arnold Atkins:** It is rare indeed for me to be on the opposite side of an issue from Mike Sloane and Larry Johnson, but that is the case on this proposal. I feel, however, that a rule that serves no useful purpose but which would make a violator with potential penalties undetermined out of an otherwise honest sportsman who may decide to hang an extra dropper.

**Mike Maurer:** I'm representing New Mexico Trout and 1 of the reasons New Mexico Trout didn't officially respond was that we didn't get the information in time to respond. Nearly 500 members of New Mexico Trout generally were blindsided by this action and we urge you to table this action and not implement this change until the problems can be studied. Jerry Burton, retired fisheries biologist with the U.S. Fish and Wildlife Service could not be here today but asked me to relay this message and it sums up our position. I believe that before the Commission makes any decision on this subject, they should first have research done to determine the extent of the problem and if so, how does the mortality factor compared to other factors such as handling stress, deep hooking, old age, disease, and egg retention. There's a fair amount of data available on these factors and we urge the Department study these before implementing this rule.

**Rudy Rios:** I'm here to represent myself today. I understand that this new regulation that is before the board today of limiting the number of hooks on 1 fishing line to 2 is a result of concerns of foul-hooking fish through a tangled line with multiple hooks. Having a special regulation pertaining to a limited number of hooks will only add to the already over-burdened field conservation officers who must now watch for more important game issues in New Mexico. I encourage you to table the proposed action to the manner and method and further study be performed by the Department biologists. The impact of limiting fishing to 2 hooks will not result in non-injury to any fish only reduce the art of old age fishing techniques and over-burden New Mexico Department of Game and Fish staff with excessive regulation.

**Jerry Jacobi:** I do support limiting the number of hooks in the San Juan because when they're packed in there so dense you're going to get something and I think we have to think about trying to get mileage out of the fishery resource and the less fish are hooked the less they're going to

**Commissioner Salmon:** I suggest that we table this proposal for the time being and if the Department wants to bring it up at a future time with more information available.

**Commissioner McClintic:** The only time that I've seen a multiple-rig fly is in the boats in the Texas Hole to where they go up/down the Texas Hole and they have their clients hanging their rod with a strike indicator with 5-6 flies and they just limit it to the Texas Hole. The thing that irritates me to some point about this is that you said everybody had proper notice yet all the e-mails I have from all the organizations said they had no knowledge. There are always 2 sides to the issue and a lot of us don't have a big play in this issue but I'm going to recommend we vote against this because this is not very well brought out. If they want to have their meetings and get more information to us, bring it to us at that time when you've had enough time to study it, we get the all the information from all the players which are all the people that fish. When you're prepared to bring it back then we can consider it.

**Commissioner Simpson:** I too got numerous complaints asked what was going on and inadequate notice. All that information is not adequate and this needs to be studied further and more adequate input. Even if we wait a year, we need to analyze this and come up with some facts. I don't think it's that much resource damage and in my opinion this doesn't require the level of regulation and as much resource damage. I too support postponing/tabling the issue until other information proves otherwise.

**Commissioner Buffett:** From a conservation perspective, I'm supportive of the intent of the proposed rule. I also share the sentiment that maybe instead of basing it on anecdotal evidence, we need more time, get some scientific information and perhaps table it until April or the summer meeting and in the meantime the organizations can take an official stance that the groups that didn't have time to consult and then you can come back to us with more evidence in support of your position and then we can make an informed decision.

**MOTION:** Commissioner McClintic moved to vote against the Department's recommendation on the change of Manner and Method Rule 19.31.10, NMAC, that defines fly or flies and limits the number of flies on a single line to 2.

**Commissioner Simpson** seconded the motion.

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

**Agenda Item No. 15: General Public Comments (comments limited to 3 minutes).**

**Terry Riley:** I'd like to make a statement regarding the Farm Bill. Many of you might know this is the largest single piece of legislation that comes out of Congress that affects wildlife and conservation in the nation, perhaps the world. Right now we're looking at \$17-\$22B that will go to conservation over a 5-year period and New Mexico has captured many of those dollars for conservation and hopefully we'll continue to do that. I'd like to express my concern that the Department isn't doing all it can to work for those dollars. Hopefully, there will be a process in place where we can start working for the funds. Today the Farm Service Agency announced that New Mexico was 1 of a handful of states that has a new conservation practice specifically for lesser prairie chickens. It's only 2,600 acres but it's a start and delineate acres out on the landscape under the conservation

reserve program specifically for lesser prairie chicken. It was designed in New Mexico by biologists and I think it's important that we get out and utilize these dollars as effectively as we can.

**Chairman Arvas:** Bob, do we have an ongoing process where we keep track of that Farm Bill?

**Luke Shelby:** We have a staff person, Cal Baca, who is our landowner system supervisor and part of his job task is to track the Farm Bill. He does that in conjunction with a variety of other duties, but I think what Commissioner Riley was looking for is what we requested in our legislative package this year with some partial/fully funded people that would work on the eastern side of the state, there may be 1 north and 1 south, that would have ensured that that Farm Bill monies were being used on the ground, and of course, we were unsuccessful on that so we do have a person who part-time looks after Farm Bill implications to the Department.

**Chairman Arvas:** In relationship to what Terry mentioned, how would you answer that? He was quite specific.

**Luke Shelby:** Right, about New Mexico not using its full complement of Farm Bill money and I would again like to reiterate that we recognize that and took some action with the request to have another position or 2 devoted specifically to that and we were not successful.

**Commissioner Simpson:** How much money do we turn back to the feds that could be used?

**Luke Shelby:** I don't have that figure.

**Commissioner Simpson:** I'll add to that so we can ponder on it and maybe come back with an answer. We have a Comprehensive Wildlife Plan and there's a lot of resource evaluation and needs there and in assessing what the habitat specialist or anyone else does, that could do a lot of good to solve some of our problems. I just think in prioritizing and if there's extra money, if you re-allocate some of the time/effort to say here's how it's going to benefit and start addressing some of our habitat wildlife conflicts or making sure we've got adequate habitat to support wildlife. I'm saying as with oil/gas, we need to figure out what brings in the money and what's the benefit and how to get the landowners to help with the game and we can help them.

#### **Agenda Item No. 17: Big Game and Turkey Rule Development Process-Rule Opening.**

**Presented by R.J. Kirkpatrick** – The Department requested the Commission open the following rules for public input and comment for development of hunting recommendations for the 2009 and 2010 hunting seasons: Boundary Descriptions 19.30.4, NMAC; Hunting and Fishing License Application 19.31.3, NMAC; Hunting and Fishing Manner and Method of Taking 19.31.10, NMAC; Bear and Cougar 19.31.11, NMAC; Barbary Sheep, Oryx and Persian Ibex 19.31.12, NMAC; Deer 19.31.13, NMAC; Elk 19.31.14, NMAC; Pronghorn Antelope and Javelina 19.31.15, NMAC; Turkey 19.31.16, NMAC; and Bighorn Sheep 19.31.17, NMAC.

**Commissioner Salmon:** What about the furbearer trapping rules, that's included in the Big Game Proclamation but it's not on this list. I take it that's taken up at a separate time?

**R.J. Kirkpatrick:** To clarify, the furbearer rule is a rule that is a permanent rule and doesn't require that it be opened once every 2 years or on any cycle pursuant to Administrative Code. Because of the great progress we felt we made in 2006 when we opened the furbearer rule in development of the furbearer resource matrix and mandatory harvest information, we don't feel there's any reason or pressing need to open a rule that doesn't require be opened. As we move through this process, if there becomes significant public interest in evaluating or making adjustments to specific parts of that rule, you can entertain doing that. At this point we feel we're in a good position and everyone is comfortable with that matrix and the current rule.

**Commissioner Salmon:** That makes good sense, I just wondered how it was separated that way.

**Terry Riley:** I'd like to recommend that we again expand the number of youth opportunities for big game particularly deer/antelope/elk hunting. We are still having lots of young people trying to get into this process and they can't get in because there are just too few licenses available. I know the Department looked specifically at what proportion of the youth are actually getting licenses when they apply and a lot of our youth are not getting licenses. I think it's a good idea to at least examine how many young people are trying to apply and if this is their first opportunity, if they keep applying and don't get in we could potentially lose them. Also, provide more opportunities as far as the season length and timing so that more weekends and holidays are open so that they can hunt when they're available. Secondly, I'd recommend that we go to a 9-day antelope season and provide at least 2 weekends for the season rather than trying to cram it all for the whole state into a couple of days, even if you have to limit that to public land. I realize success is high in the state with respect to harvest rates but still people need more time to hunt. The National Wild Turkey Federation recommends that we could go farther into May--May 31 and they thought that would be reasonable based on our harvest rates.

**MOTION:** **Commissioner Simpson** moved to open the following rules for the specific purpose of accepting public input or testimony and management adjustment recommendations toward development of regulations for the 2009-2010 and 2010-2011 license years as follows: Boundary Descriptions 19.30.4, NMAC; Hunting and Fishing License Application 19.31.3, NMAC; Hunting and Fishing Manner and Method of Taking 19.31.10, NMAC; Bear and Cougar 19.31.11, NMAC; Barbary Sheep, Oryx and Persian Ibex 19.31.12, NMAC; Deer 19.31.13, NMAC; Elk 19.31.14, NMAC; Pronghorn Antelope and Javelina 19.31.15, NMAC; Turkey 19.31.16, NMAC; and Bighorn Sheep 19.31.17, NMAC. **Commissioner McClintic** seconded the motion.

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

**Agenda Item No. 19: Proposed Changes to the Fisheries Rule, 19.31.4, NMAC.**

**Presented by Yvette Paroz** – The Department proposed to seasonally open portions of Mogollon Creek in the Gila National Forest for Gila trout angling. The Department also proposed extending the angling season on Black Canyon Creek.

**Commissioner Salmon:** Do you intend to continue to stock Gila trout in the Forks area/Sapello Creek as you did last November?

**Yvette Paroz:** Yes, right now we are getting fish as they are available and we need to work within our agency and with U.S. Fish and Wildlife to develop a more formal idea of how many hatchery fish are going to be available from year to year and make a plan to make sure there are enough fish to maintain those fisheries, especially for the Forks area and Gilita/Willow Creeks that were traditionally stocked areas. We're hoping to completely replace Rainbow trout stocking at an equal level with Gila trout.

**Commissioner Salmon:** I've recommended before that stocking of Rainbow trout in the Gila streams be eventually replaced with stocking Gila trout. You mentioned there was a particular reason in timing why you wanted to get permission to open up a portion of Mogollon Creek and extend the season in Black Canyon. Could you go into that?

**Yvette Paroz:** Yes. The fishing rules information booklet goes to the publisher in a few weeks and last year when we opened up these creeks we were too late so we're trying to get this in so that all this information is included.

**Commissioner Salmon:** I initially was concerned that this action was being proposed a week before the Silver City meeting but upon further review I'm thinking it's apples/oranges in the opening of Mogollon Creek and Black Canyon extension which I support. On that basis, I'm inclined to recommend that we go ahead at this time with the proposed opening of Mogollon Creek and extension of Black Canyon and we'll take up the other Gila trout issues in Silver City.

**Commissioner Simpson:** How is the lower portion of Mogollon Creek identified from Trail Head down?

**Yvette Paroz:** It's from Trail Canyon down to the barrier.

**Commissioner Simpson:** That's got the native fish and you plan on restocking that?

**Yvette Paroz:** There is already an established population of Gila trout there.

**Commissioner Simpson:** In the future are you going to keep stocking or are you going to let it be without restocking native trout?

**Yvette Paroz:** I think it'll depend on what the surveys tell us that this creek hasn't been stocked for several years and it's booming with trout and our intention is that it would be a wild replicated fishery but if needed we do have the option of supplemental stocking if it needs that.

**Commissioner Simpson:** That's still part of the wilderness area there?

**Yvette Paroz:** That's true.

**Commissioner Simpson:** The only access in there is on horse or foot, right?

**Yvette Paroz:** Yes. I think it's about a 6-mile hike.

**Commissioner Simpson:** I just wanted clarification.

**MOTION: Commissioner Salmon** moved to approve changes to regulation to open Mogollon Creek to angling from July 1 through October 31, catch and release, single barbless hook, artificial fly or lure, anglers must possess a no fee Gila trout authorization and extend angling season in Black Canyon Creek through October 31. **Commissioner McClintic** seconded the motion.

**VOTE: Motion carried unanimously.**

**Agenda Item No. 20: Approval of Quail Habitat Guidelines.**

**Presented by Larry Kamees and Tim Mitchusson** – At the December 2007 Game Commission meeting, a draft "Habitat Improvement Guidelines for Quail in New Mexico" was approved by the Commission, with a request to incorporate specific guidelines for each species and return for final approval in February 2008. Department staff discussed a revised "Guidelines" and requested final approval. Also at the December meeting in Roswell a document was presented with some quail habitat improvement guidelines for your approval. Ex-Commissioner Riley recommended changes made to provide more detail to these guidelines.

**Commissioner Simpson:** Did you get any further comments from Quail Unlimited?

**Larry Kamees:** No, I did not. I sent 2 more e-mails out, I received more comments from BLM and Dr. Schemnitz and no more from Quail Unlimited.

**Commissioner Simpson:** There is big heartburn with a lot of quail hunters about guidelines. Guidelines are guidelines and they don't have any specific power just like the oil/gas stuff. So I'm going to say shelf the guidelines until we figure out how we're going to put this in actually resource management plans and really get something serious on the ground and take some serious action. That would be my opinion because there's not very much sportsmen support/comments and I think we need to wait a little while and see if we can reshuffle the game and figure out what we can do to get better understanding and implementation on the ground.

**Larry Kamees:** I respectfully disagree with that because I did request a lot of input. I worked with the sportsmen's groups trying to get them to provide me input into something that would be usable to the land managers, state agencies, federal agencies who manage land, and didn't receive much. I worked closely with the land managers at BLM, Forest Service, and some private entities to put these together and I asked them specifically what they would need to implement into their plans and this is what we've come up with. As far as not getting comments back from sportsmen's groups, that's not from lack of effort.

**Chairman Arvas:** The whole intent of doing this exercise is to improve the quail situation in the state. The guidelines are supposed to be a stepping stone. We've heard over and over again that by lack of their attendance at our meetings I think there's a lack of interest on the part of the federal agencies involved concerning quail management. We need to get the sportsmen's organizations and federal agencies input. We have a unique opportunity in the state to improve quail population. We have a great opportunity to have a state that has great quail hunting, but we have so many other parts that are terrible.

**Larry Kamees:** Along those lines, I did contact NRCS and they've agreed to put it into their technical guidelines. I will work with them this summer in their brush management workshops trying to implement these so it's working that way. BLM has agreed to put it into their Tri-County Plan in Las Cruces.

**R.J. Kirkpatrick:** The truth of the matter is successfully accomplishing any kind of habitat manipulation that benefits any species in New Mexico on public lands has its difficulties. One of the difficulties comes with the funding that inevitably is required to accomplish those kinds of things whether it's grazing deferrals, rotational grazing systems, or actual mechanical treatments of property or water distribution efforts, funding always is a requirement. The Department is in a better position to provide the piece of the funding that is the most difficult to accomplish in securing non-federal match. Ex-Commissioner Riley made a comment about the Department not fully embracing and taking advantage of Farm Bill funding opportunities and habitat initiatives, then comes that non-federal match requirement. We're in a unique place and we can start taking advantage of federal funding opportunities to do these things. We just sold the first 1 and we're getting ready to sell the second. As those Governor's authorizations become available to people, those dollars can be used for a multitude of species. Habitat management and access stamp funds are non-federal match dollars for conducting these kinds of things that are on the ground as Commissioner Simpson desires, so I think that we are setting ourselves up to be able to make these things happen more effectively, efficiently, realistically over the next few years.

**Chairman Arvas:** How about the Sikes Act money, can that be used?

**R.J. Kirkpatrick:** Yes, Sikes Act is non-federal money. There's no reason BLM can't submit habitat project proposals that are partially Sikes Act funded.

**Chairman Arvas:** That is a process that we do have a tremendous amount of control over in a sense and since we coordinate all the Sikes Act monies. I recommend you make Dale Hall aware of our wishes at least of the consensus of the Commission that we'd like to see some of that money go into quail habitat, something to show us that we're trying.

**Commissioner Simpson:** Larry, 1 of the things they wanted to see is a test case since the Department has cooperating agency status with BLM and Tri-County Management Plan. You said that BLM was willing to incorporate this into the Tri-County Management Plan. So the point is that these guidelines are what they're going to put in there—they're actually going to do something or put it in there that emphasizes quail or give us more details because that's 1 of the big heartburns with the quail chapter in the southwest/southeast quadrants or when we have rain or moisture and there's vegetation. I'm saying some of this heartburn may go away if you highlight and what's going to happen with that Tri-County Plan. With the Department pushing this something is going to happen so maybe some funding and how we're going to work on this so that's a dry plan with no additional money and implementation and how it's going to be utilized other than sitting on a shelf is what some of the heartburn is about.

**Terry Riley:** To reiterate, the Farm Bill is primarily for private land and there are a lot of dollars out there. It appears the latest version moving through Congress will increase the EQIP from \$1B a year to \$1.9B a year. That's almost 100% increase. We get about \$20M a year in New Mexico. We could potentially get \$40M-\$60M a year and again this would go directly to landowners and most of the time the landowners come up with match through in-kind services, so the match isn't near as much of a problem as you might think. Secondly, they have annual incentive payments like CRP payments that you can use for wildlife habitat improvement as long as it fits into the rancher's operation. If a rancher is willing to come forward to work with it, everyone wins in this situation. Nobody wants to force this down a rancher's throat but a lot of the ranchers go to NRCS offices and sign up for these EQIP dollars to be able to improve their operation. It's just a matter of making the effort and many of those same landowners have leases with BLM and the Forest Service to use our public lands for grazing and many times you can actually use some of those dollars to help improve things, so we don't want to be turning back a lot of money. We want to attract more money to New Mexico and the only way we're going to do it is to get the infrastructure in place to be able to bring those dollars into the state because we can accomplish a lot of things on private land a lot easier than we can on public land.

**Bert Ancell:** I'm President-elect of New Mexico Cattle Growers and we represent ranchers that use forest/BLM/state lands as well as private and we want to know what the grazing recommendations are?

**Larry Kamees:** There are several recommendations to people who only want to improve it for quail. It's not trying to tell anyone how to graze. One recommendation is to defer grazing 1 out of 3 years on ranges considered in poor condition or 1 out of 5 years on ranges in good condition, grazing less than 50% of current annual growth in years of average rainfall. Some of these

go with maintaining bunch grass cover, maintain a minimum of 30% grass canopy depending on the species for scaled quail and 60 for Montezuma quail, avoid complete brush removal and this is not grazing *per se* but it does have impacts on grazing. The distance between brush cover is also in here and that's different for each species but specifically for grazing those 2 are deferred grazing just to give it a rest and grazing less than 50% of current annual growth in years of average rainfall.

**Bert Ancell:** Did you use range scientists from New Mexico to help develop this?

**Larry Kamees:** Yes, I talked to BLM and NRCS and got their recommendations. A lot of this is from BLM.

**Bert Ancell:** You didn't use the Ranch Improvement Task Force out of Las Cruces?

**Larry Kamees:** No, I e-mailed them but didn't get a whole lot back from them.

**Commissioner Simpson:** In relation to the \$500,000 we have to lease rights-of-way for private or enhanced hunting opportunities in between the Farm Bill and extra money for willing ranchers/private landowners/youth and other hunters could go hunting and improve habitat money for quail and others things it's a win-win scenario and trying to maximize and coming up with some strategies that put it on the ground and improve the habitat. You know down in the southwest we had a huge drought for numerous years and wiped quail out really bad and I'm saying let's seriously look at the resources and actually put something on the ground where the private landowner can get money and improve the habitat and if you've got good habitat for quail you've got good habitat for other things including grazing. I'm just saying let's see if we can come up with something more comprehensive and put some here's how we're going to work it and here's how we're going to incorporate the guidelines and actually get the feds to go along with it. Guidelines don't mean anything unless you tie it in with here's solutions and here's where we need to go and here's a start. That's where I'm coming from.

**Chairman Arvas:** I think you've done a great job in getting the guidelines going but I think we are going to expect a lot more from you in terms of getting the quail going. If the money is available and if we're not utilizing the money for the purpose intended, then we're at fault.

**MOTION: Commissioner Salmon** moved to adopt "*New Mexico's Quail – Biology, Distribution, and Habitat Management*" as presented by the Department to convey specific quail habitat management guidelines for use in New Mexico. **Commissioner Buffett** seconded the motion.

**VOTE: Motion carried unanimously.**

#### **Agenda Item No. 21: Land Conservation Appropriation Update and Action as Needed.**

**Presented by Jim Karp** – The Department presented an update of the status of projects approved for funding under the Land Conservation Appropriation.

**Jim Karp:** There are 2 projects that are still pending—the Silva acquisition in Cibola County of approximately 440 acres and the other is the Rio Abajo project in Valencia County of approximately 192 acres. With Silva, they haven't provided the survey, they were slowed up by too much snow and they still have to provide us with an easement from the Forest Service/Silva's, and assurances that there is access through a subdivision. All these access interests are from public roads to the property. The Rio Abajo project documents have been signed between the state/BNSF Railway/the Conservation District to allow the improvement of the grade crossing to start, but it may take 60-90 days until it's completed. The initial target closing date is at the end of March so we'll have to see how that progresses. TPL is hopeful that they'll be able to finish it sooner than that.

**Commissioner Buffett:** To clarify, my recollection is that our desire date was end of March and our drop dead date was end of June for Rio Abajo?

**Jim Karp:** I thought it was end of March, you may be correct. Whatever it is, frankly, if they finish in time we'll be in a position to close the transaction.

**Commissioner Buffett:** Well, it would make a difference if we're talking 60 days or so.

**Jim Karp:** TPL has indicated that they feel they'll be able to finish by the March date.

**Chairman Arvas:** What we need to do is go back to the original Minutes and see what the action taken by the Commission was.

**Commissioner Simpson:** What do you mean by drop dead date?

**Jim Karp:** It has to close by that date. That's what the Commission has established as the date when it must close.

**Commissioner Simpson:** Even if it doesn't close, the money doesn't go away, you just have to do what with the money?

**Jim Karp:** We would have to find another project to spend the money on.

**Commissioner McClintic:** No, we get that information and we have a hard contract that had a lot of grief on this Commission that we all agreed upon so I think we should stick to it.

**Discussion item only.**

#### **Agenda Item No. 22: Legislative Session Update.**

**Presented by Patrick Block and Luke Shelby** – The Department provided the Commission with an update regarding legislation affecting the Department and Game Commission that was introduced during the 2008 Legislative Session. By the date of the Commission meeting, the session had concluded, but legislation may be awaiting action by Governor Richardson.

**Luke Shelby:** The primary focus of the presentation will be on items that the Commission previously approved for the Department to pursue during the legislative session and then were subsequently approved by the Governor's office, so as an executive agency you provide us with the primary guidance and then we seek approval from the Governor's office as they set the Call for the short session. So this year the effort was focused in 3 primary areas—budget request for operating/capital project requests/some items discussed at a previous meeting having to do with real property transactions. First, the operating budget—the Department budget is 1 that begins as it's own legislation. This year it was HB5 and got rolled into the General Appropriation Act which carries the designation of HB2 every year. The amounts in the bill reflect the legislative recommendation and legislative analysts prepare their own budget recommendations and they're based on what the agency submits as the agency's wishes. The budget does include 1 expansion position—the 1 that had to do with issuance of licenses that are sold through the online process and that was the expansion requests they chose to approve and fund. The budget bill also included a \$400,000 1-year appropriation to continue work on the warm water hatchery. Funding sought through the capital bill but was not approved by the time the capital bill came out. We were fortunate enough to have several legislators who have a real interest in seeing that project continue and grow so they were able to get \$400,000 into the budget bill. The other item of interest within the budget is last year we received the appropriation of \$300,000 to work on some recreational planning efforts in the Upper Pecos Canyon. The intent of the sponsor was that some of that money be used for on-the-ground efforts so as a result of the budget bill this year, we have another year to utilize the remaining money and also use has been expanded to include those on-the-ground improvements. Next is capital outlay—these were 9 projects that the Commission approved in August for a total of \$12.975M and most of those received only a small portion. The amounts that were appropriated were \$100,000 each from the General Fund to perform dam safety assessments at McGaffey Lake and Laguna del Campo; also, as a result of some specific legislator interest and requests tying back to the National Association of Sportsmen Caucuses, a \$25,000 appropriation to acquire equipment to continue implementation of the National Archery in the Schools Program and as a result of several requests made by different legislators, \$15,000 to acquire equipment to address beaver damage complaints. There was in the end besides what was in the operating budget no funding for the warm water hatchery. The Department did not receive any money requested for dam repairs/aircraft replacement/or any of the other projects. There was an appropriation of \$2M to the State Engineer for dam repairs that may benefit some projects like Lake Roberts. The fate of this bill is unknown because it is sitting at the Governor's office and he is going through the bill contemplating whether to sign/veto/sign it with certain line item vetoes. We have submitted the agency recommendation and we are waiting to see action taken.

**Chairman Arvas:** How closely does the Senate version relate to the House version?

**Pat Block:** They were identical.

**Chairman Arvas:** So there's still some hope there?

**Pat Block:** Yes, sir.

**Luke Shelby:** HJR2 entitled Disposal of the Abiquiu Tract—passed unopposed and it grants approval to transfer about 32.5 acres of Commission-owned property known as the Abiquiu Tract to the Abiquiu Land Grant. The property was recommended for disposal last December at the Commission meeting in Roswell. Also passing was HJR11 entitled the San Miguel Land Lease. That resolution was amended in committee and there was a substitute provided in another committee passed unopposed once it got to both chambers. What that resolution does is it approves an easement through Commission-owned property to the San Ignacio Joint Venture near Pecos for 99 years and allows the consideration to be paid by the San Ignacio Joint Venture to exceed \$100,000. Also passing was SJM13 entitled Traditional Ways of Life in the Forest Plan. This passed unopposed in the both chambers. It requests the U.S. Forest Service to insure that many ways of New Mexican life will not be adversely impacted by the revision of Travel Management Plan. You recall we made several presentations to this Commission. Also passing was SJM40 which was an off-highway vehicle study. It was amended then passed with opposition. It requested that the Department cooperate with Energy, Minerals and Natural Resources Department and other unnamed state agencies to conduct and recommend actions to resolve a variety of issues involving motorized recreation users. Lastly, SM58 passed unopposed and urges the Commission to allow the Juan Tafoya Land Corporation to graze on the Marquez Wildlife Area. It passed without recommendation in Senate Rules Committee then passed the Senate Chamber unopposed. What did not pass was HB34 entitled Free Licenses for Public Assistance Recipients. That did not make it out of House Rules and Order Committee and also what did not pass was SB293 which would have allowed another Game Commission member to be placed on the Commission that was to be an outfitter and that did not make it out of its first assigned committee.

**Pat Block:** On HR34, we aren't sure what the specific or intent of the bill was but what the effect of the bill was to provide a free general hunting/fishing license to all persons receiving public assistance from the Human Services Department. When we contacted Human Services Department to find out how many people we were talking about it turns out that there are over 640,000 on general assistance and so as we looked at the numbers assuming that recipients of general assistance participate at about the same level as the state as a whole, it turned out to be a significant impact and probably well beyond what the sponsor intended. We also wanted to begin what the Commission might want to consider for the 2009 session. We will be talking about this probably mid-summer, but we wanted to bring a few things to the fore to hopefully stimulate the thought process. As it is a long session, we're going to be able to request and/or see bills come out on any subject so we felt that some of those high-profile

areas were capital needs and other funding priorities. Things are going to remain tight and if not get even tighter than they were this past year. We feel that capital needs and the overall funding picture are going to be a high-priority area. We also heard in the report that we need to work on developing improved depredation resolutions and anything else that comes along we will keep you apprised.

**Commissioner Buffett:** It may not surprise you to know that there was another bill that I was tracking—Peter Wirth's Oil and Gas Development and Public Health--HB248—it stalled in its first committee but I expect it will be back in future years and what it sought to do was expand the mission of the Oil Conservation Division to also consider wildlife impacts. I think that is something we should support and track when you bring bills during the interim for us to be apprised of.

**Commissioner Simpson:** I agree with Commissioner Buffett and enter discussion in giving you guys a priority about dealing with oil/gas because we need to identify what the hindrances are and how we're going to get the authority to make these things possible. Other than just thinking about it we've got a few months to put something together in some proposed legislation and get sponsors. Mr. Wirth has started the process but we need to seriously put a good-faith proposal there to actually make it happen and make something happen on the ground and we need the legislative authority and find out conflicting statutes with other states and go after it and try to clear up some of this stuff.

**Commissioner Salmon:** Also HB2 that funded \$800,000 for Gila River planning studies which were to include ecological/economic/hydrological studies and the hydrological portion of the studies would be of importance to the Commission and the Department. Hopefully, the Commission and Department will be in charge of the ecological studies which pertain to the Arizona Water Settlements Act which is a proposal to divert 14,000-acre feet from the Gila River and this funding is designed to ascertain the effects of that project on the endangered species and natural values of the Gila River.

**Commissioner Simpson:** We've been giving you a bunch of priorities but in order to meet this we need to have staff and budget assessments to go along with what me and Sandy said and other issues. Reassessing what staff needs and prioritizing what additional expansions that would help sportsmen understand to get behind this stuff to really give you the support. If they knew those ahead of time we can certainly help in the interim committees and other situations to make it happen.

**Chairman Arvas:** Pat, would you make a comment—I guess the Governor has had a zero-base budget proposal?

**Pat Block:** Yes, sir, that's correct. As we were provided information about the Governor's guidance to executive agencies last July/August, the directives agencies received were to come in with a flat budget especially when it came to General Fund requests. We did include some expansion requests that were outside the base budget that we requested General Fund to pay for, we did not receive any of those.

**Chairman Arvas:** How long can we last with that zero-base budget before we have to impose another increase in our license fees?

**Pat Block:** It depends on a lot of things, what we and the legislature do as far as funding capital outlay. As you may recall, a lot of the requests last year were for General Fund or Severance Tax Bond Funding for those projects. If the Game Protection Fund is not used to fund major capital outlay endeavors, we're probably looking at another 4 years. Anytime that you lop big chunks of money, the money that is sitting there today held in reserve to pay increasing expenses as inflation takes its toll over the coming years goes away and that date where something different in the funding picture needs to happen comes ever closer. I will say something different because in my opinion, we're probably going to get to a point 1 day where you cannot rely on the hunter/angler to pay more. There's going to be a point where that ability hits its limit so I think we need to include that but not exclude anything when it comes to determining how the public wants to pay for fish and wildlife management.

**Chairman Arvas:** Any response to Commissioner Simpson's observation about getting this done early. The Legislative Committee is already more or less mandating the Director that we have a game plan because that's where we went astray last time. Every state agency is looking for money and the first 1 that gets it means there isn't as much left for the others so we're going to make a concerted effort with the Legislative Committee this year to not only define the needs but also to go where the source is and find out why we're not getting any money. Zero-based budget is great if you have a lot of money in surplus, but we don't have a lot of money in surplus.

**Discussion item only.**

**Luke Shelby:** I wanted to give the Commission an update on our Open Gate Program in the southeast part of the state. Roy Hayes is our SE-Area Chief and his staff has successfully opened up over 56,000 acres in the southeast part of the state for dove/quail/waterfowl/fishing/turkey hunting/trout fishing and he's working on 2 others that he expects to bring forth soon that could open up several thousand acres for deer hunting. That 56,000 acres is both private acreage and access to public lands that had been land locked before.

**Commissioner Simpson:** That's the kind of success that needs a lot of PR and I think that would be great to put in the next newsletter to brag on this and show what's possible and what's opening and give people some more hope. Access is the number 1 issue with sportsmen and that's why we got over 2 years \$500,000 and how it's going to be utilized and maybe can help youth or whatever but I would highly recommend that that be stressed and show some good maps somewhere that people can understand where they're at.

**Luke Shelby:** Ok.

**Commissioner Buffett:** Can someone tell me who's in charge of that \$25,000 National Archery in Schools because Senator Cravens asked that I follow that?

**Pat Block:** The Department's Public Information and Outreach Division added a new position this year--Youth Outdoor Skills and Recreation Coordinator. We have filled that position and Brian Guzman will begin on February 25. He was previously our Hobbs District Officer, so depending on what you want it would be Brian, Marty, me or the Director, but the hands-on person will be Brian. Brian will be working on a variety of projects since our initial push is to get the National Archery in Schools Program going. He will be working on that quite a bit off the bat but his role is not restricted to that. We're hoping that some of his time is spent on developing shooting programs. We have archery range funding that we're trying to put to use. He will also be working with the rest of PIO to enhance the annual Expo that we have at the Shooting Range Park in Albuquerque, and we'll also be helping to enhance our efforts in delivering the Hunter Education Program.

**Agenda Item No. 23: General Public Comments (comments limited to 3 minutes).**

**Public Comment:**

**Ron Shortes:** I'm representing Catron County and also our family ranches in Lincoln/Catron Counties. The first issue is the water issue in central/western New Mexico. I don't know whether you all have taken a position on this but it has the potential of a horrible adverse impact on wildlife everywhere the river at Socorro all the way to the Arizona line and possibly the whole Gila River base. The second issue is bad PR for the Department. There's rather obscure rule about hunting in vehicles on 2-track roads that was apparently implemented in 2006. That rule is so poorly drafted that it is causing a problem. We haven't had a problem in Catron County until recently because your game officers were using common sense and realized that the rule made no sense. Under the current rule the way it's worded, there's not a 2-track road in Catron County that you can hunt off of. That's a serious problem for hunters on our ranches, especially antelope hunting in San Augustin because a hunter would literally have to walk in some situations 10 to more than 20 miles to get someplace to hunt without being on a 2-track road the way it's defined and this came up with an officer prosecution from your Department with a judge who does not like your Department anyway. It was very bad PR for the Department for the judge to say that this is the silliest law that I have seen in all my years as a judge. It is something that needs to be reviewed. I don't know what the purpose of the rule was but it makes no sense in most of the state. Lastly, every county in the state through the Association of Counties has passed a resolution opposing the Wolf Reintroduction Program. Again, this program is not working and it is not true that a majority want or need it.

**Bob Jenks:** Mr. Shortes brought up 2-3 issues that I think that we can at least provide some additional information for you as far as the Department's efforts. If I'm not mistaken, Mr. Shortes referred to the Arizona Water Settlement Act in process to implement that Act which is federal legislation and the Department has been actively involved in that process. There have been I believe 3 workshops—Director Thompson has attended 1, Mr. Shelby has attended as well and a third that is scheduled for this Saturday and we'll be actively engaged in that process.

**Ron Shortes:** Respectfully, that wasn't what I was referring to. There had been water well drilling requests through the State Engineer's office, 1 through the San Augustin Plain if I calculate correctly is requesting 3 trillion gallons of water annually to be drained out of that basin.

**Bob Jenks:** Yes, in that regard the Department has been involved with that issue and in fact we filed a protest with the State Engineer' office regarding that application.

**Luke Shelby:** Regarding the road issue, I think it's this particular rule and let me work with Ron to see exactly what the problem was with it. It does have to do with driving off of an established road or off a 2-track road—hunting/fishing/angling in an area where a person has a license to hunt/fish/trap; so, what I'd like to do is have the opportunity to work with Ron and see what we could do.

**Agenda Item No. 25: Adjourn.**

**MOTION:** Commissioner Salmon moved to adjourn. Commissioner Simpson seconded the motion.

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

