

MINUTES
NEW MEXICO STATE GAME COMMISSION
Farmington Civic Center
200 W. Arrington
Farmington, NM 87401
April 16, 2009
9:00 a.m. – 5:00 p.m.

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AGENDA ITEM NO. 1: Meeting Called to Order.

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

AGENDA ITEM NO. 2: Roll Call.

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

Commissioner McClintic: There are no revocations to consider, Item No. 6, we will not hear it. We will hear Agenda Item No. 7, San Juan River Public Involvement Update, and after that we will convene into Closed Executive Session because we have matters for consideration before we get to Agenda Item Nos. 15, 16, and 17.

AGENDA ITEM NO. 3: Approval of Agenda.

MOTION: Commissioner Buffett moved to accept the agenda, as amended, for the April 16, 2009 State Game Commission Meeting. Commissioner Salazar seconded the motion.

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

AGENDA ITEM NO. 4: Introduction of Guests.

Introductions were made by approximately 50 members of the audience.

AGENDA ITEM NO. 5: Approval of Minutes (March 5, 2009 – Santa Fe, NM).

MOTION: Commissioner Arvas moved to approve the Minutes of the March 5, 2009 State Game Commission Meeting in Santa Fe as presented. Commissioner Salmon seconded the motion.

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

NEW BUSINESS:

AGENDA ITEM NO. 7: San Juan River Public Involvement Update.

Presented by Mike Sloane and Marc Wethington – The Department updated the Commission on status of engaging the public in discussions on the San Juan River fishery. Participating were Concerned Citizens for the San Juan/San Juan Quality Waters Coalition/NM Trout/San Juan River Guide Association/San Juan Fly Fishing Federation/NM Wildlife Federation. The Department presented public's concerns raised to date and discussed potential options to address issues as making the entire stretch catch-'n-release, perception fishing is different, bugs are different, sediment in the river causing crowding, fish are wary, consider extending the special trout water, see an increase in law enforcement, improve the facilities—better picnic tables, boat ramps, and trails, prefer stocking smaller fish, Department control the washes, habitat projects especially in the braids where water is ankle deep because of lower flow, flows are over regulated in the river and they're interested in trying to bring back a range of flows, and they'd like for BLM to look at an abatement study to see if there's a way to reduce sediment coming into washes. They also feel BOR needs to take action on the mitigation measures discussed in the Environmental Impact Statement related to the re-operation of Navajo Dam. They point out the coordination report put together by USFWS that talks about the impacts of the alternatives in the EIS and to Executive Order 12962 telling federal agencies to try and promote recreational fishing and sustainable aquatic environments. They expressly request we send a letter to BOR/USFWS asking for status on mitigation, and why it's not moving forward. Finally, the San Juan stamp concept where a stamp to fish in the special trout water would have to be purchased, and money would be dedicated specifically to the San Juan so each year we'd do a habitat project or help State Parks with shelters or a variety of things.

Commissioner Arvas: I'd recommend we wait until we hear response from constituency. From that point on the Commission will decide what it'd like to do as far as the next step.

Chairman McClintic: I've been informed that the Assistant Attorney General couldn't make it to Farmington so they're sending someone else. We're going to revert to the original Agenda although Item No. 6 is still off, but we'll follow the original order on the Agenda.

Public Comments:

Greg McReynolds: Trout Unlimited has not created an official response but we're pleased to see input being cataloged and sportsmen believe additional work needs to be done. Fish numbers are changing so we'd like to see studies done to look at the bug life and sediment studies done to identify where that's coming from, how that's impacting the river, and if it's likely to impact fish populations.

Mike Sloane: The Department is looking at how best to analyze sediment information and see if we can't find some older data to compare it.

Jeremy Vesbach: Representing the NM Wildlife Federation. A specific issue is continued looking into basing decisions on good information. Other issues are stocking rates almost quadrupled but didn't necessarily see reflection in number of fish being caught per hour, and continue looking into what can be done about sediment and preventing it.

Larry Johnson: Secretary/Treasurer of San Juan River Guide Association. The impact on business has been substantial. On behalf of the businesses/guides/services and the members of the association would like to assure they will do all in their power to assist any state or governmental association in keeping this world-class trout fishery a premier destination for anglers in state and around the world.

David Israel: The Department's law enforcement is not going unnoticed. An important issue is complete catch-'n-release for the quality water.

Sheldon Smith: A developer has gone to each person and told them that they have no rights to the river. He's said he has a right to come across their land. He's told people he's made a deal with the Department to change the river.

Andreas Novak: Member of the Concerned Citizens/San Juan Waters Coalition. Membership's purpose is to bring attention to and request consideration for mitigation measures for the trout fishery. All point to the lowered flows and the amount of silt in the riverbed especially where Baetis Bend/Muñoz Canyon/Simon Canyon enter the river. Where once major populations of larger baetis and the now nearly extinct Pale Morning Dun prospered, there are now oceans of mud where such species cannot live. Caddis flies once found in large numbers on the lower third of the quality waters are no where to be seen. The only real concentrations of insects are the diptera or midges, and these have become progressively smaller in specimen size.

Observations are that there are fewer fish. The economic conditions in the river are also thought to be negatively impacted. Request NMDGF consider recommending minimum flow of at least 750 cubic feet per second to the BOR in favor of maintaining the health of the trout fishery. It has also been suggested that such flows would not be detrimental to the endangered species and the critical habitat area, hence such a recommendation would seem reasonable.

Commissioner Arvas: Mike, how do we deal with the BOR in terms of the flow? We keep hearing over and over that we need flows 350-750 as the optimal. We have flows now in 250-800 range, what negotiating ability do we have with the BOR to come up with these optimal flows?

Mike Sloane: Almost none. The BOR is under statutory obligation for flood control and for endangered fish. There's a science committee that made a recommendation on the flow. They went through the EIS process and developed 500-5,000 alternatives where they're trying to mimic the natural hydrograph and that would balance the water needs for the endangered fishes with the potential water development into the future. There's some flexibility in that and we have an intention to talk with them about how much flexibility there is and whether there are opportunities to manage it differently to be better for the trout fishery.

Pat Page: I'm with the Bureau of Reclamation. The reservoir is being re-operated to meet needs of endangered fish and for future water development, which basically the floor recommendations call for mimicry of the natural hydrograph. Because the floor recommendations suggested that we go with releases lower than the historical releases, as low as 250cfs, we underwent the development of EIS to study impacts. EIS basically concludes that this re-operation would have an impact on the trout fishery. It stands to reason that re-operating for native fish is probably not going to benefit the non-native fish, but in the EIS we mentioned we would have some flexibility in operations prior to full water development occurring in the basin. We've been implementing that flexibility with the exception of the extreme drought years of 2002-2004. We've not had releases below 500cfs, other than to accommodate some of the habitat improvement projects that we've been supporting through the Department. One thing the operational flexibility doesn't allow us to do is to set aside the flow recommendations because the lower releases basically are for 2 reasons: (1) to conserve water in the reservoir in order to have the big spring peak releases that the flow recommendations call for the following year; so, it's basically to store water to allow to have those demands and our more traditional demands of the reservoir for the next year; and (2) is to maintain these target base flows during the non-spring months because basically a natural hydrograph you have the big spring peak release and low flows throughout the rest of the year so the flow recommendations calls for a 500-1,000cfs range in the critical habitat. Those releases are reduced in order not to exceed 1000cfs. During the hot summer months, when the tributaries downstream start to flow less, namely the Animas River, results in having to release more water from the reservoir so even in the extreme drought years releases as high as 1000cfs in the summer. BOR never maintained 500cfs all through the summer. Those releases have had to be increased in order to reach that target base low between 500-1000 in the critical habitat.

Commissioner Arvas: The understanding that the Department has control over BOR isn't true. This has to be within the parameters of BOR's job descriptions.

Pat Page: BOR has parameters to operate under. BOR has done what it can and at times maybe has gone beyond. BOR is looking at all agencies within NM that have conflicting issues with your Commission.

Commissioner Salazar: The Department is hopeful BOR would be willing to be part of a committee to look long-term at how to maintain this fishery and this economy.

Tweeti Blancett: I'm a rancher in the San Juan Basin. Our ranch sits in the Macey Mountains on top of the mesas, and it drains into both Animas/San Juan Rivers. It's a federal lands ranch and in the fairway of the largest natural gas producing area in North America. When reclamation starts on the river, this ranch has some of the highest activity in the entire basin. It has pollution from erosion/roads/pipelines/noxious weeds/contaminants—six generations of plants that have been on that ranch. All our waters are contaminated in one form or another. In addition, there's contamination in the tanks/pits/surface. Ranch is at the top of the mesa and contamination is going into the Animas/San Juan Rivers. When the Department takes on this challenge of trying to clean up sedimentation/erosion, it is taking on the federal government and the largest producing natural gas field in North America. Protect the rivers, enforce the rules/regulations that are on the books to protect the land/water/resources.

Oscar Simpson: I represent the National Wildlife Federation. This is a long-term problem that's not been addressed. Wildlife aspects are declining because of lack of coordination and consideration of the water resource/habitat/hunting/fishing. We think this is a long-term goal and we need to get our congressional delegation to identify federal funds. You'll have to look at the long-term implications/climate change/invasive weeds/piñon/juniper encroachment/suppression of fire. Everything is working against us to make the sedimentation and quality of the river degrade. USFWS has told us they have plenty of data and they'd be able to share with a working group/state aerial photography and lots of data saying what's going on toxicologywise. The San Juan is a world class fishery and we want to maintain it.

Commissioner Arvas: Do we have a partnering system in place now?

Mike Sloane: Not in a formal sense, but Mark communicates with BLM/BOR/State Parks. The Department's habitat specialist in the northwest area is coordinating with BLM and looking at the mesa tops in that regard but I'm not sure it's a formal focused group.

Commissioner Arvas: I'm at a loss because I don't know what more you/Department can do to alleviate the allegations that Oscar is saying that we're not dealing/working with these entities. Whether or not we have the control over these groups is one of the misunderstood things. When it comes to the Congressional delegation, we're not prepared and we ought to be better prepared to address that issue.

Commissioner Salazar: There's no total coordination going on. People want to see long-term coordination to protect this area.

Commissioner Buffett: Setting aside BOR, what sort of coordination do we have with looking at the upstream sources of the sediment loading? What ability/authority/expertise do we have for looking on top of the mesas and saying this is a major source of sediment loading and this is how we would solve it? How do we work with those parties to decrease the source of sediment loading from the top of the mesas?

Mike Sloane: That comes through our habitat program where we have oil/gas development guidelines that have been before this Commission. That mechanism isn't in Fisheries it's more in Conservation Services Division and in the area operations that have habitat specialists. They are actively working on that. This has been an ongoing issue through oil/gas issues and their impacts on wildlife habitats and how we can insert ourselves more into that process and try and make it fit better.

Commissioner Buffett: Echoing what Commissioner Salazar said, we need to work together. We need folks from Conservation Services and our partners from BLM to come together and look at this river within the context of the whole ecosystem.

Mike Sloane: I didn't mean to say they're over there and we're over here. When they see a fisheries issue they come and talk to us about it and want our input. There's been a proposal by one of the energy companies to do seismic testing all across the upper part of the reservoir all the way to the Jicarilla border and we were included in that discussion both because of what might come off the mesas, and because they wanted to do some seismic testing within the lake, so that's a long-term project that they're starting to talk about.

Commissioner Buffett: I'm going to look at that '92 EIS when the EIS on Navajo Dam was completed and see if we might find some recommendations/benchmarks that we still need to achieve.

Mike Sloane: It was finalized in 2006. On the Department's website under Fisheries on the bottom right-hand corner there's a link to the page that has all the chapters for the final EIS.

Commissioner Arvas: If anyone in the audience/Commission can identify an instance where you weren't at least cooperative in the sense of discussion at least with any of these partners, I'd like them to tell me that.

Chairman McClintic: Mrs. Blancett leveled a very serious accusation and I want to know how many times the Department has been notified that there are pollutants in the fishery, that there has been spillage from the pits/oil/gas, and I want to know how we addressed it and what was found.

Mike Sloane: Specific to the special trout water I'm only aware of one incident that was investigated by Marc and the Oil/Gas Conservation Division and found that it was just organic matter that had washed out of a wash during a heavy rainfall.

Chairman McClintic: Who leveled the accusation?

Mike Sloane: I don't know exactly the source of that information. I got it through Oil/Gas Division representatives, but I don't know exactly who sent the original video. One thing I'd say about Mrs. Blancett's comments is that my interpretation of what she was saying is that the contaminants were up on the mesas and that they hadn't come down yet, but the potential existed.

Chairman McClintic: No, she was saying they had come down and getting in the rivers. This Commission takes that very seriously, and we need documentation. If this lady believes that there are contaminants coming down off that mesa and getting in our rivers, we need to do some sampling. I don't know how often we test, I don't know what your control standards are on testing these streams, but we sure would like to know. As Dr. Arvas said, this continues to come up time and time again on the Animas/San Juan.

Mike Sloane: We don't actually test for hydrocarbons in the water. We rely on water quality/temperature.

Chairman McClintic: Someone does test for them, right?

Mike Sloane: I think the Environmental Department may test for them on a 5-6 year cycle as they go around the state testing different watersheds but I don't know that there's any regular testing though most hydrocarbons are toxic enough to fish so I think we'd see some mortality due to a spill.

Chairman McClintic: I'm going to direct this Department to move forward seriously to get facts because it seems to keep coming. That ad on KOB-Radio in Albuquerque about not being able to fish the river anymore because of all the pollutants, etc., is troubling to people who make a living in this town, making a living off this fishery, and it's troubling to me and other people within the Department because we've spent a lot of time on this. Marc has put a lot of his life into this. It's important that we have documentation.

Commissioner Buffett: We're all in agreement that we need facts/good data and that's why a group of folks for over a year and longer have been calling for a comprehensive study of the area/river within the context of industry/sedimentation and getting a full understanding of what's going on.

Chairman McClintic: We have a study, the White Paper, that our biologist/Department came out with. If you're talking about an additional study, they have a perfect right to hire anyone and go get that study.

Commissioner Buffett: The study I recall was on the fisheries itself, but not looking at what's going on the mesas overall.

Director Stevenson: To clarify, when we get reports of contamination going into the watersheds, we do not neglect looking at those. I remind both the Commission/public that the Environment Department as far as water quality standards in the NM is the regulatory and statutorily responsible agency. I'd be glad to go back and get the information consolidated with Environment and Oil/Gas Conservation Division who are the responsible entities for on-site issues with oil/gas development. Clearly, it has

potential impacts to wildlife/habitat. We're involved with that on water quality standards. We'll consolidate and do better coordination work and a better job of ensuring that information is passed on to the Commission. On the San Juan, there's been one incident and we investigated that. We can continue to do that and try to influence OCD/Environment Department regarding how important this fishery is, and get them to coordinate with us.

Chairman McClintic: Would it be within our purview to do a study on the mesas and see if silting is coming from there and if there is a serious problem? Is that something that we as a Department should undertake?

Director Stevenson: I suggest we move forward and coordinate that activity with other agencies. I'm not sure that the Commission/Department are capable of doing that. That would have to be a coordinated effort with folks with expertise and who have the responsibility to do that. We'd be glad to look at that, but I'm not sure from the Commission's/Department's standpoint that we'd be capable of taking on that type of a study by ourselves because of what it involves—authority of several entities.

Commissioner Buffett: All the more reason to make sure we're really challenging ourselves to robust coordination.

Chairman McClintic: We're taking everyone's input and then we'll put together what people want. In the future we'll have an agenda item where everyone's voice will be heard and we'll have a consensus to use \$250,000 available for improvements.

Commissioner Buffett: Let's make sure we explore any opportunities to leverage or match those funds with federal/stimulus or whatever before we think of it as \$250,000. We might be able to make that \$500,000-\$750,000.

Rudy Rios: I represent 350+ members of NM Trout. There is something that's happening in this river that's positive as opposed to what some people are saying. We have margins of error in the survey because we don't have all our members accounted for and we have some members that didn't respond. The overall experience 56% said it was an excellent/acceptable experience on the San Juan whether it was 1 time per week or 1 time per year they went.

Steve Henke: I'm BLM-District Manager. BLM is committed to cooperative efforts with the Department through the Sikes Act Program working in conjunction with the oil/gas industry. We have participated in habitat improvement projects in the river. I pledge working cooperatively with the working group to address the complex issues associated with the San Juan.

Commissioner Salazar: What did you do in Largo Canyon to help reduce the sediment?

Steve Henke: We haven't done anything specifically with analyzing the erosion rates in Largo Canyon. We can draw a corollary to Simon Canyon that any contribution from oil/gas on sediment in addition to the natural background sediment was insignificant. We're willing to participate/cooperate in the working group and share data we have available that might have some bearing on the recommendations that come to the Commission.

Mike Sloane: In the White Paper we did use that USGS report on Largo Canyon and tried to apply it to the watersheds and I think we came up with a conclusion—87% of the sediment entering the river by those calculations was based on natural background and maybe up 13% was from oil/gas development, so it's part of the watershed and also the report you mentioned by the NM Environment Department is a link within that report.

Bubba Smith: I represent San Juan River Foundation. We feel (1) erosion/environmental issues should be addressed by those who know what they're looking at and what they should be doing with it, not the Department, but we do believe they should work in correlation with them; and (2) we believe in the habitat improvement of the San Juan River.

Marita Noon: Executive Director at Citizens Alliance for Responsible Energy. There was an ad placed on Kkob/Magic and this ad made false accusations that damaged the fishing on the river. I've spoken to the guides/oil/gas people, I've tracked the work of Oscar Simpson/Tweeti Blancett and they've made it their life work to destroy the oil/gas industry in this valley/state. There's no record of any damage to the river as a result and the oil/gas industry in this region has put forth tremendous effort to work cooperatively with you to secure the habitat. I want to personally and on behalf of our 1,000-5,000 members thank you for your work that's reasonable/honest/responsible.

Commissioner Salazar: I want to make sure you're willing to work with the group to make sure and maintain these quality waters in the future.

Morita Noon: Most certainly. I represent citizens who care about abundant energy.

Chairman McClintic: Mr. Wethington explain what you've been doing and what you like to see as far as the fishery.

Marc Wethington: When you first put those 4" fish in the river system, those are some of your fastest growing fish. Within the river system on the low end we're hoping for ½" a month to as much as 1¼" depending on the time of year for the first few months. So fish going from 4"-8" we're hoping it's making it somewhere between 4-5 months it's doubled in size. From 8"-12" you're looking at longer but within a year's timeframe people are catching these fish. Within 1½ year they're 15"-16" inch fish. For those fish to make it over 20" some of those fish doesn't matter if they live in the river for 10 years, they will not make 20" because not all of them have the genetic potential. Part is genetics potential and food resource, part is luck, being in the right habitat at the right time. The end result is somewhere between 5%-10% of these fish will make it over 20". That's what we're hoping for with any stocking event because when you stock 100,000+ fish you're hoping for somewhere between 30%-40% survival. Half off the bat you're looking that half will be eaten up.

Chairman McClintic: Do you think the river is overpopulated?

Marc Wethington: You can stack fish in the San Juan unlike any place else in the state. There's a point where you can pile them in until you start seeing growth rates reduce. Looking at the condition factors at our most recent electro fishing survey in Nov., 2008 there was no reason to think it was overstocked or there was a lack of food resources by the size and quality of fish.

Commissioner Salmon: What would the natural recruitment rate be of the Rainbow relative to the Brown trout? Are there ways we might manage/manipulate the river to improve natural recruitment among the Rainbow?

Marc Wethington: The big issue with natural recruitment of Rainbow trout is the presence of whirling disease. Whirling disease in the San Juan River is that it's a positive river. Fish that are affected fry to about 3"-3½". To get them through that time period with whirling disease, it's very limited. You can go in and improve spawning conditions but the end result may not be any better because of the presence of whirling disease. Brown trout are resistant to whirling disease. They're carriers and they continue the process within the river system but young fish are not nearly as susceptible or marginal at most. Brown trout reproduction in the San Juan now is as good as it's ever been. They've probably moved in and occupied some of the space that Rainbows did a few years ago. Brown trout are continuing to do well through natural reproduction of the San Juan from a disease standpoint. Rainbow trout recruitment, at least in the foreseeable future within the system, is limited.

Commissioner Salmon: Do some strains of Rainbow trout that develop a resistance to the disease and you get a disease resistant strain developed in the system?

Marc Wethington: Yes, they're working on those day/night at hatcheries all over the country. There are some strains that have shown potential but at this point in time there's no bulletproof Rainbow trout for these systems.

Commissioner Arvas: How significant is the bottom of the San Juan in relation to nutrition and the feeding aspects of a Rainbow trout in the stream bed itself?

Marc Wethington: One of the things happening when they first built that 400' dam, you no longer have any new sources of gravel/cobble coming into the system that you'd have in a natural river. There wasn't an abundance of gravel/cobble to begin with and over time we're losing cobble/gravel and part of the process below all tail waters they've seen is that it becomes more cement or armored and that's because fine particulates filling in/around the cobble/gravel. There's a point where you're losing pore space and actually losing habitat for invertebrates. Certain invertebrates do extremely well in these conditions and have little competition, and some eventually start disappearing and we've seen changes in the insect fauna since the day they built that dam. The influences of the dam creep further downstream until you start having enough side channels/material being brought in. The problem is that in the southwest all that material being brought in it's warmer water laden with sediment so you have a mix of cobble/sand but it's primarily outside of the trout fishery other than in Simon Canyon.

Commissioner Arvas: How significant would core samples of the streambed be to find out what the streambed is like?

Marc Wethington: You can do habitat surveys looking at cobble gravel. There are techniques for evaluating that and the amount of cementation/armoring of the substrate but it's a slow natural progression. We're 40-50 years out and we're seeing the end results of that. That's where there are things that we can do to improve it. I'd like to start taking steps to add cobble gravel to the system because no new stuff is coming in. One thing we're looking at now we collected invertebrate samples last week to compare to studies done in the '90's. From observations of collecting samples, lots of bugs diversity is narrow.

Commissioner Arvas: If you did a core sample, that'd tell you whether or not you have the right type of streambed?

Marc Wethington: It's the loose material on top.

Commissioner Arvas: Does the core sample do anything with that?

Marc Wethington: No, we're looking at such a thin layer before you hit the sandstone bedrock because when they built the dam, all the material used in the construction of the dam was pushed out of the channel itself.

Commissioner Arvas: So then if you correlate the core sample effort with the nutrient values of what the San Juan has to offer, does that give you a common denominator in terms of deciding how many fish you plant?

Marc Wethington: No. You could put enough fish in any system to where you started having fish starve to death.

Commissioner Arvas: Have we ever done that?

Marc Wethington: No.

Commissioner Arvas: How would you answer a person that says that fish are not starving to death?

Marc Wethington: The fish are the end result in my opinion. If food resources are not available it will be reflected in the quality of the fish.

Commissioner Arvas: That'd be the growth factor?

Marc Wethington: Growth rates/weight and another thing we look at is a condition factor. That's length/weight ratio and this is something that's used across the board nationwide. The condition factor of one for Rainbow trout is considered reasonable nationwide. Someone picked a formula where you put in the length/weight. If one pops up, fish are reasonably healthy. If it's greater than one, that's a plus. If it's less than one, you might start looking at what you're food resources are or your fish densities.

Commissioner Arvas: How often do we do those studies?

Marc Wethington: Every year at least once a year and sometimes more. In November you'd think condition factors might be a little on the slide because of spawning fish. Because Rainbow trout aren't successful with natural recruitment doesn't mean they

don't go through the process of spawning. Brown trout also are spawning during that timeframe. Condition factors on the San Juan since they started electro fishing have been consistent of about 1.2-1.4. What's interesting is this year looking at condition factors in November, the fish are as good as they've been anytime from that standpoint.

Commissioner Salazar: You've done habitat work putting boulders/weirs with some limited success. What do you think it needs to develop that habitat to give us a broader range of bugs across the river to move the progression of the river back?

Marc Wethington: The larger structures are to provide resting area to help scour material. They're not designed for invertebrate concept. Invertebrates need pore space around cobble. One thing that might be done is add cobble/gravel to the system. The problem is where to put it? The habitat invertebrates need gravel/rocks and the pore space around them.

Commissioner Salazar: With sedimentation increase areas and bugs limited to a narrower breed of bug, if something happens to that certain area, I'd like to see a broader range of those.

Marc Wethington: Most tail water fisheries wind up as primarily a midge fishery. There were people writing about this in the mid-'60's that basically said this is what you'll see 30 years from now. They were good at what they were doing. It's been a slow progression. There ways to turn back the clock and we ought to look at that.

Commissioner McClintic: **Janet Rees** submitted her written comments: "I believe it is essential to recognize the contribution of oil and gas industry activities to the sedimentation increases in the San Juan and Animas Rivers. Due to the high level of development in our area, there are miles and miles of roads which at times are inadequately maintained and/or constructed so that rutting speeds, run-off; water bars are at times lacking. I would like to see the industry encouraged to use more directional drilling and more multi-well drilling sites to reduced the number of roads needed which in turn should reduce run-off."

Discussion item only.

AGENDA ITEM NO. 8: Game Management Unit 6 Overview and Recommendations.

Presented by R.J. Kirkpatrick – The Department provided the results of the survey conducted pursuant to a proposal received from landowner/sportsmen interests to modify the manner in which elk hunting opportunities are allocated and private land damage concerns are managed. Additionally, concerns expressed regarding the current 3-subunit configuration of Game Management Unit 6, combining GMU's 6-A/6-C won't impact 40-50 landowners. It'll impact several thousand hunters/land management agencies/outfitting/Tribal/business interests so the Department felt it needed to get the opinions/concerns/comments of as many people before any decisions were made. There were some assertions that the Department didn't take the landowner communities interests into account when unit was originally split. There are two components: one are responses to questions and the other are the comments received. The Department is requesting the Commission give the Department direction on whether to move forward to develop prospective amendments to the elk rule that would combine the units. The second thing the Department is asking is for direction on whether the Department should move forward on working with constituents/hunters/landowners to develop prospective amendments to the landowner system rule that'd better recognize the contributions small landowners make especially as it relates to cultivated crops and damage elk are causing on their properties. Based on Commission's direction today, the Department will prepare prospective amendments to the elk rule that would combine those two units and bring them before the Commission for final action in July.

Chairman McClintic: Is the questionnaire deadline over with? How are we handling that?

R.J. Kirkpatrick: There was a deadline applied to returning the questionnaire so we could summarize/analyze/present it. The deadline is no longer available to the public.

Commissioner Salmon: How much migration is there back/forth between these various units of elk?

R.J. Kirkpatrick: The Jemez is a volcano so the Valles Caldera is the heart of that volcano and most of the high country is in the center of the unit. San Pedro Parks is high country as well. The predominant migration that occurs in the Jemez every year is from the higher country centered around Valles Caldera and neighboring property and San Pedro Parks down to lower elevations. There are elk on the Jicarilla wintering that have come out of the Chama Basin that we suspect some years they decide to try a new neighborhood and they'll move into Unit 6 in the northwest corner, but basically the migration is an elevational migration and not out/back into the unit migration.

Commissioner Salazar: The survey opened more questions for me than it solved. I hear comments that there's migration with hunting pressure and they're moving into Bandelier where there's less pressure. That leaves less elk in that particular area. Is there any other consideration to a different alignment where we'd have an equal distribution of the herd as far as the two units?

R.J. Kirkpatrick: This is a difficult GMU. The issues have been in place for a long time. Elk utilize the Valles Caldera as a safe haven and they thrive there and they do move off, but hunting pressure happens and as livestock starts moving into those allotments and recreational activities start occurring, those elk move back into the Valles Caldera. Past the last two regulation cycles, we've established that dates for hunting seasons in 6-A, 6-B, and 6-C are set at the same times that theoretically equal pressure to keep those elk from finding those safe havens when hunting seasons happen. What can be done about reducing movement of elk out of 6-A and 6-C to safe havens when hunting season starts is difficult when the Department doesn't control the activities with Valles Caldera/Bandelier/Los Alamos. As far as distribution of elk, we've hunted and put significant pressure on elk in the 6-C area and as a result there aren't as many/dense/distributed as in 6-A where we've hunted it very tightly and

quality managed. We're trying to increase numbers of elk in 6-A to encourage elk to come off Valles Caldera into 6-A and we've been somewhat successful. Anything we can do changing the boundaries is not going to change elk seeking safe havens when there's pressure put on them through recreational activities or livestock grazing/hunting. No matter what you do, if you erase this boundary and put the two units together, when hunting season starts elk will go to Valles Caldera.

Commissioner Montoya: What could potentially happen if 6-A and 6-C became combined? What are ramifications?

R.J. Kirkpatrick: It depends on what interests are. Some concerns from Department/landowners/hunters/outfitters are that in 6-A there's little hunting pressure, the quality of hunting is good, competition for hunting is not much, it's an enjoyable place to hunt and subsequently landowner authorizations are in high demand and outfitters that are able to operate in there are successful and have growing businesses v. 6-C where over the years there have been significant high levels of hunting opportunity established to reduce elk populations and keep them at minimal levels. As a result hunter satisfaction isn't very good in 6-C, landowner authorizations aren't in demand as they're in other places. If you combined the units, fears are that people who draw public hunts in the unit and the landowner authorizations that are a result of allocations to these private lands in what are now 6-C the majority of those folks want to go where the best elk hunting is and that's usually where most elk are well they're probably going to focus their attention on San Pedro Parks and all of the areas in 6-A that are good elk hunting. One of the fears is that when you erase the boundary and make it one there will be a significant increase in pressure applied to what's now 6-A thereby reducing the quality of bulls/hunt. Some landowners are concerned that their authorizations will become less desirable, outfitters are concerned economics of businesses will decline but on the other side people that've been hunting 6-C and landowners receiving authorizations would theoretically benefit from eliminating the boundary because their landowner authorizations would become more valuable and hunters that drew the unit would have a better place to do. How long it would take to balance itself I don't know but the major concern is if you did that you'd destroy what 6-A represents now. The value would be that it simplifies things, does give hunters significantly more country to hunt, it may cause redistribution of elk throughout this country, and it would make it more difficult/longer timeframe process if the Commission wanted for us to go with some of these suggestions to increase quality/quantity.

Commissioner Arvas: What's breakdown of private landowners in 6-A, 6-B, and 6-C? There are private landowners 6-B so in other words the complaints are they are equally divided between 6-A and 6-C with scattering around Valles Caldera or are they more predominate in 6-C than in 6-A not liking the unit the way it is? Are there more landowners in 6-A than in 6-C? Are the landowners in 6-A as vocal as in 6-C?

R.J. Kirkpatrick: The complaints to depredation or not liking the unit the way it is I think the group represents landowners in 6-A and 6-C. There are more landowners enrolled in our system in 6-A than 6-C. I don't know that they're more vocal. Given this particular issue there's more interaction between the Department and 6-A than has been in the past. There's been an increasing amount of dissatisfaction with landowners in 6-A on two issues. We've been successful in that there are more elk in 6-A now so that's led to more presence of elk on private property and depredation concerns. The other component of 6-A that's gotten vocal over the course of the last couple of years is that although a lot of those landowners/Forest Service supported conservative hunting in 6-A to bring the herd/quality back before we split it. As we've done that, they were willing to accept fewer authorizations/permits/hunting opportunities but there comes a point where people get tired and a lot of landowners in 6-A are smaller properties. It's difficult when you're conservatively hunting a unit and there are very few hunting opportunities to get everyone a hunting opportunity so there have been a lot of landowners in 6-A because of small acreages and few authorizations available. They're frustrated with not getting any authorizations or having to settle for authorizations in other units through the new landowner system and there are increasing concerns about when are we going to get authorizations for our unit.

Commissioner Arvas: What's your answer to that question?

R.J. Kirkpatrick: My answer is figuring out a way to continue to be diligent about increases in the elk population and increasing hunting opportunities. Getting that hunting opportunity into hands of landowners may require amending the landowner system so that these cultivated crop properties and smaller landowners get them more often, modifying how the landowner system works, but it's a difficult because you have so many landowners. The other issue is that Unit 6 is not unique but one of the few in NM that's this way is that the proportion of public land compared to private land is difficult. Every hundred hunting licenses the Commission approves basically 80 of them go to public hunters through the public draw and about 20 go to the landowner community. Anytime you have a public/private proportion in a GMU that's 70%-80% public lands vs. private lands, the landowner part is small and spreading that landowner apart through all landowners that are participants is difficult.

Public Comment:

Garth Simms: I represent the NM Council of Outfitters. The Council is opposed to combining the two units.

Chairman McClintic: What was the reason for the guides/outfitters' lukewarm response to our questionnaire where we had 10 that didn't respond and then we had a split?

Garth Simms: I can't speak for them. Some of our members are here to talk directly to the issue but I'm not sure why others didn't. Others may not have been members of our organization.

Commissioner Arvas: Are you of the same opinion that there's not much of a problem with 6-A at this point in time?

Garth Simms: Our members who hunt the 6-A area are very pleased with the quality/quantity of the game.

Commissioner Arvas: If that's the case, they seem to be unhappy about 6-C.

Garth Simms: I don't think they are unhappy. I've not heard any negatives about 6-A. What I hear from our members is that if you combine these units it will destroy the quality in 6-A.

Commissioner Arvas: Yes, I understand that, but what I'm trying to get to is that if there's no perceived problem in 6-A, the Department doesn't think there's a problem there either, but the landowners in 6-A don't seem to be quite as adamant about a problem there as they do in 6-C, so if you left 6-A the way it is, there is an interest in increasing the quality in 6-C so that means a reduction of permits and then a possible consideration for the landowner in that unit to be given some sort of compensation. What I've heard is that no one wants 6-C landowners' permits.

Garth Simms: A reason for that is obviously quality/quantity of game in there has been managed down and not responsive to public input.

Commissioner Arvas: When outfitters go buy landowner permits, the cost of 6-C permits are much less than 6-A permits?

Garth Simms: That's correct, I assume because the quality isn't in 6-C. If you rebuilt quantity/quality of animals in 6-C, our members wouldn't have a problem with combining the units. But doing it precipitously will drive all the hunters into the quality area and diminish the quality of animals in that area.

Anthony Madrid: I'm a landowner in 6-A and 6-C. I've been working on a petition with local outfitters/businesses/ranchers/sportsmen in the Cuba/La Jara areas. This was prior to the Department's survey being sent out. I spoke at the March Commission meeting and I'd like to stress that I'm strongly opposed to combining Units 6-A and 6-C. The quality/quantity of elk differ in these units and combining the units wouldn't be fair at this time.

Jeremy Vesbach: I represent NM Wildlife Federation. The ratio of tags that go to the public tends to decrease; so, if you do decide to get in and re-open the allocation system that the public is taken into account. Tags allocated to the public stay same/increase in ratio. Secondly, the decision of allocating tags based on damage incentivizes complaints/problems because when you have a problem you get a valuable tag. Lastly, part of the issue is schizophrenic management between 6-A and 6-C. Looking at the survey, the herd was looked to be decreased in 6-C because of landowner complaints, but the 6-C landowners that were surveyed, 15 that responded from 6-C said they'd like to see the herd increased overall, 19 maintained, and 1 6-C landowner would like to see the herd decreased further.

Robert Espinoza: I represent NM Sportsmen for Fish and Wildlife. We're supporting not combining. The Department has done an outstanding job in making 6-A a quality unit and if you combine those units all the hunters are going there.

Carlos Chavez: The split happened about 10 years ago. We feel we're getting to a point where we can work towards a solution. Even though 6-A has been managed as a trophy the numbers/percentages have not increased.

Commissioner Arvas: What's your answer/solution to all of this?

Carlos Chavez: Split the unit in a different direction.

Commissioner Arvas: What would it accomplish if you split in a different direction?

Carlos Chavez: You'd have to change the numbers of tags the Department is giving out.

Commissioner Arvas: We can control the number of tags we give out now. It can't be more/less licenses?

Carlos Chavez: I understand how difficult it is. The hard thing for me is that we've worked for several years with the Commission to get things done before the Proclamation deadlines and they never seem to get done. One solution would be more on-site investigation.

Commissioner Arvas: What's the investigation going to do?

Carlos Chavez: People's properties need to be checked.

Commissioner Arvas: In other words, what you're saying is you're concerned about the private landowners in that unit in terms of the numbers of elk that frequent those properties during all times of the year, and you're also saying a solution to that would be to give those landowners some sort of compensation for the crops that are being used? How many landowners do you represent?

Carlos Chavez: Correct. Well, there are a lot of people angry with the Department/Commission. We've tried to get people to attend the meetings. They get angry with me because nothing happens.

Chairman McClintic: You say nothing happens because it doesn't happen the way you want it to. It's not necessarily that we're not doing anything.

Carlos Chavez: Nothing happens right away and that's how we want it to happen. We want it to happen instantaneously and the Department hands us tags because we've not gotten tags in the last 10 years.

Commissioner Salazar: It's clear to me from the survey that there's disparity in the quality of the units as far as the game goes, but we've had a lot of complaints about depredation issues. We've set up the system to keep those two separate so that people aren't making money off the elk. We tried to pass the regulation in the legislature this year to take that away so we don't have issues where we're destroying the elk. The Department has expressed a strong interest to work with the landowners. We have to get the quality of the elk units up so there's not such a split personality between the two causing problems but at the same time addressing some of these depredation issues. I don't want to see people going out and start destroying elk but rather call

us and we will respond. The Department has been much better about that. We need to try to address the schizophrenic personalities of these two units.

Art Martinez: Did the Commissioners receive the questionnaire that was sent out to the public by the Department?

Commissioner Arvas: Yes.

Art Martinez: Just about everyone I've spoken to, as well as senators/representatives, have stated that it's biased and set up to get answers the way the Department wants. Did you get the Forest Service's response?

R.J. Kirkpatrick: Yes, we got a response from the Forest Service.

Art Martinez: Did the Commissioners get a copy of the Forest Service's response?

R.J. Kirkpatrick: No, we did not send that to the Commissioners.

Art Martinez: Five of the Forest Service's responses were no against putting the unit back to leaving it the way it was. The response to the questionnaire was not what was said. It said this question may be of limited value because it is subjective and responses will be based on emotion and not biological and ecological data. I think a lot of the responses we got back from hunters/landowners was based on that issue because the questionnaire stated things that the Department wants them to know. It never stated anything the concerned citizens wanted people to know. We encourage the Department to work with the landowners to resolve their concerns. In the past, the Forest Service has basically sided with the Department but the response from the Forest Service is they're neutral and they know that there's a problem in this unit. In 2006 we suggested realignment of the unit. That was not done. Now we think the best way to do it is combine the units and make it equal to everyone, not just one side of the mountain.

Chris Lovato: I'm a landowner/rancher in Unit 6-C and 90% of the ranch is cropland/irrigated fields. When that unit was split, 6-C was devaluated and completely messed up for hunters/landowners. I wish we'd had input before the unit was split. Unit 6 was a great unit. The misconception by the Department was that the landowners in 6-C were trying to get rid of elk. That's not true. The two entities/landowners that wanted to get rid of elk through the E-PLUS System currently control 70% of the elk authorizations. They were the ones that griped the most about trying to get rid of the elk. Small landowners didn't mind elk as long as they were getting the land authorizations, but now land authorizations for small landowners in 6-C are gone because of the way the Department administers the E-PLUS System. On my 200 acres which are 90% crops/irrigated fields I get one cow permit. I used to get five, two years ago. Even though the Department doesn't see the land authorizations as compensation the small landowners and the two entities see it that way. You don't hear them griping any more, but one is getting 70 tags and the other one is getting 45 tags. They control the market on land authorizations because they're getting them all. I'm asking the Department to make the unit the way it was before. Hunters were satisfied and by splitting the unit, 6-C was ruined.

Rob Degner: I'm owner/operator of Mountain States Guide Service. We've had a decline because of the number of permits allowed in 6-A and I don't think we want to combine that unit at this time. We need to increase the number of elk and correct the problem in 6-C.

Steve Velasquez: I'm a small landowner and lifetime resident in Gallina. Ever since the split, the hunting has gone down. Combining them and doing better management, lessening the number of public tags, re-working the landowner system, and actually checking actual property damage would work.

James Casaus: I own/operate Arroyo Outfitters. I'm representing Jared Taylor/Red Top Mountain Outfitters/Cordova Land & Cattle/Taylor Family who run cattle in 6-A and we're strongly against combining 6-A and 6-C.

R.J. Kirkpatrick: On point of clarification, the unit wasn't split until after the State Game Commission at that time mandated the Department implement hunt structures across what was Unit 6 all together to reduce that elk population by about 40%-60%. After we accomplished that massive reduction in elk numbers is when the desires for different management happened and that's when the split happened so the damage to the reputation and quality of elk hunting in the Jemez wasn't the result of splitting the unit, it was more a result of what the Department was mandated to do in reducing massive reductions in the elk herd to begin with.

Commissioner Montoya: I was led to believe that in Unit 6-C there were a number of landowners and possibly to a great extent grazing permittees that influenced the Forest Service and went through all the levels of government and used that influence and the amount of pressure the Game Commission/Department were under at that time was to reduce the numbers. I'm learning that it probably wasn't the majority of those individuals that either hunt or own property but it was possibly a group that was more vocal and more influential at the time. Unit 6-C went away because of the wishes of some that didn't want elk, and 6-A did want them and they stuck around and worked with it, but 6-C is back and maybe it's an opportunity for us to work with both units and see if we can improve hunting quality overall. Because it's such a complicated unit and there are so many stakeholders, I'm not convinced the survey has done enough to inform us how all the stakeholders think about this. I'd recommend we delay providing guidance/making recommendation to the Department at this meeting. Whatever we do it won't have any effect on this year's hunting, but we still have time for the next big game rule in 2010. There are a lot of stakeholders/grazing permittees/Forest Service/legislators I'd like to hear opinions from. In my opinion the survey is almost leading me to answer a certain way. I'd like the Department to conduct 2-3 hearings to invite/solicit more feedback from legislators/grazing permittees/landowners. I don't know that enough landowners have been responsive to the survey or understand all the issues completely. If we gave them an

opportunity and got more feedback/input from the Department based on feedback they receive, we could possibly feel more at ease with our decision. At this point I don't know how it'd be realigned or if the repercussions to 6-A or any negative results to 6-A are accurate. I think we can all agree 6-C is in bad shape. I think I saw a statistic that the success rate is 6% and that's horrible. We have an opportunity to re-examine whether those sentiments are still there and if they're not, we have an opportunity to improve the units.

Chairman McClintic: We've got a suggestion from Commissioner Montoya. If we do want to get more people we have to have meetings before July, but if you want to put it back to them that's fine. R.J., let's go ahead and do that and re-visit this and try and come up with something.

Discussion item only.

Chairman McClintic: We're not going to consider Agenda Item No. 9. We're going to go into Closed Executive Session.

MOTION: Commissioner Montoya moved to convene into Closed Executive Session for reasons stated. **Commissioner Arvas** seconded the motion.

Roll Call Vote:

Chairman McClintic – yes

Vice Chairman Buffett – yes

Commissioner Arvas - yes

Commissioner Montoya – yes

Commissioner Salazar – yes

Commissioner Salmon - yes

Commissioner Sims – absent

Motion carried unanimously.

AGENDA ITEM NO. 15: Closed Executive Session.

The State Game Commission adjourned into Closed Executive Session to discuss the possible acquisition of additional lands for conservation and habitat purposes, disposal of surplus lands, and threatened or pending litigation pursuant to Sections 10-15-1(H)(8), and 10-15-1(H)(7), NMSA, 1978.

Chairman McClintic entered into Open Session and stated that the record reflect that no action was taken during the Closed Executive Session.

MOTION: Commissioner Arvas moved the Commission to authorize the Department to communicate with private and other landowners and leasees on behalf of this Commission the continuing right of the state to access public lands on and over State Road 199. **Commissioner Buffett** seconded the motion.

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

Chairman McClintic: Because of time constraints and other issues, the Department has recommended that we don't hear Agenda Item No. 9. Is there anyone in the audience that wanted to speak on presentation of Jackson Lake WMA Management Options?

AGENDA ITEM NO. 10: Update on Restoration of Rio Grande Cutthroat Trout in the Rio Costilla.

Presented by Kirk Patten – The Department presented a summary of the previous year's field season activities related to restoration of Rio Grande cutthroat trout in the Costilla watershed. The Department planned and implemented a native fish restoration project for the benefit of Rio Grande cuts/suckers/chub. Another area worked on in 2008 was Costilla Creek on Vermejo Park Ranch. Mechanical removals were conducted in July and treated it with a Rotenone formulation in September and everything went fine. We ended up stocking the area with about 1,300 Rio Grande cuts and so that population should be on it's way. We're planning additional stockings in 2009. Like Comanche Creek, we collected water quality samples to look for active and inert ingredients in the piscicide that we used. No chemicals were detected downstream of the project area. Rotenone was detected at about 20 parts per billion. This is the concentration expected and it indicates that the actual treatment was working as expected. There are four small lakes on Vermejo Park Ranch called the Casias Lakes as well as a stream called San Estevan Creek. Mechanical and chemical removal efforts are proposed during field season 2009. Macro-invertebrates were collected and we will do that same water quality assessment.

Public Comment:

Rudy Rios: As President of NM Trout, we've always supported Kirk and his project on the Rio Costilla. We'd like to continue that support. If there's anything we can do to help the Department/Commission let us know.

Greg McReynolds: I want to echo those sentiments. This project is progressing and we're pleased to see it. A lot of our members and a lot of people from a lot of states are looking forward to a time when they can go up there and catch Rio Grande cutthroat.

Commissioner Arvas: We've already had our conversations with Vermejo Park, did they have anything they wanted to add/change in your approach to this? Last time there were concerns they had expressed about the project.

Kirk Patten: I talked about it with them two days ago and they were still on board with proceeding.

MOTION: Commissioner Salmon moved to direct the Department and allow project cooperators to proceed with native fish restoration efforts in proposed areas during the 2009 field season. **Commissioner Salazar** seconded the motion.

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

AGENDA ITEM NO. 11: General Public Comments (Comments Limited to 3 Minutes).

Public Comment:

Rob Degner: I'm with Mountain States Guide Service. I have a concern about the new regulation that's coming up that if you draw a HD quality hunt next year you will not be able to put in for that hunt again.

Chairman McClintic: Rob, there's an assumption on your part that every single person that you put in for a quality HD hunt draws it. You're saying it's going to hurt your business for the following year, but how many people that you put in for a quality HD hunt in the area you're putting in for what percentage of them draw—1%, 3%? We want to give the sportsmen in this state a better opportunity. I don't believe that if you put 15 people in for quality HD hunts what percentage of those people draw, and what's the percentage I'm drawing two years in a row?

Rob Degner: I used to draw all of our deer hunters in Unit 2 until about three years ago when a lot of articles went out about the quality hunting. I have to increase the number of people I put in. Before I'd put in maybe 6-8 for a hunt because I was drawing everybody. Now, I'm looking at putting in 15-20 people for each hunt and putting down first/second/third choice just trying to get the number of people to survive.

Chairman McClintic: We do need to have a defining deal that absolutely no gray area whatsoever in it decides what does deem a quality hunt because we do have some instances where some bow hunters that got hunt quality HD and we can't fill it. We're not going to change it for 2009. Our whole intent is to give sportsmen in this state a better opportunity.

Rob Degner: I think it's a great idea for 88%, the non-residents that apply without an outfitter 10%, and 78% for residents. As an outfitter that's going to put a strain on us.

Chairman McClintic: We did talk with the guide/outfitters associations and we didn't have the trouble that you're having but we're here for you and the sportsmen in this state. If it turns out that the majority of outfitters/sportsmen in this state think this turned out to be a bad idea then we will look at it again.

Commissioner Salazar: Are you a guide mostly for bow hunters?

Rob Degner: I do a lot of bow hunts, elk hunts in 6-A and 6-C and then all our deer hunts around the lake in Unit 2. I feel this QHD next year the guys that drew the QHD we have HD hunts besides the HDQ on the deer. I'll have to put them in for the first in 2-B, first/second choice will be putting in for the first/second deer hunt before the QHD hunt next year. I see where maybe in 2-3 years you're going to see all your hunts. There won't be anymore standard hunts available.

Commissioner Arvas: Why is that? I don't think that's a true assumption.

R.J. Kirkpatrick: Yes, as more non-residents apply for standard hunts, once that level reaches a certain point, those become HD hunts, about 22%. The Commission has authority in rule to designate hunts as quality based on abundance of game, trophy quality, aesthetics of the hunt area. You are correct, there are some deer hunts throughout NM that we currently have designated as quality that we need to reconsider. They're mostly January bow hunts but they happen to be going on in units that aren't very demanded.

Chairman McClintic: You're saying that all our quality and QHD hunts are determined by the amount of non-residents that apply?

R.J. Kirkpatrick: No, sir. I'm saying that the Commission designates hunts as quality which is fully within your authority. The HD is statutorily driven.

Pat Block: The other thing I'll add is that is based on the average of the prior two years. What happens in any given year won't kick something to HD if you have something that has that HD level for two years running. That is what determines that HD. We've had concerns with hunts that don't fully fill, hunts that are filled only by fourth choice, so once we have results of the first draw we can take a look at that and figure out what's going on that year and if we need to make adjustments before that we'll be talking to the Commission.

Chairman McClintic: The door is open and this is a work in progress and we're going to continue to evaluate.

Rob Degner: I've been putting in quality hunts for the past 15 years and most of my hunters have hunted with me for 10-15 years. Well, they're not going to be able to put in for that hunt next year if they draw this year. We're going to have to put them in for a standard hunt if it's available, which in Unit 2-B rifle hunt is the first two before the third quality HD hunt everyone is going

to be putting in for that and that's why I'm saying you're going to see the standard hunts because of the person not being able to hunt because they drew that hunt they're going to be putting for the S-hunts.

Chairman McClintic: We have a right on this Commission to review that and change it.

Rob Degner: As an outfitter, I'll have to have a lot of new clientele to try and fill the gaps because of the every other year draw.

Greg McReynolds: Here are numbers from the OCD/BLM: about 100,000 acres are leased every quarter in NM for oil/gas development. In 2006 in the NW Field Office 948 permits to drill were issued, of those 579 were CATEX'd. That means they were approved by BLM without getting any input from the NM Department of Game and Fish hunters and anglers. A lot of those were probably in the neighborhood of the river. Lastly, since 1990 there's been 743 documented cases of groundwater contamination and about half of those are from unlined pits. There are issues. I don't think anyone is saying energy is bad or that every company is bad but there are violations. We need to get together and make sure we're not letting that happen.

Howard Bradley: In my opinion the GAIN Program is an affront to sportsmen/hunters because of the fee structure. As hunters/fishermen extra money is being paid through a \$4 habitat management access fee and some of that money is supposed to go for habitat access.

Chairman McClintic: To answer your questions about GAIN it has been an ongoing discussion. We're going to revisit it and try re-do/improve it. Kathy, what's the problem there? Why can't they go kill a duck?

Kathy McKim: The Rutherford is a Commission-owned property along the San Juan. When the property was purchased, it was purchased without an easement to get to it. The road was along an arroyo and then 7-8 years ago the arroyo washed out. The landowner to the east said that he'd had enough of folks partying and being in there at all times of the day and shooting going on. He said no more access through his property so at this point in time we have not gained access to the Rutherford to get the public in there.

Chairman McClintic: Have you gotten any ideas if not from him, but someone else that we could possibly gain access?

Kathy McKim: There's a landowner to the west that we can approach but both have had issues with the oil field and don't have much patience now with gaining access to any of their property, but we can attempt again.

Commissioner Salmon: You mean there's no access at all or no vehicular access?

Kathy McKim: There's no access at all to get in there. One would have to walk across Mr. Sandoval's or Mr. Valdez' property to get there. They can come down by boat if they float the San Juan from Blanco to Bloomfield they can access the property from the river but they cannot walk in and they cannot drive in at this point in time.

Howard Bradley: I'd support a walk-in area to keep partyers out of the area. Kathy, is there public access in Blanco to that area for floating?

Kathy McKim: No, the diversion keeps us from that.

Director Stevenson: We'll definitely work on that from 2-3 different perspectives. It's been an ongoing issue. We did have access for a while on an oil/gas easement after part of that, but with those landowners controlling it, we'll get Jim/Kathy/Matt on Rutherford and see what we can do, and we're currently looking at the whole GAIN Program.

Jack Bratcher: I'm a bow hunter and HD is my concern. I disagree with having non-residents set what we can/cannot do as far as drawing license two years in a row. I can't draw it next year under the new system. I feel it's tailored to benefit out-of-state residents. The other thing I disagree with is the Department extending the deadline for putting in applications.

Chairman McClintic: We gave everyone an opportunity through the website through April 8 at 5:00 p.m. to submit applications. Because the Department's system was down we had to extend it. We're going to put a lot of time/effort to fix this to where we never to extend it again, but it was the only thing we legally could do.

Jack Bratcher: How long was that system down?

Chairman McClintic: Almost three days.

Jack Bratcher: How long did you extend it by?

Chairman McClintic: We extended it for a week.

Jack Bratcher: That makes no sense.

Chairman McClintic: We didn't know if the system was fixed in one/two/three days. We could have kept extending it every six hours if that's what it would have taken but we didn't know when we extended it that the system was going to work.

Jack Bratcher: What I'm saying is if it was down three days that's all it should have been extended. No more than three days, not an extra week.

Chairman McClintic: You have somewhat of a point and I understand.

Director Stevenson: Why we went longer on that extension is we looked at the number of applicants that we were actually able to process during that timeframe and during the same timeframe last year, and we had to extend it that many days because of the capability of our servers to handle the number of people in that application system at one time. To get that same number of people that were dealt with during that three-day window last year running at the speed that we were, we had to have that potential if we were going to deal with that same number of people. We also looked at yesterday being April 15 and people trying to run taxes and because of that we didn't feel it was appropriate to compete with that deadline at the same time. We

understand what the concerns are and it's not that your concerns are not things we need to take into consideration but we tried to weigh it from different angles before we made the decision.

Jack Bratcher: I understand what you're saying but I still disagree. The IRS would not extend your deadline unless you put in a special application and therefore, why should the state be different than the IRS? The Department extended it over twice as long as the system was actually down.

Commissioner Arvas: So your concern is the number of people that applied after the extension was put in place?

Jack Bratcher: No, not really that. There was a deadline set in place and that's people should have met.

Commissioner Arvas: What's your main concern, the number of the people that applied after the deadline?

Jack Bratcher: Yes, that's part of it but there was a deadline set.

Commissioner Arvas: We had a mechanical problem.

Jack Bratcher: You said it was down for three days but you gave them an extra week which probably meant twice as many people applied.

Commissioner Arvas: That was my concern but there were not as many as you think.

Jack Bratcher: There was still a deadline.

Commissioner Arvas: Yes, but I'm saying if you look at the number of people that applied to the deadline and then look at the number of people that applied after that first deadline to the second deadline, there are not as many people as you think.

Jack Bratcher: If I missed that deadline and tried to put in, would I be given the opportunity to draw?

Commissioner Arvas: We really couldn't do that because there wouldn't be any reason to give you that.

Chairman McClintic: No, what he's asking is if he'd missed the deadline and we didn't extend it, would we have given him a special opportunity.

Commissioner Arvas: No.

Jack Bratcher: That's what I'm saying.

Commissioner Arvas: That wasn't your fault, that was lack of awareness on your part of the deadline but in our case it was a mechanical problem. We weren't able to satisfy the demand.

Jack Bratcher: I understand that. What I'm saying is extend it three days and you didn't do that. You extended it for a full week.

Commissioner Arvas: What bothers you about that timeframe is it allowed more people to apply?

Jack Bratcher: A lot more evidently.

Commissioner Salazar: The Department will work to get the system fixed.

Jack Bratcher: In the past you had to put in your full amount for a hunt. If you went back to that that'd cut a lot of the others that want to put in to see if they can draw.

Chairman McClintic: That was something good the Department did?

Jack Bratcher: If you do it on everything---deer/elk. I'd also like to see the out-of-state license go up again.

Commissioner Arvas: Go speak to your legislator about that.

Jack Bratcher: We're going to get a campaign started on that too.

Ed Olona: We have not received the easement from the Department for Sabinoso. Congressman Heinrich is asking where the easement that the Department was supposed to procure?

Lief Ahlm: We attempted to get an easement through a landowner but we found out that the easement we were offered was not owned by the person who was offering it. Once we discovered ownership was with someone else we had to forego getting the easement and we're still working toward that end. We haven't been able to find out who the other landowners are.

Ed Olona: Are we investigating who has the property adjacent so we can receive this easement?

Lief Ahlm: I don't know that. I know we've spoken to BLM and they're pursuing additional easements from a different direction. I'm not privy to that information because it's confidential between BLM and the people they're talking to. We are trying to find out who the other landowners are.

Oscar Simpson: There is a lot of contamination in the San Juan Basin and across the state related to oil/gas. I'm personally involved in the process of documenting and showing where those are. Oil Conservation Division needs to show the database of where they are, contaminants, and what's there. They did put up a summary in a spreadsheet format. It'd be nice to know what's going on in the basin and if the river/streams/groundwater is being impacted. There's one public water system between Bloomfield and Aztec that had 3-4 wells contaminated because they were right next to the river. We need to keep positive, corrective, and good regulations to control those spills/leaks. Congress has made lots of loopholes and allowed them to discharge in the storm water runoff. All those chemicals and spills and controlling erosion has been eliminated by Congress. The Supreme Court has allowed them to exceed the authority of the law. BLM has the authority to regulate erosion/runoff/spills/leaks. They've got standards on road building to control erosion/runoff and solve those problems but they don't comply with their own rules. We've got a lot at risk, habitat fragmentation. There are going to be 40,000 more wells drilled in the San Juan Basin. We ought to step up to the plate and say use existing drill pads for further development, use directional drilling.

Chairman McClintic: What would you like to see as the Department's involvement in this issue?

Oscar Simpson: As Executive Order No. 1292 says when you have fisheries like these the feds/Indian tribes/fisher sportsmen/non-profits get together and resolve the problems and work it and do the studies and mitigation if necessary.
Commissioner Salazar: When I specifically asked individuals today, I heard them say they would all work together and recognized it's value to the state.

AGENDA ITEM NO. 12: Pronghorn Antelope Relocation Project Update.

Director Stevenson: We can pass over this item. We'll get information out. We were just going to provide additional information and we may bring it up a short recap at a later time.

Discussion item only.

AGENDA ITEM NO. 13: 2009 Legislative Session Summary.

Chairman McClintic: We're going to pass this item over too.

Discussion item only.

AGENDA ITEM NO. 14: Disposal of Fixed Assets.

Presented by Alexa Sandoval – The Department requested Commission approval to dispose of fixed assets that are worn out, obsolete, or have reached the end of their service life. State statute, Section 13-6-1, NMSA, 1978, *Sale of Public Property*, requires an agency's governing body approve the disposal of personal property prior to disposing of the items. The Department proposed that these items be sold at public auction in July, 2009, in Santa Fe, or otherwise disposed of in accordance with state law.

Commissioner Arvas: At the end of the sale do you come back and tell us how much you got for all of that stuff?

Alexa Sandoval: We can do that. We get a final list from our auctioneer.

Commissioner Arvas: Where does that money go?

Alexa Sandoval: That gets deposited into the Game Protection Fund.

Commissioner Arvas: Under what item or how would you do that?

Alexa Sandoval: Sale of Department Property is what it goes into.

Commissioner Arvas: It's not earmarked or anything?

Alexa Sandoval: No, the only time we earmark anything is we have to recognize those items that have been sold that have federal aid tied to them. We have to tie that back as program income. If it's over the value of \$5,000, which we received at the time of auction. We have to recognize that within our grant programs and credit that money back to those programs.

MOTION: Commissioner Salmon moved to approve the Department's request to dispose of the list of fixed assets that were presented to the Commission as worn out, obsolete, or have reached the end of their service life, either by sale at public auction in July 2009, or otherwise disposed of in accordance with state law. **Commissioner Arvas** seconded the motion.

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

Commissioner Arvas: What do we do with confiscated firearms?

Alexa Sandoval: We sell those at auction. Typically that only happens every 2-3 years because at the time we sell those we don't have enough to make that part of the auction feasible for us to take care of.

Pat Block: They don't get sold at the regular State Police auction along with trucks and equipment like that. They're sold at a firearms auction held by a licensed firearms dealer usually at the Dickerson facility in Las Cruces.

AGENDA ITEM NO. 16: Attorney General Report on UU Bar Case and Consideration of Additional White Peak Road Issues.

Presented by Nan Erdman – David Thomson, lead counsel on the UU Bar case, reported to the Commission regarding the scope of the decision and sought input and made recommendations regarding future action to take concerning public access to the White Peak area.

Ed Olona: The point Nan brought up where the gate was placed originally in the area where the gate was locked and it goes to Springer. The situation is that where the gate is placed there was controversy about the gate being placed there. That cattle guard that sits there belongs to the State of NM. The NM Department of Transportation placed that cattle guard and it is still in our best interests that that gate should be removed. I'd like to see the Commission go ahead and speak up on this situation and remove the gate. The former Director, Bruce Thompson, I tried to get him to get the gate removed and he was hesitant, but there is no necessity for that. One of the biggest issues the UU Bar says they need that gate because when they're hauling/moving cattle. There's a cattle guard and also a gate they can open where the cattle can go through and it's not necessary to have that gate there.

Oscar Simpson: We'd like to see this stretch of the road, Hwy 21 part of the Santa Fe Trail, opened up.

Nan Erdman: That was the quiet title action on that 2.6 stretch of land. Those roads are still vested in the state so it's the AG's position that those are state public roads and we want to offer our assistance given the resource constraints we have to the Commission to do what we can to open those roads. I know the Commission is addressing those issues and working out the best methods for gaining access and getting rid of the fences.

Oscar Simpson: We'd like to have any progress at the next Game Commission meeting on opening those roads because there is state land that can be hunted. People have received citations for hunting those areas.

Commissioner Arvas: The Department issued citations?

Oscar Simpson: The Department issued those citations and Ed can testify that down in the lower parts of 21 there is some state trust land and they went up that road and hunted that area and then got cited for trespassing.

Lief Ahlm: I don't know of any citations for trespassing. We have designated camping areas in conjunction with camping on state trust lands, and last year we asked a person that was camping near that area, near the old sawmill, to move. This year we designated a new camping area in conjunction with UU Bar. We've asked people to move but we've not prosecuted anyone for trespassing on that road.

Ed Olona: There's record that two people have been cited in the area on State Hwy 21 across from Charette Lake for trespassing. The UU Bar Ranch caretaker caught two hunters on state trust land off of Charette Lake. They were given citations. They took a bull elk away from them and this happened on state trust land. They were both given citation/warnings.

Lief Ahlm: I have a full report every year of all law enforcement that has gone on in Unit 48 for the last three years. There was a case near Charette Lake that is not part of this road. It has nothing to do with this road or issue where some people were cited. They were given a warning citation for trespassing on the UU Bar. They kept their elk and received warning citations. There was also another case near there where the hunters were on a small piece of BLM land which is adjacent to the state land. They killed an elk, we were called by UU Bar, we investigated it, and we determined that they were there legally and we escorted them out the gate and we required UU Bar to open that gate. There is a gate within that half Section 21 that we've been in contention with the State Land Office whether or not they would open it, but that's at the end of state land. This location where these two incidents occurred involving trespass are several miles from where 199/21 are. I'd be glad for Mr. Olona or anyone else to come in and check our records, but I have a full accounting of all law enforcement actions in Unit 48 for the last three years.

Ed Olona: The gates in that area are at Charette Lake. That is state trust land and we'd like to have those gates removed.

Lief Ahlm: I understand where he's talking about and again it is on state trust land, but it is not part of the Hwy 199/21 issue. There was no one prosecuted for any of those cases. They received a warning citation and they were trespassing on UU Bar where the elk was killed and there were no signs and because it was not legally posted, they received a warning not to go back there.

Dennis Peralta: I'm with the NM Department of Transportation, Las Vegas-District 4. NM 199 was conveyed to the Game Commission. As DOT, we're indicating that it is your road. We're available for any assistance as far as signing. As far as the gate issue, we'd have to get something from the Director/Commission indicating that you want assistance on any issues pertaining to NM Hwy 199, but we are available.

Jeremy Vesbach: An issue I wanted to bring before the Commission is how Open Gate is being applied to keep access temporarily open. I understand it's a short-term solution, where you get into short-term leases on roads that should be open. You're going to get yourself down a road that you don't want to go where landowners are essentially getting a year-to-year lease to open road that's supposed to be open anyway. For that reason we'd commented earlier on the Open Gate Program that we wanted to see it applied only to permanent or very long-term leases.

Director Stevenson: Nan, on behalf of the Commission/Department I wanted to express our appreciation to the NM Attorney General's Office and please pass that on to Dave. Your agency has spent a significant amount of time and after 11 years the outcome was great. We appreciate it very much.

AGENDA ITEM NO. 17: Land Conservation Appropriation Projects and Other Land Acquisition Projects Report.

Presented by Jim Karp – The Department presented update of the status of projects proposed for funding under the land conservation appropriation and other funding vehicles. Rio Abajo did close about two weeks ago. The County accepted the work done at the rail crossing and declared what is commonly known as Horse Ranch Road is a public road and gives us access from the highway through to the property.

Chairman McClintic: When you say it closed, does that mean that they did put the crossing in the railroad?

Jim Karp: A condition of their accepting there was a public road was their approval of the completed railway crossing and improvement of the road itself. That's all in place?

Commissioner Arvas: It's documented somehow?

Jim Karp: It's only documented through the county?

Commissioner Arvas: But we haven't actually seen it though?

Jim Karp: Completion of the crossing was not a condition of the purchase agreement. It was the provision of public access to the property and that we have through the actions of the county in accepting it as a public road.

Chairman McClintic: That was a condition of the county for them to accept it as a road because under their ordinance they cannot accept that as a county road without that crossing being in place, but you're telling me they waived that condition so they could close?

Jim Karp: They did not waive it, they accepted it. They acknowledged that the work was complete in accordance with their action to accept the road only when it was completed.

Director Stevenson: The railroad did go in, they completely re-did that crossing, they put in the crossing guards and all of the things that were stipulated as required on a county road, so 100% of that work was done, and we have photographs that we can share with the Commission. I didn't want a misrepresentation, it was not waived, it was completed.

Jim Karp: The conditions for closing were met and the deed recorded about two weeks ago.

AGENDA ITEM NO. 17a: Approval of Purchase Agreement with The Nature Conservancy for a Portion of the Johnson Ranch.

Presented by Matt Wunder - The Commission was requested to approve a draft Purchase Agreement between the Commission and The Nature Conservancy for acquisition of 2,120 acres in Lea and Roosevelt Counties. This acreage has been identified as containing habitat advantageous to Lesser prairie chicken and is adjacent to Lesser prairie chicken areas currently owned by the Commission.

Matt Wunder: There are 2,120 acres of the ranch being purchased for \$400,000 of Land Wildlife Clean Energy (LWCE) funding through NM Energy, Minerals, Natural Resources Department. The Nature Conservancy is paying a total of \$40,000 for a 10% interest under the Natural Lands Protection Act. There is no direct cost to the Department. The cost to the state is approximately \$188.68 per acre for a 98% interest in the property. This ranch has a strategic location relative to other Commission properties. The Nature Conservancy, perhaps not so much BLM but state land as well. It does have a high value for prairie chickens. We believe that 4 of the 15 leks on the total ranch property are on the portion that the Commission is being asked to purchase. Most of the existing energy leases have been purchased by Oxy Petroleum. There are no water rights specifically accompanying this purchase but there is a windmill on the property and at this point there are only two producing oil wells on the Commission portion of the property.

Commissioner Salmon: That working windmill that has no water rights, are we able to use that windmill to the extent that it would have a wildlife benefit?

Matt Wunder: I believe it's functional and it does produce water so that would be available for wildlife use and potentially if the Department decided to incorporate grazing as a component of the management of that area, that it would be available for that as well.

Commissioner Salazar: There are two oil well leases on there?

Matt Wunder: Two working oil wells and a number of closed wells.

Commissioner Salazar: There's no liability with those wells? They're in good condition and the lease is proper, etc?

Jim Karp: Yes, there are a number of wells that have been shut down and closed out by OCD and there may be a clean up of all those closed wells and remediation by BLM because federal monies are involved where they cannot commit at this point in time to any specific project. There has been an agreement reached with BLM but it isn't in writing, but we've been told that BLM came to the Nature Conservancy and said that when that money comes in they will completely remediate that entire area.

Chairman McClintic: Are we purchasing any mineral rights with this property?

Jim Karp: No, there are no mineral rights associated with this purchase. Most of the mineral rights are federal minerals and those have been leased. There has not been production other than those I've been told variously and since we don't have any of the paperwork at this point and time, it's difficult to ascertain but that's part of the vetting/due diligence process that there may be only one working well on the property.

Director Stevenson: All the action we're taking is for the restoration of Lesser prairie chicken is the goal from the Department/Commission/public that supports us of trying to get that population up to a level that we can support hunting of prairie chickens. If you're asking whether we're going to do that this fall, that's the goal.

MOTION: Commissioner Salazar moved to approve the Agreement for the Purchase and Sale of Real Estate with The Nature Conservancy in the form presented to the Commission by the Department, and to authorize the Chairman to execute that Agreement. The Department is authorized and instructed to perform all required due diligence and when approved by counsel to the Department and counsel to the Commission as conforming to the terms of the Agreement to effect the closing of the transaction described in the Agreement. **Commissioner Arvas** seconded the motion.

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

AGENDA ITEM NO. 18: General Public Comments (Comments Limited to 3 Minutes).

Public Comments:

Larry Johnson: Representing the San Juan River Association of Outfitters & Guides. We'd like to propose a trout stamp for the special waters on an annual basis an amount that can be determined obviously by joint work between the

Commission/Department. We've also proposed revision of the special regulations in the San Juan especially for the quality waters to make that a catch-'n-release area. It'll make it easier for our wardens to monitor/patrol because if no fish are taken they can't say it's 17" or 20" so we'd really like you

Bubba Smith: I'm with the San Juan River Foundation and the Foundation would like to see a stamp as well and we endorse everything Larry Johnson has stated.

AGENDA ITEM NO. 19: Adjourn.

MOTION: Commissioner Arvas moved to adjourn. Commissioner Salmon seconded the motion.

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

Meeting adjourned at 4:49 p.m.

s/Tod W. Stevenson
Tod W. Stevenson, Secretary to the
New Mexico State Game Commission

May 28, 2009
Date

s/Jim McClintic
Jim McClintic, Chairman
New Mexico State Game Commission
Minutes Transcribed by: Katie Gonzales
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May 28, 2009
Date