

STATE GAME COMMISSION MEETING

Agenda Item 13

August 19, 2022

Held at

UNM GALLUP CAMPUS

705 GURLEY AVENUE

GALLUP, NEW MEXICO 87301

ROOM SSTC 200

PRESENT:

Sharon Salazar Hickey, Chairwoman

Deanna Archuleta, Vice-Chairwoman

Gregg Fulfer, Commissioner

Tirzio Lopez, Commissioner

Roberta Salazar-Henry, Commissioner

Michael Sloane, Director

Kirk Patten, Fisheries Management Division Chief

Valerie Joe, Assistant Attorney General

Ryan Darr, Assistant Chief of Information

Tristanna Bickford, Assistant Chief of Education



1 MS. SALAZAR HICKEY: So let me say this hearing will  
2 please come to order. My name is Sharon Salazar Hickey,  
3 chair to the commission. I will be serving as the hearing  
4 officer and be advised by the commission's counsel from the  
5 Office of Attorney General. The purpose of this hearing is  
6 for the commission to receive public comment on repealing  
7 and replacing the Landowner Certification of Non-navigable  
8 Water rule, Title 19, Chapter 31, Part 22, New Mexico  
9 Administrative Code, which will become effective on August  
10 23rd, 2022.

11 These hearings are being conducted in accordance with  
12 the provisions of the Game & Fish act and the state rules  
13 act. These hearings are being audiotaped and  
14 videorecorded. Anyone interested in a copy of the audio  
15 tape or video recording should contact Ryan Darr with the  
16 Department of Game & Fish.

17 Public notice of this hearing was advertised in the  
18 New Mexico Register, the New Mexico Sunshine Portal, and  
19 the department's website. Copies of the proposed amendment  
20 have been available on the department's website. Those  
21 wishing to comment here today must have registered to  
22 submit public comments.

23 The rule hearing will be conducted in the following  
24 manner. Staff will present pre-filed exhibits. Exhibits  
25 admitted into evidence are available for review by the



1 public on the department's website. After all exhibits are  
2 entered, we will proceed to the presentation of the  
3 proposed rule, after which testimony will be taken from the  
4 audience.

5 Participants are asked to wait until they are called  
6 to speak. In order to ensure that the hearing is  
7 accurately recorded, only one person at a time shall be  
8 allowed to speak. Any person recognized to speak is asked  
9 to identify yourself by name and who you are affiliated  
10 with for the record each time you are recognized, and two,  
11 speak loud and clear to accurately record your comments.

12 After a person has offered comment, they will stand  
13 for questions from the hearing officer. The audience may  
14 also ask questions of anyone offering comments, after being  
15 recognized by me. These hearings are not subject to  
16 judicial rules of evidence. However, in the interest of  
17 efficiency, I reserve the right to limit any testimony  
18 deemed irrelevant, redundant, or unduly repetitious.

19 The commission may discuss the proposed new rule after  
20 public comment portion of the hearing. Final commission  
21 action, including adoption of the rule, may occur after the  
22 conclusion of the presentation and public comment period of  
23 each hearing.

24 Hearing item number 13, rulemaking hearing on  
25 Landowner's (sic) Certification of Non-navigable Waters,



1 19.31.22 NMAC. This hearing is now open. Are there any  
2 exhibits for the proposed amendments to 19.31.22 NMAC, for  
3 the record?

4 MR. PATTEN: Thank you, Madam Chair. Yes, I have five  
5 exhibits to enter today. The first one is a copy of the  
6 notice of rulemaking procedure, or hearing, that was  
7 published in the New Mexico Register. The second exhibit  
8 is a clean and edited copy of the proposed repeal of the  
9 Landowner Certification of Non-navigable Waters rule. The  
10 third is a copy of my presentation today. The fourth is a  
11 summary of the proposed rule, which has been published on  
12 the Department's website, as well as Exhibit 5, which is a  
13 copy of technical information which was relied upon in the  
14 rulemaking process.

15 MS. SALAZAR HICKEY: Very good. Exhibits 1 through 5  
16 are hereby admitted into the record.

17 Kirk, can you please introduce the proposed amendments  
18 to 19.31.22.

19 MR. PATTEN: Yes, thank you, Madam Chair. This is a  
20 brief presentation. This topic has been going on for  
21 several years and in the past six months or so, there was a  
22 pretty significant -- Mr. Director, would you like --  
23 excuse me. I left -- one exhibit got left behind.

24 MS. SALAZAR HICKEY: Oh, is there -- are there --

25 MR. PATTEN: I just -- I just gave him a copy.



1 MS. SALAZAR HICKEY: So are there six exhibits?

2 MR. PATTEN: No. There's a total of five.

3 MS. SALAZAR HICKEY: Oh, but you just gave him a total  
4 of five now.

5 MR. PATTEN: Correct, yes.

6 MS. SALAZAR HICKEY: Got you. Okay.

7 MR. PATTEN: Yes, ma'am.

8 So anyway, back in the spring of 2022, the New Mexico  
9 State Supreme Court issued a bench ruling on the Adobe  
10 Whitewater Club versus the New Mexico State Game Commission  
11 court case in which they declared 19.31.22, the Landowner  
12 Certification of Non-navigable Water rule,  
13 unconstitutional. It was on March 1st of this year.

14 Later that afternoon, the commission voted on an  
15 emergency basis under the state rules act to repeal that  
16 rule, given the direction of the State Supreme Court. On  
17 March 2nd, the writ of mandamus was issued by the state  
18 supreme court wherein they directed the commission from  
19 refraining from any further implementation of that rule as  
20 well as the need to repeal the rule and consider it void  
21 and unconstitutional.

22 Oh, sorry. So under the state rules act, the  
23 emergency rule was effective for 180 days from the date of  
24 action; that would have been -- I believe it's set to  
25 expire on August 28th of this year. And so we initiated



1 the rule process to formally, permanently repeal the rule  
2 earlier this year. We -- I believe we came to you in -- it  
3 would have been June or so to start that rulemaking  
4 process. We started the -- well, we also got or started  
5 the public comment process and that -- we received no  
6 public comments to date on the proposed repeal and the --  
7 so we're here today, seeking your repeal of the rule.

8 Again, the emergency repeal expires on August 28th of  
9 this year. And so I guess that's a summary of what we're  
10 here for. I think that's all I have. Thank you very much.

11 MS. SALAZAR HICKEY: Thank you, Chief. Do we have --  
12 is there anyone from the audience -- would anyone like to  
13 comment on the proposed amendments, to 19.31.22? Okay.

14 MS. JOE: I think you've got someone.

15 MS. SALAZAR HICKEY: Yes?

16 MR. DARR: Madam Chair, we have --

17 MS. SALAZAR HICKEY: I see nods like this, or shaking  
18 of the heads.

19 MR. DARR: Sorry. Madam Chair, we have an emailed  
20 request from Kerrie Romero on behalf of New Mexico  
21 Council of Outfitters and Guides. She would like us to  
22 read her comments into record.

23 MS. SALAZAR HICKEY: Okay. Very good. Thank you,  
24 Ryan. Could you please do so.

25 MR. DARR: "NMCOG is not opposed to a full repeal of



1 the Non-navigable Waters rule. This was what the New  
2 Mexico Supreme Court ordered on March 1st, and we do not  
3 stand in opposition. The NMCOG is opposed to is the  
4 NMDGF's overly broad interpretation as it relates to how  
5 the NM Supreme Court ruling applies to public recreational  
6 access to waters located on private land.

7 "The NMDGF printed in their 2022 fishing proclamation  
8 by means of this court order all water courses in the state  
9 that can be legally accessed are open fur public  
10 recreational use. The NMDGF additionally provided NMCOG  
11 with written clarification of their current stream trespass  
12 enforcement policy, which stated as long as you legally  
13 access the stream and stay within the freeflowing waters of  
14 the stream bed, the wetted portion of the stream, then you  
15 can access the stream for recreational use; fishing,  
16 floating, swimming, et cetera.

17 "NMCOG feels that these policies are an egregious  
18 misinterpretation of the March 1st Supreme Court ruling.  
19 The ruling directed that the Non-navigable Waters rule be  
20 repealed. However, they did not repeal the statute which  
21 specifically outlaws walking and wading on private property  
22 to access water for recreational purposes. The statute  
23 reads: 'No person engaged in hunting, fishing, trapping,  
24 hiking, sightseeing, the operation of watercraft, or any  
25 other recreational use shall walk or wade onto private



1 property through nonnavigable public water or access public  
2 water via private property unless the private property  
3 owner or lessee or person in control of private lands has  
4 expressly consented in writing'", citing Section C, Chapter  
5 17.4.6, NMSA 1978.

6 She continues. "In New Mexico, the stream bed of any  
7 waterway on private land with or without flowing water is  
8 unarguably owned by the private landowner. They pay taxes  
9 on that land. The legal description of the streambed is  
10 included in their property deed and the value of the  
11 streambed is included in the real estate value of their  
12 property. The ownership structure has been in existence  
13 since New Mexico became a state in 1912. Private property  
14 owners have rights and landowners should not be forced to  
15 accept unlimited and uncontrolled numbers of trespassers  
16 just because their property includes a streambed. And  
17 without a New Mexico Supreme Court written decision stating  
18 otherwise, trespass on private property, including in  
19 privately owned streambeds, is still 100 percent illegal.

20 "The NMGF and this commission are adding to the  
21 public's confusion regarding this issue and this confusion  
22 is leading to some dangerous conflicts between unsuspecting  
23 anglers and landowners desperate to protect the investment  
24 on their private property".

25 MS. SALAZAR HICKEY: Thank you. Anyone in the





1 audience present here today -- would anyone in the audience  
2 like to ask a question of this witness?

3 Okay. Are there any exhibits from the public that  
4 need to be entered into the record at this time? No?

5 Okay. So those that are registered and participated  
6 in the hearing will be included on the attendance sheet.  
7 At this time, the attendance sheet --

8 MS. JOE: Pardon me, Madam Chair. This is Valerie  
9 Joe. I believe Ms. Romero's email should be included.

10 MS. SALAZAR HICKEY: Okay. Very good. Even though  
11 it was read into record.

12 MS. JOE: Yes, as the public comment.

13 MS. SALAZAR HICKEY: Even though it was read into  
14 the record?

15 MS. JOE: Yes, so then I believe we're up to number 6,  
16 then.

17 MS. SALAZAR HICKEY: Okay. We can make -- so I  
18 hereby clarify for the record the email from Kerrie Romero  
19 is hereby admitted into evidence as Exhibit Number 6. And  
20 it is so marked by the secretary to the State Game  
21 Commission, the director of Game & Fish.

22 And those that are registered and participated in the  
23 hearing will be included on the attendance sheet. And  
24 therefore at this time, the attendance sheet will be marked  
25 and admitted as evidence, Exhibit Number 7, because we did



1 have a person speaking.

2 So the comments submitted and testimony heard during  
3 this rule hearing will be reviewed by the commission and  
4 discussed during the open session of today's meeting. The  
5 commission will vote on the proposed amendments at this  
6 time. I would like to thank everyone present for their  
7 participation today. Let the record show that this  
8 rulemaking hearing was adjourned at 12:17 p.m., today on  
9 Friday, August 19th, 2022.

10 So now may we proceed?

11 Attorney General Valerie Joe. Okay.

12 MS. JOE: Yes, now you would engage in any discussion  
13 and/or vote if appropriate.

14 MS. SALAZAR HICKEY: Thank you.

15 MS. JOE: I mean, discussion if there is needed and  
16 then after that is done, you can vote (indiscernible).

17 MS. SALAZAR HICKEY: Okay. Very good.

18 Commissioners, do we have any discussion? Actually, I  
19 take that back. I think we like to hear from the public,  
20 anybody present. But I did that during the meeting or the  
21 hearing.

22 Commissioners, any comments, questions?

23 Okay. Do I have a motion?

24 MR. LOPEZ: Madam Chair?

25 MS. SALAZAR HICKEY: Yes.



1 MR. LOPEZ: Move to repeal the landowner certification  
2 of nonnavigable water rule 19.31.22 NMACS, presented by the  
3 Department, and allow the Department to make minor  
4 corrections to comply with the findings of this rule with  
5 the state records and archives.

6 MS. SALAZAR HICKEY: Do I have a --

7 MS. SALAZAR-HENRY: Second.

8 MS. SALAZAR HICKEY: Thank you, Commissioner  
9 Salazar-Henry.

10 MS. SALAZAR HICKEY: Director, can I please have a  
11 rollcall vote?

12 MR. SLOANE: Commissioner Salazar-Henry?

13 MS. SALAZAR-HENRY: Yes.

14 MR. SLOANE: Commissioner Lopez?

15 MR. LOPEZ: Yes.

16 MR. SLOANE: Commissioner Fulfer?

17 MR. FULFER: Yes.

18 MR. SLOANE: Vice-chair Archuleta?

19 MS. ARCHULETA: Yes.

20 MR. SLOANE: Chair Salazar Hickey?

21 MS. SALAZAR HICKEY: Yes.

22 MR. SLOANE: Motion passes unanimously.

23 (End of audio)  
24  
25



## C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript  
is a true and accurate record of the proceedings.



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Colin Richilano (CDLT-252)  
TTA-Certified Digital Legal Transcriber

eScribers  
352 Seventh Avenue, Suite #604  
New York, NY 10001

Date: September 12, 2022



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Agenda Item 16

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Sharon Salazar Hickey, Chairwoman

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1 MS. SALAZAR HICKEY: So let me say this hearing will  
2 please come to order. My name is Sharon Salazar Hickey,  
3 chair to the commission. I will be serving as the hearing  
4 officer and be advised by the commission's counsel from the  
5 Office of the Attorney General. The purpose of this  
6 hearing is for the commission to receive public comment on  
7 repealing and replacing the Bighorn Sheep rule, Title 19,  
8 Chapter 31, part 17 of the New Mexico Administrative Code,  
9 which will become effective on April 1st, 2023.

10 These hearings are being conducted in accordance with  
11 the provisions of the Game & Fish act and the state rules  
12 act. These hearings are being audiotaped and  
13 videorecorded. Anyone interested in a copy of the audio  
14 tape or video recording should contact Ryan Darr with the  
15 New Mexico Game & Fish department.

16 Public notice of this hearing was advertised in the  
17 New Mexico Register, the New Mexico Sunshine Portal, and on  
18 the department's website. Copies of the proposed  
19 amendments have been available on the department's website.  
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21 submit public comments.

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25 public on the department's website. After all exhibits are



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16 judicial rules of evidence. However, in the interest of  
17 efficiency, I reserve the right to limit any testimony  
18 deemed irrelevant, redundant, or unduly repetitious.

19 The commission may discuss the proposed new rule after  
20 public comment portion of the hearing and final commission  
21 action, including adoption of the rule, may occur after the  
22 conclusion of the presentation and public comment period of  
23 each hearing.

24 Hearing item number 16, rulemaking hearing on the  
25 Bighorn Sheep, 19.31.17 NMAC. This hearing is now open.



1 Are there any exhibits for the proposed amendments to  
2 19.31.17 NMAC for the record?

3 MR. LILEY: Madam Chair, I wish to submit six exhibits  
4 to the record. Exhibit Number 1, the notice of the  
5 rulemaking; Exhibit Number 2, the initial proposed rule  
6 that was posted on the department's website; Exhibit 3, the  
7 presentation that I will be giving today; Exhibit 4, the  
8 summary of the proposed changes; Exhibit 5, the technical  
9 information we relied upon to develop the rule; and Exhibit  
10 6, the 702 public comments we received during the  
11 rulemaking process.

12 MS. SALAZAR HICKEY: Exhibits 1 through 6 are hereby  
13 admitted into record. Thank you.

14 Stewart, can you please introduce the proposed  
15 amendments to 19.31.17.

16 MR. LILEY: Madam Chair, members of the commission.  
17 You all have kind of heard this through -- numerous times,  
18 as you will recall, throughout the summer, spring. Just  
19 real briefly, population status of the two. Rockies are on  
20 top; approximately 1,700 Rockies. 1,200 Deserts across the  
21 state. Distributed into eleven different Rocky  
22 populations, those blue dots, and eight different desert  
23 populations across the state.

24 Some of the proposed changes that we did have to the  
25 rule was creating a ram hunt in the Jemez Mountains; that





1 herd was released in 2014 and augmented in 2017. We think  
2 that we probably will be able to start ram hunt in that  
3 unit in 2024 and that would be during this four-year rule  
4 cycle. We are proposing dates, two different time frame  
5 dates to make that a quality hunt of August 10th through  
6 24th and then September 1 through 15th.

7 Continuing with Rockies, we are proposing an  
8 additional ram hunt window in the Rio Grande Gorge to  
9 spread hunter density out. It's not necessarily that we're  
10 going to have more licenses in there, but to spread hunter  
11 density out across those hunts.

12 Moving on to Desert sheep. One of the proposals that  
13 we have is separating the Little Hatchets from the Big  
14 Hatchets. We have disproportionate harvest in the Little  
15 Hatchet, so most of the rams are harvested in there. We  
16 are proposing moving that to where we will have harvest  
17 equally across those ranges, proportional to, hopefully,  
18 the populations of rams that are there. We get a little  
19 bit of movement between the two ranges, but most of the  
20 range movement is limited by a highway that bisects the two  
21 different mountain ranges. We're also proposing shifting  
22 the hunt dates to September 15th through 30th and October  
23 1st to 15th.

24 We also are proposing splitting the Ladron and  
25 Peloncillo -- there was currently only one hunt in the



1 Ladrone and one hunt in the Peloncillos. We're proposing  
2 splitting those into two different hunt time frames.  
3 You'll see those frames down there, in the -- in the bottom  
4 for the Ladrons, December 1 through 15 and December 16  
5 through 31, and Peloncillos, November 1 through 15 and then  
6 16 through 30, and that's just creating a limited hunter  
7 density. We may see some increase in licenses in those ram  
8 herds as the populations hopefully continue to grow in  
9 there.

10 And just in general, we currently do have some -- a  
11 population of Rocky rams and kind of the Turkey Creek herd  
12 that do occur every once in a while on the Double E. We're  
13 just proposing allowing those licensed hunters -- if they  
14 do want to go into the Double E to harvest, it would be  
15 opened up for them, and then just adjusting, kind of, the  
16 season dates.

17 I mentioned that we received two -- 702 official  
18 public comments during the rulemaking. The majority of  
19 this is -- as we've kind of discussed over multiple  
20 meetings throughout the commission on the -- the structure  
21 of how a hunt code is and how the -- the hunt windows and  
22 time frames occur with Rockies. And so most of the  
23 comments you'll see there were in support of the current  
24 license allocation, current -- how we currently do that.  
25 226 of those were unique emails that were -- were specific



1 to -- in support of keeping the -- the current structure on  
2 how we allocate licenses. Current 200 form emails. Then  
3 you'll see on the opposition, there was 37 unique, 209  
4 form. And then just 11 support the proposals and 23 that  
5 were outside the scope of the bighorn rule.

6 And with that, I would take any questions you may  
7 have.

8 MS. SALAZAR HICKEY: Would anyone like to comment on  
9 the proposed amendments to 19.31.17? I actually have three  
10 cards here.

11 If you could, please come to the microphone. Please  
12 identify yourself for the record. Oh, okay. Do it now?  
13 No. Yeah.

14 MR. WYNN: Actually, I'm going to do it now.

15 MS. SALAZAR HICKEY: Okay. Let me just call the names for  
16 the record. I'm going to call Brandon Wynn. I'm going to  
17 call David Heft. And third, Bryan Bartlett.

18 MR. WYNN: Good morning. Good afternoon, Madam Chair.  
19 My name is Brandon Wynn. I'm from Albuquerque, New Mexico.  
20 Is that good?

21 MS. SALAZAR HICKEY: And who do you represent?

22 MR. WYNN: I represent myself. I'm not part of any  
23 organization. I speak on my own behalf.

24 So the Bighorn rule. Obviously, we've been through  
25 this several times this year. And I just wanted to



1 register that I'm disappointed that the commission did not  
2 pass the proposal to modify the way the bighorn sheep  
3 permits are lumped together and point out that, you know,  
4 when they had -- the department just showed the tally of  
5 the emails that came in for and opposed for making changes  
6 or not making changes, that you know, the majority was in  
7 support of the way it was done without making any changes  
8 that would have benefitted resident hunters.

9 You know, you've got to keep in mind that there was  
10 quite a strong effort by the national Wild Sheep  
11 Foundation, Boone and Crockett Club to generate those. So  
12 yeah, you got 327 million people that aren't New Mexicans.  
13 And when you rally those, yeah, they're going to swamp us  
14 with comments. And so believe me, New Mexicans are --  
15 we're in favor of creating more opportunity for ourselves.  
16 Thank you.

17 MS. SALAZAR HICKEY: Before you go.

18 MR. WYNN: Yes?

19 MS. SALAZAR HICKEY: Anyone in the audience like to  
20 ask any questions of this witness?

21 MR. LOPEZ: Motion to dismiss the witness.

22 MS. SALAZAR HICKEY: Okay. You're dismissed. Next  
23 witness is David Heft. Please state your name  
24 loud, clear for the record and who you represent.

25 MR. HEFT: David Heft, Mayhill, New Mexico. I'm



1 representing myself today.

2 Retired wildlife biologist, long-time involved in the  
3 bighorn sheep program. In fact, I can remember taking your  
4 senior seat (indiscernible) just out, showing the Ladron  
5 herd area when you first hired him; that's how long I've  
6 been around and been involved in it.

7 Unlike my good friend Brandon Wynn, I support the  
8 current license allocation process and the rule as  
9 proposed. And I would like to thank the commission and the  
10 department for all the opportunity we've had to voice our  
11 disagreements, but at the same time remain friends. Thank  
12 you.

13 MS. SALAZAR HICKEY: Before you go, does anyone here  
14 in the audience have a question, any questions for this  
15 witness?

16 MR. LOPEZ: Dismiss the witness.

17 MS. SALAZAR HICKEY: You may be dismissed. Thank you.

18 Next, Bryan Bartlett. Please state your name for the  
19 record, who you represent, and --

20 MR. BARTLETT: Yes, Madam Chair and commissioners,  
21 here we are again. My name is Bryan Bartlett. I am the  
22 president of the New Mexico Wild Sheep Foundation. I'm  
23 also engaged in activities for the national Wild Sheep  
24 Foundation.

25 First I would like to say is I'm not sure that all of



1 the comments came from the Whild Sheep Foundation and the  
2 Boone and Crockett Club. Every one of our members was  
3 asked to make comments on that and that -- just right after  
4 we asked our own state members to make comments, there was  
5 a great influx of comments that came in. So my own  
6 conclusion to that is not the same as Brandon's.

7 Basically, I just want to -- to say that the New  
8 Mexico Wild Sheep Foundation gives full support to the  
9 Bighorn Sheep rule as proposed by the New Mexico Game &  
10 Fish Department (sic) as presented on March 4th. But more  
11 importantly than these tags, I would just like to make --  
12 add a little bit of a statement.

13 You know, due to drought and disease, specifically  
14 mycoplasma ovine pneumonia in wild sheep, it's important  
15 that we continue to provide easily accessible funding for  
16 both Rocky Mountain and Desert bighorn sheep conservation.  
17 This is the real important item.

18 We specifically need to be mindful of wildlife water  
19 development and maintenance and appropriate vegetation  
20 thinning for these ungulates. This effort for bighorn  
21 sheep also supports all the mule deer populations that are  
22 in those areas, of which every one of our bighorn sheep  
23 populations, especially Deserts, have sizeable mule deer  
24 population associated with it. So we're not only  
25 supporting bighorn sheep.



1           This will -- this appropriate -- this will require  
2       boots on the ground. And I appreciate Commissioner  
3       Salazar-Henry's comments this morning about getting  
4       projects on the ground. In order to this, it's going to  
5       require boots on the ground and cooperation and  
6       coordination between the game department, the BLM, and the  
7       Forest Service, which is what we talked about this morning.

8           So I guess now to summarize this, we are in full  
9       support of the Bighorn Sheep rule the way it is now and  
10      the way the tags are allocated. And we are very, very  
11      concerned about our herds due to drought and disease, and  
12      we need to stay on top of this. Thank you very much.

13           MS. SALAZAR HICKEY: All right. Proceeding on, do we  
14      have any other persons who have -- no? Okay. There's --

15           MR. DARR: We do have an email from the New Mexico  
16      Council of Outfitters and Guides, if I may be allowed to  
17      read that into record?

18           MS. SALAZAR HICKEY: Please do.

19           MR. DARR: This email was submitted on behalf of  
20      Kerrie Romero, again, with New Mexico Council of Outfitters  
21      and Guides, Dated August 18th, 2022.

22           "Regarding the Bighorn Sheep rule. There has been  
23      much debate regarding the Bighorn Sheep rule over the past  
24      six months, since the rule revision process began. NMCOG  
25      continues to maintain that the current process of



1 distributing bighorn sheep permits is within compliance of  
2 Section B 17.3.16, Chapter 17 NMSA 1978.

3 Our position has been further supported by an Attorney  
4 General opinion dated April 5th, 2022, which was requested  
5 by this commission and stated that: 'The current  
6 population levels of Rocky Mountain and Desert bighorn  
7 sheep make it impossible for the commission and the  
8 department to assign a single hunt code to each hunt area  
9 during each hunt window for the bighorn sheep hunting  
10 season without running afoul of the statutory allocation  
11 requirements for residents and nonresident hunters dictated  
12 by Section 17.3.16(b). We therefore believe that a court  
13 would agree that the commission's application of the term  
14 hunt code to its rules, regulating the bighorn sheep  
15 hunting season, is lawful, in that it incorporates the  
16 elements, species, weapon type, time frame, specific hunt  
17 that make up the definition hunt code while also giving  
18 effect to the requirements of Section 17.3.16(b)'.

19 "The current bighorn sheep draw structure was  
20 instituted in 2014 when the Terk Injunction was overturned  
21 and the Chapter 17 quota was required to be applied to all  
22 bighorn, oryx, and ibex hunts. Prior to the overturn of  
23 Terk, permits in these three species were rewarded 50  
24 percent to nonresident hunters. The game commission during  
25 that time approved the current draw structure to provide





1 nonresident hunters the opportunity to participate in the  
2 draw. They did this in recognition of the essential role  
3 nonresident hunters have played in restoring New Mexico  
4 bighorn sheep populations.

5 "Today, there are seven ram tags that are awarded to  
6 nonresident hunters through the big game draw. The other  
7 43 ram tags go to residents. Without this current draw  
8 structure, there would be zero nonresident bighorn sheep  
9 ram tags awarded through the draw. The NMDGF has proposed  
10 to maintain the current allocation process for bighorn  
11 sheep permits and NMCOG is in full support of the  
12 proposal".

13 MS. SALAZAR HICKEY: Thank you. I would like,  
14 Director, the exhibits 7, attendance list, and exhibit 8,  
15 the email just read, to be entered and admitted into the  
16 record.

17 MS. ARCHULETA: Madam Chair, may I make a  
18 clarification?

19 MS. SALAZAR HICKEY: In a minute.

20 MS. ARCHULETA: Okay.

21 MS. SALAZAR HICKEY: Those that are registered and  
22 participated in hearing will be included on the attendance  
23 sheet. At this time, we've admitted that; Exhibit Number  
24 7. The comments submitted and the testimony heard during  
25 this rule hearing will be reviewed by the commission and



1 discussed during the open session of today's meeting.

2 The commission will vote on the proposed amendments at  
3 this time. I would like to thank everyone present for  
4 their participation today. Let the record show that this  
5 rulemaking hearing was adjourned at 3:57 p.m. on Friday,  
6 August 19th, 2022.

7 Now we may have some discussion. Vice Chair?

8 MS. ARCHULETA: Madam Chair, I just wanted to make a  
9 quick clarification that the AG's letter was advice and  
10 not an opinion.

11 MS. SALAZAR HICKEY: And that is correct. The  
12 Attorney General's Office has a distinction in how they  
13 prepare Attorney General opinions that are made public.  
14 And I believe what we received was not a "opinion letter".

15 Assistant Attorney General Valerie Joe, do you want  
16 to add anything to what we just said?

17 MS. JOE: No. That is accurate. There is a formal  
18 request for a formal opinion and then there is attorney  
19 advice in the role as counsel for this commission. Thank  
20 you.

21 MS. SALAZAR HICKEY: Okay. Very good. Commissioners,  
22 we typically -- we lately have been opening it up to the  
23 public comment for additional comments, but we've already  
24 heard that in the recorded hearing, so I'm going to bypass  
25 that.



1           Now, commissioners. Commissioner Salazar-Henry,  
2 Commissioner Lopez, Vice Chair, Commissioner Fulfer --  
3 okay. Any comments?

4           MR. LOPEZ: I do have a comment, Madam Chair.

5           MS. SALAZAR HICKEY: Vice Chair?

6           MS. ARCHULETA: No. Thank you.

7           MS. SALAZAR HICKEY: Okay. Commissioner Salazar,  
8 comments before we have a motion?

9           MR. LOPEZ: I have a comment.

10          MS. SALAZAR HICKEY: Oh, okay.

11          MR. LOPEZ: Madam Chair, members of the public, and  
12 members of the commission, those listening online. As we  
13 all know, this has been a very hot topic, contentious topic  
14 between all parties involved, stakeholders -- all  
15 stakeholders involved. And it seems the department has  
16 offered to all stakeholders to come up to some type of  
17 agreement in the last few months and no such agreement was  
18 reached for lumping or unlumping statutory language,  
19 allocating of licenses.

20          So in being that -- trying to keep everybody happy and  
21 in order to have further discussion on this topic, which  
22 needs to be fixed as we might have already touched on by  
23 the legislature about the quota rule, the hunt codes, our  
24 leaders in Santa Fe need to look at this. I move that we  
25 amend -- I make a motion to do the proposed changes from



1 19.31.17 NMAC to read amend 19.31.17.4 from April 1, 2023,  
2 ending on March 31st, 2027 to read April 1, 2023 to March  
3 31st, 2025, making this a two-year rule, which will allow  
4 the public to communicate more with the legislators, the  
5 department, and all stakeholders to come up with some type  
6 of an agreement if it is not addressed by the legislature  
7 in the upcoming two sessions.

8 MS. SALAZAR HICKEY: Before I get a motion, we need  
9 some discussion on that motion. I thought we had already  
10 reviewed that motion at our last meeting.

11 And can we -- and I guess Assistant Attorney General  
12 Valerie Joe, should we be proceeding with that motion at  
13 this time at our rule hearing? Because I think that's a  
14 substantive change, isn't it? It's not a nonsubstantive  
15 change.

16 MS. JOE: Sorry. I'm just referring to my notes. So  
17 with respect to this type of rulemaking, it is covered by  
18 the default procedural rule because when I looked in the  
19 regulations for the commission of the Department of Game &  
20 Fish, there's nothing specifically with respect to these  
21 types of changes. So that rule is 1.24.25.14(c). And what  
22 it states is any amendments must be within the scope of the  
23 current rulemaking proceeding. Amendments that exceed the  
24 scope of the noticed rulemaking may require a new  
25 rulemaking proceeding. Amendments to a proposed rule may



1 fall outside of the scope of the rulemaking based on the  
2 following factors, and there are three.

3 One, any person affected by the adoption of the rule,  
4 if amended, could not have reasonably expected that the  
5 changes from the published proposed rule would affect the  
6 person's interest; number two, the subject matter of the  
7 amended rule where the issues determined by that rule are  
8 different from those in the published proposed rule; or sub  
9 three, the effect of the adopted rule differs from the  
10 effect of the published proposed rule.

11 So I believe as it currently stands, the -- this is  
12 supposed to be a four-year rule. The proposed change would  
13 be to shorten that time period to be a two -- until 2025;  
14 is that correct? So it would be a two-year rule?

15 MS. SALAZAR HICKEY: Correct.

16 MS. JOE: Okay. So within the -- it appears to be  
17 within the scope because if the proposed rulemaking talked  
18 about four years and you're shortening it to two, it seems  
19 it would be appropriate.

20 MS. SALAZAR HICKEY: So it seems to be appropriate.  
21 Wow.

22 Okay. Director, do you want to say something?

23 MR. SLOANE: Madam Chair, I just want to make sure  
24 that the AG is clear and that we're all clear on it. And  
25 you mentioned that you had previously voted on that



1 two-year option at -- I think it was the June meeting.

2 MS. ARCHULETA: In Santa Fe.

3 MR. SLOANE: So does it make a difference that you've  
4 considered that and rejected it and does that change the  
5 expectation of the public who might attend or is it still  
6 within the scope of the rule that you just read?

7 MS. SALAZAR HICKEY: I'm sorry, Assistant Valerie Joe  
8 -- can I just call you Attorney Valerie Joe?

9 MS. JOE: Yeah, I mean, this is about the scope. So  
10 the scope of the proposed rule is four years. This doesn't  
11 talk about anything about prior proceedings or anything of  
12 that nature. I believe it's fair game at this point.

13 MS. SALAZAR HICKEY: In the spirit of giving public  
14 comment between the last two, I don't know.

15 MS. SALAZAR-HENRY: Madam Chair?

16 MS. SALAZAR HICKEY: Yes, Commissioner Salazar-Henry?

17 MS. SALAZAR-HENRY: There was never a proposal voted  
18 on in June on a two-year rule. My initial proposal was  
19 just unlumping some bighorn sheep (audio interference).

20 MS. SALAZAR HICKEY: I did make that motion.

21 MS. SALAZAR-HENRY: There was never a motion.

22 MS. SALAZAR HICKEY: But it was not -- it was two  
23 meetings ago, so it would have been our May meeting.

24 MR. PATTEN: Madam Chair, if I may. At our meeting in  
25 Angel Fire -- or Eagle Nest. Close. At Eagle Nest, we did



1 have a motion -- two different motions that both failed on  
2 a two-two vote. One of those motions was to make this a  
3 two -- direct the department to make this a two-year rule;  
4 that failed on a two-two vote.

5 MS. SALAZAR HICKEY: Okay.

6 MR. SLOANE: I'm guessing that wasn't June, then. MS.

7 SALAZAR HICKEY: So that was on June 3rd; that was  
8 at the June 3rd meeting. We had two meet -- okay. And so  
9 we actually had four members present and it was two-two  
10 vote.

11 MS. ARCHULETA: I was online.

12 MS. SALAZAR HICKEY: Okay.

13 MR. LILEY: Madam Chair; that is correct.

14 MS. SALAZAR HICKEY: Oh, I'm sorry.

15 MS. ARCHULETA: No. That's okay.

16 MS. SALAZAR HICKEY: Okay.

17 MS. ARCHULETA: I was in attendance, just on Zoom.

18 MS. SALAZAR HICKEY: Right. Okay.

19 So well, we have a motion. Commissioner, are you  
20 still keeping your motion on the table?

21 MR. LOPEZ: I am.

22 MS. SALAZAR HICKEY: Okay. Do we want more  
23 discussion or do we want to give a second to that motion?

24 MS. ARCHULETA: I'll second.

25 MS. SALAZAR HICKEY: Really?



1 MS. ARCHULETA: Um-hum.

2 MS. SALAZAR HICKEY: Okay.

3 MS. ARCHULETA: I made the motion in the first place.

4 I'm not sure what --

5 MS. SALAZAR HICKEY: I understand. I understand.

6 Director, can you please -- so wait. Let me clarify  
7 this. Are we going to have another motion to approve the  
8 proposed changes as stated or with it being only two years?  
9 Is that your motion? Can you clarify it?

10 MR. LOPEZ: So the proposed -- sorry. Madam Chair,  
11 the proposed motion is accepting the department's  
12 recommendation as is, but changing 19.31.17.4 from April  
13 1st, 2023 through March 31st, 2027 to April 1st, 2023 to  
14 March 31st, 2025, reflecting that it will be a two-year  
15 rule. All other recommendations stick.

16 MS. SALAZAR HICKEY: Okay. Do we have a second?

17 MS. ARCHULETA: Yes, Madam Chair. I second it.

18 MS. SALAZAR HICKEY: Okay.

19 MR. FULFER: I have a question.

20 MS. SALAZAR HICKEY: I'm sorry?

21 MR. FULFER: I do have a question.

22 MS. SALAZAR HICKEY: Okay. Ask your question before  
23 we take the rollcall vote.

24 MR. FULFER: Madam Chair, I'm just trying to  
25 understand -- I'm catching up here, I guess.





1 MS. SALAZAR HICKEY: You and I.

2 MR. FULFER: So can you explain to me a little bit  
3 about why two years instead of four-year? And if the state  
4 legislator changes or corrects the statute, why are we  
5 doing this? Is that --

6 MR. SLOANE: Madam Chair, Commissioner Fulfer.

7 So some of the discussion around this first part on  
8 the two-year was to try to hope to force the legislature to  
9 make the corrections. That said, if the legislature went  
10 in and during this session -- it would have to happen this  
11 session. So if they during this long session went in and  
12 corrected the statutory rules on distribution of licenses  
13 according to resident and nonresident outfitters, you would  
14 then, even if you passed a four-year rule, would have to  
15 amend your rule because of legislative changes, which we do  
16 in a four-year term. The discussion around the two-year  
17 was trying to hope to force the legislative body to make a  
18 change during this session.

19 MS. SALAZAR HICKEY: And if I may add to that. If  
20 that session did not make any changes to the statute, with  
21 this two-year rule, we're having to review the rule again.

22 MS. ARCHULETA: In two years.

23 MS. SALAZAR-HICKEY: In two years, versus four years.  
24 The goal is to one, get the legislature to reevaluate and  
25 make changes to the statute, and two, get the commission to



1           come back in two years.

2           MS. ARCHULETA: And Madam Chair, if I may clarify as  
3           well.

4           Part of the issue, Commissioner, is that there are two  
5           conflicting statutory terminologies in the current statute.  
6           And what we're asking is for them to clarify. Either  
7           rewrite them so they align or take one and make it align  
8           with the other. So either way, it's just so there's clear  
9           direction to the commission on the expectation.

10          MR. FULFER: Okay. Madam Chair, so this will help try  
11          to get the state legislators to act? Is that -- or is it  
12          just going to bring up -- in two years bring this same  
13          issue back to the commission?

14          MS. SALAZAR HICKEY: I'm going to let the  
15          Commissioner Lopez answer that because it's his motion.

16          MR. LOPEZ: Commissioner Fulfer, so in no way are  
17          we -- or is my intention to make the legislature -- or  
18          force their hand to sponsor a bill to -- whatever bill they  
19          want to sponsor. The intent of the motion is that we have  
20          all parties, all stakeholders involved. Conversations were  
21          had, an agreement could not be reached by all stakeholders,  
22          from our hunters, our department, numerous organizations.  
23          An agreement could not be met on lumping and unlumping.

24          So having this a two-year rule would give the  
25          individuals more time to discuss. In two years, let's say



1 the legislature does not act on this. They can have two  
2 full years to discuss what they actually want. And if the  
3 legislature does act on this, not by force, but the good  
4 will, that you know, by statute, the commission would have  
5 to, you know, amend the rule based on the state statute.  
6 And at that time, the stakeholders involved can talk to  
7 their affiliated legislators statewide and lobby what they  
8 want changed in the bill for the better of everybody going  
9 into an interim committee or a committee and seeing whether  
10 they can hash this out.

11 So I think it's a fair compromise, so to say, for all  
12 stakeholders involved; that they still have a voice to  
13 complete whatever goals they want, and we're here to  
14 support resident and nonresident hunters being on the  
15 commission. But it gives them more time to really look at  
16 the issues, look at both or all nine sides of the issues to  
17 see where they can come up with some type of agreement,  
18 whether at the roundhouse or between themselves, and it  
19 gives them two years. And if that doesn't happen, then I  
20 guess we'll see them in two years. So that's the  
21 rationale. I mean, my rationale. My personal rationale.

22 MS. SALAZAR HICKEY: Okay. Director, can we have a  
23 roll call vote, please.

24 MR. SLOANE: Commissioner Salazar-Henry?

25 MS. SALAZAR-HENRY: Yes.



1 MR. SLOANE: Commissioner Lopez?

2 MR. LOPEZ: Yes.

3 MR. SLOANE: Commissioner Fulfer?

4 MR. FULFER: Yes.

5 MR. SLOANE: Vice-chair Archuleta?

6 MS. ARCHULETA: Yes.

7 MR. SLOANE: Chair Salazar Hickey?

8 MS. SALAZAR HICKEY: Yes.

9 MR. SLOANE: Motion passes unanimously.

10 MS. SALAZAR HICKEY: Okay. I was about to vote no,  
11 but I know at the meeting, when we were talking about -- I  
12 wanted the two years, so I can't change it. Okay.

13 (End of audio)

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## C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript  
is a true and accurate record of the proceedings.



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Colin Richilano (CDLT-252)  
TTA-Certified Digital Legal Transcriber

eScribers  
352 Seventh Avenue, Suite #604  
New York, NY 10001

Date: September 12, 2022



STATE GAME COMMISSION MEETING

Agenda Item 17

August 19, 2022

Held at

UNM GALLUP CAMPUS

705 GURLEY AVENUE

GALLUP, NEW MEXICO 87301

ROOM SSTC 200

PRESENT:

Sharon Salazar Hickey, Chairwoman

Deanna Archuleta, Vice-Chairwoman

Gregg Fulfer, Commissioner

Tirzio Lopez, Commissioner

Roberta Salazar-Henry, Commissioner

Michael Sloane, Director

Kirk Patten, Fisheries Management Division Chief

Valerie Joe, Assistant Attorney General

Ryan Darr, Assistant Chief of Information

Tristanna Bickford, Assistant Chief of Education



1 MS. SALAZAR HICKEY: This hearing will please come to  
2 order. My name is Sharon Salazar Hickey, chair to the  
3 commission. I will be serving as the hearing officer and  
4 be advised by the commission's counsel from the Office of  
5 the Attorney General. The purpose of this hearing is for  
6 the commission to receive public comment on repealing and  
7 replacing Wildlife Management Areas Title 19, Chapter 31,  
8 part 17 of the New Mexico Administrative Code, which will  
9 become effective on April 1st, 2023.

10 These hearings are being conducted in accordance with  
11 the provisions of the Game & Fish act and the state rules  
12 act. These hearings are being audiotaped and  
13 videorecorded. Anyone interested in a copy of the audio  
14 tape or video recording should contact Ryan Darr with the  
15 Game & Fish department.

16 Public notice of this hearing was advertised in the  
17 New Mexico Register, the New Mexico Sunshine Portal, and on  
18 the department's website. Copies of the proposed  
19 amendments have been available on the department's website.  
20 Those wishing to comment here today must have registered to  
21 submit public comments.

22 The rule hearing will be conducted in the following  
23 manner. Staff will present pre-filed exhibits. Exhibits  
24 admitted into evidence are available for review by the  
25 public on the department's website. After all exhibits are



1 entered, we will proceed to the presentation of the  
2 proposed rule, after which testimony will be taken from the  
3 audience.

4 Participants are asked to wait until they are called  
5 upon to speak. In order to ensure that the hearing is  
6 accurately recorded, only one person at a time shall be  
7 allowed to speak. Any person recognized to speak is asked  
8 to one, identify yourself by name and who you are  
9 affiliated with for the record each time you are  
10 recognized, and two, speak loud and clear to accurately  
11 record your comments.

12 After a person has offered comment, they will stand  
13 for questions from the hearing officer. The audience may  
14 also ask questions of anyone offering comments, after being  
15 recognized by me. These hearings are not subject to  
16 judicial rules of evidence. However, in the interest of  
17 efficiency, I reserve the right to limit any testimony  
18 deemed irrelevant, redundant, or unduly repetitious.

19 The commission may discuss the proposed new rule after  
20 the public comment portion of the hearing. Final  
21 commission action, including adoption of the rule, may  
22 occur after the conclusion of the presentation and public  
23 comment period of each hearing.

24 Hearing item number 17, rulemaking hearing on Wildlife  
25 Management Areas, 19.34.5 NMAC. The hearing is now open.





1 Are there any exhibits for the proposed amendments to  
2 19.34.5 NMAC for the record?

3 MR. LILEY: Madam Chair, I wish to enter four  
4 exhibits. Exhibit Number 1, notice of the rulemaking;  
5 Exhibit Number 2, the initial proposed rule posted on the  
6 website; Exhibit 3, the presentation being giving today;  
7 Exhibit 4, the summary of the proposed changes.

8 MS. SALAZAR HICKEY: Thank you. Exhibits 1 through 4  
9 as described are hereby admitted into the record.

10 Stewart, can you please introduce the proposed  
11 amendments to 19.34.5.

12 MR. LILEY: Madam Chair, I forgot to mention there was  
13 no public comments on this. The reason we're amending this  
14 is because of new acquisitions to wildlife management areas  
15 in the state. And you'll notice there, these are the four  
16 new acquisitions over the last probably eight years. And  
17 that's all we're doing is putting those in and some  
18 clarifications on previously owned. And with that, I would  
19 stand for questions.

20 MS. SALAZAR HICKEY: Okay. Very good.

21 Would anyone like to comment on the proposed  
22 amendments to 19.34.5? Okay. Very good.

23 For that, we are -- those that are registered at this  
24 time, the attendant -- let's see. The attendance sheet --  
25 nope -- shall be marked. Do we need to do an attendance



1 sheet? Yes. At this time, the attendance sheet shall be  
2 marked and admitted as Exhibit 5. The comments submitted  
3 and testimony heard during this rule hearing will be  
4 reviewed by the commission and discussed during the open  
5 session of today's meeting.

6 The commission will vote on the proposed amendments at  
7 this time. I would like to thank everyone present for  
8 their participation today. Let the record show that this  
9 rulemaking hearing was adjourned at 4:17 p.m. today,  
10 Friday, August 19th, 2022. All right. Let us proceed.  
11 Any comments? Any questions?

12 Commissioner Salazar-Henry? Oh, I'm sorry. Okay.  
13 Well, then very good.

14 Do I have a motion?

15 MS. ARCHULETA: So moved.

16 MR. FULFER: Second.

17 MS. SALAZAR HICKEY: Can you be more specific with  
18 your motion? I think we have --

19 MS. ARCHULETA: Oh, sorry.

20 MS. SALAZAR HICKEY: Director, can you assist us  
21 with that motion? I believe it's somewhere in our  
22 paperwork here.

23 MR. SLOANE: Madam Chair, I think the motion will be  
24 to --

25 MS. ARCHULETA: Accept as proposed.



1 MR. SLOANE: -- move to adopt.

2 MR. LILEY: Can we grab a brief?

3 MS. ARCHULETA: Oh, thank you. Here we go.

4 Sorry. I have found it.

5 MR. SLOANE: Found it.

6 MS. ARCHULETA: Sorry. My apologies. I move to adopt

7 the proposed changes of 19.34.5 NMAC as presented by the

8 department and allows the department to make minor

9 corrections to comply with filing this rule with state

10 records and archives.

11 MR. FULFER: Second.

12 MS. SALAZAR HICKEY: Director, can we have a

13 rollcall vote, please.

14 MR. SLOANE: Commissioner Salazar-Henry?

15 MS. SALAZAR-HENRY: Yes.

16 MR. SLOANE: Commissioner Lopez?

17 MR. LOPEZ: Yes.

18 MR. SLOANE: Commissioner Fulfer?

19 MR. FULFER: Yes.

20 MR. SLOANE: Vice-chair Archuleta?

21 MS. ARCHULETA: Yes.

22 MR. SLOANE: Chair Salazar Hickey?

23 MS. SALAZAR HICKEY: Yes.

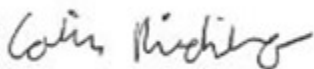
24 MR. SLOANE: Motion passes.

25 (End of audio)



## C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript  
is a true and accurate record of the proceedings.



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Colin Richilano (CDLT-252)  
TTA-Certified Digital Legal Transcriber

eScribers  
352 Seventh Avenue, Suite #604  
New York, NY 10001

Date: September 12, 2022

