

**MINUTES**  
**NEW MEXICO STATE GAME COMMISSION**  
**Santa Fe Community College – Jemez Room**  
**6401 Richards Avenue**  
**Santa Fe, New Mexico 87508**  
**August 18, 2004**  
**9:00 a.m. – 5:00 p.m..**

**AGENDA ITEM NO. 1. Meeting Called to Order**

Meeting called to Order at 9:43 a.m.

**AGENDA ITEM NO. 2. Roll Call**

**Chairman Riordan – Present**  
**Vice-Chairman Alfredo Montoya – Present**  
**Commissioner Arvas – Absent**  
**Commissioner Henderson – Present**  
**Commissioner Jennifer Montoya – Absent**  
**Commissioner Pino – Present**  
**Commissioner Sims - Present**

**AGENDA ITEM NO. 3. Introduction of Guests**

Introductions made by approximately 75 members of the audience.

**AGENDA ITEM NO. 4. Approval of Minutes (July 19, 2004--Albuquerque, NM)**

**MOTION: Commissioner Sims** moved to approve the Minutes of the July 19, 2004 Game Commission Meeting in Albuquerque, NM, as presented. **Commissioner Henderson** seconded the motion.

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

**AGENDA ITEM NO. 5. Approval of Agenda**

**MOTION: Commissioner Sims** moved to approve the Agenda for the August 18, 2004 State Game Commission Meeting as presented and to allow Joe Garcia to speak after Agenda Item No. 6. **Commissioner Alfredo Montoya** seconded the motion

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

**AGENDA ITEM NO. 6. Consent Agenda:**

- Revocations

**Dan Brooks** The Department is bringing forward individuals for revocations; 159 individuals for failure to pay penalty assessments; approximately 284 not meeting compliance with parental responsibilities; 2 registered outfitters that haven't provided proof of insurance so we're suspending registration until they are again in compliance and they've all been afforded the opportunity for hearing and we haven't had any requests for hearing.

**MOTION: Commissioner Alfredo Montoya** moved to approve the revocations. **Commissioner Henderson** seconded the motion.

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

### **Comments from Joe Garcia of Albuquerque**

**Joe Garcia** Rancher from northern New Mexico. During the July 19 State Game Commission Meeting, Commissioner Riordan made a number of misrepresentations regarding the killing of 19 elk last July on a private ranch in Unit 4 near Chama. Let me state for the record, after many discussions, the Department decided that the only solution to the severe depredation problem was to issue kill permits. Once the decision was made by the Department to issue the kill permits, when I went to pick up the permits, I informed the Department that upon issuing the permits, we were going to act on the kill permits within a week. Within 15 minutes of killing the elk, the ranch manager went to a neighbor's house to use his phone to call the Department staff in Chama and notify them of the number and exact location of the elk that had just been killed. Upon and after arriving at the ranch, none of the Department's personnel made any attempts whatsoever to salvage the meat. The Department knew in advance when the kill permits were going to be utilized. They should have been prepared. These, Mr. Chairman, are the events that occurred last summer regarding the killing of 19 elk on a private ranch in Unit 4. If you personally, Commission members or Department staff, continue to make malicious misrepresentations regarding these events as reflected by accounts written by the media and statements made by you, not only will you be acting in a malicious, reckless, irresponsible and unethical manner with total disregard for the truth, but will be verging on criminal activity. When you go before the legislature to propose legislation to further strip landowners of their depredation rights I will be there to assure that the misrepresentations are not repeated.

**Commissioner Sims** I can assure you that there are a lot of people out in New Mexico in the sportsmen and politics that support Mr. Riordan's idea of what this was, as I do, and if you think that Mr. Riordan has broken the law, I would suggest you bring the police with you next time.

**Joe Garcia** I never suggested that Mr. Sims. If you'd been listening to what I said, I never once suggested that Mr. Riordan broke the law.

**Commissioner Sims** You accused him of criminal activity.

**Joe Garcia** I said it verges on criminal activity. I never accused anybody of criminal activity. Verging is very different from actually engaging in criminal activity.

**Commissioner Henderson** Nineteen elk were killed on your property last year—have you seen any difference as a result of that or has that problem persisted and remained the same?

**Joe Garcia** No, basically, what's happened is we still have a very severe depredation problem.

**Commissioner Henderson** You had just mentioned that you're having severe impacts and could you give me a sense of what severe impacts mean.

**Joe Garcia** On any given day, of course this is seasonal, but right now, I would say we have anywhere from 30-80, over 100 elk on our ranch any late evening or early morning grazing on the Timothy grass and it prevents us from being able to get more cattle on the property to rent and it also prevents us from harvesting a lot of the Timothy.

**Chairman Riordan** How many bales of hay did you bale last year on that property?

**Joe Garcia** What the elk left was the equivalent of about 400 bales. Back before we started leasing the ranch, we would bale anywhere from 3,000-4,000 bales. That's when our own personal cattle were there.

**Chairman Riordan** What years were those?

**Joe Garcia** I would say 1995-1996 backwards.

**Chairman Riordan** 1995-1996 you were capable of baling 3,000-4,000 a year?

**Dave Sanchez** The capacity of the ranch and what it can produce has been provided to you all, the tonnage. The 400 bales that were harvested last year were done to give Director Thompson an idea of harvest data after the elk had consumed the rest of the hay. There are approximately 272 acres of irrigated fields. If you multiply 2.96 tons per acre, which is a very fair average in accordance with New Mexico state statistics, that will give you the tonnage for that irrigated acreage. They had approximately 50-70 head of mother cows in there grazing at the same time, so those numbers will correlate if you do the math.

**Chairman Riordan** How many head of cattle are you running now?

**Dave Sanchez** Right now, the current operation for that ranch is to graze cattle for approximately 1 month and we've implemented that practice in the spring to help dissipate the large herd of elk. Prior to that, no cattle have been grazed in there in the spring, during the growing season because the intent and mission of that ranch was to produce hay and as of 2 years ago when the drought became very severe and we had the huge numbers of elk in there,

**Chairman Riordan** When I go back to the Department, in 2002, how many bales of hay do you think that you had there, that you baled on 272 acres?

**Dave Sanchez** I think that ranch produced in 2002 easily the 2.96 tons per acre on the irrigated ground.

**Chairman Riordan** In 2001?

**Dave Sanchez** The same.

**Chairman Riordan** You agree with that, Mr. Garcia?

**Joe Garcia** That sounds about right.

**Chairman Riordan** I assume this hay was for sale?

**Joe Garcia** No, it was basically utilized for cattle. Some was sold.

**Chairman Riordan** Do you have any idea how much was sold?

**Dave Sanchez** No, I don't.

**Chairman Riordan** How many head of cattle did you run in 2002?

**Dave Sanchez** For 30 days or less, I would guess that we probably had about 150 mother cows on the whole ranch.

**Chairman Riordan** That's what this hay was used to subsist—the baled hay?

**Dave Sanchez** The hay that we were able to harvest was used for that and some was sold.

**Commissioner Henderson** I'm pleased that you had the chance to speak your mind though not all of it was easy or pleasant for us to hear. Let me just say that I don't want to get into a "he said, she said" situation here, but we certainly will take what you've expressed back to the Department and have a conversation with the Department.

**Director Thompson** I too am pleased that Mr. Garcia and Mr. Sanchez have had a chance to air some of their views and provide some clarifications. The Department has continued to work with these gentlemen, although we admit full resolution has not been achieved. However, over the past year and despite several attempts and offers for permanent resolution, Mr. Garcia, in fact, has refused any permanent resolution in that case and that has been the offer of a fence which is really the only way to absolutely and completely address all of these situations. Mr. Garcia, on at least 3 occasions, has requested the Department to pay him a little over \$258,000. We simply don't believe that figure is consistent with the situation that has prevailed at that property, but we remain dedicated to working with these gentlemen and many others to resolve these kinds of situations. I think that that's perhaps the more complete story. As we go to and toward the legislature, we anticipate working with a wide array of people, including Mr. Garcia and Mr. Sanchez, to craft language that has workability.

**Commissioner Riordan** I'd like to thank Mr. Garcia and Mr. Sanchez for coming down. I'm against the killing, I'm against it happening on private ranches, and I'm not singling out you people because I never mentioned your name in that meeting, but it's unconscionable that that takes place and we need different resolutions.

**Joe Garcia** We are both in agreement on that.

**Dave Sanchez** I would like to see the Commission take the time to go to the legislature and hear the comments and the problems that people have because that's where most of the problems get aired.

## **NEW BUSINESS**

### **AGENDA ITEM NO. 7. Approval of FY 06 Department Budget Submission**

**Presented by Bruce Thompson and Barbara Morin.** - The Department presented a draft budget for FY 2006 for Commission direction and approval regarding content of budget to be submitted by 1 September deadline for Legislative Finance Committee and Department of Finance and Administration consideration.

**Director Thompson** Since 2002, the Department's budget has been effectively flat or diminishing depending on fiscal year. This has eroded the Department's ability to maintain facilities and adequately serve all the demands and interests of the New Mexico public regarding wildlife. Continuation of that trend will diminish condition of Game Commission properties, conservation management programs, staff morale, and affects the Department's ability to meet changing and new public interests regarding wildlife-associated recreation and conservation endeavors. The Governor's instruction to us for FY 2006 budget development was to submit a double bottom line flat budget, and the bottom line focuses on securing significant gains on core policy agenda and holding down costs while driving agency efficiency and effectiveness up. With that instruction in mind, my guidance and instructions to the Department of Game and Fish was to prepare a double bottom line flat budget according to the Governor's request; but, that we want to do that while integrating various needs that we've identified for Department programs to be maintained as

well as possible, and to move forward in some new directions. Department staff was specifically asked to identify an amount equal to 2% of the past year's operating budget as an amount of money that we would then use to re-allocate knowing that our costs actually are going up.

**Commissioner Alfredo Montoya** What's a double bottom line flat budget?

**Director Thompson** Flat means it's going to be no larger than FY 2005 budget and the double bottom line had to do with first, focusing on achieving the Governor's core policies and second, on holding down costs. We asked Department staff to identify this 2% of operating costs from this current year so that we could examine the ability to re-allocate those amounts within or among the divisions and programs to provide cost containment, increase efficiency and effectiveness, and to accommodate unavoidable increases and fixed costs. Fixed costs are such things as employee benefits, various liability insurance rates, other fees that we are charged for Department operations that we don't have control over. I also asked Department staff to document the ways in which these reductions would diminish program implementation and our clientele services. Further, as part of the budget development process, we are offered the opportunity to identify program changes or increases and that normally relates to identifying new FTE's or new positions and the associated operating costs. With that background, I'll indicate what we have achieved and identify a few key questions and then we'll go to other details. We achieved a double bottom line flat budget and the FY 2006 budget is approximately \$28,024,000; however, we did this after identifying nearly 9% of the operating budget was required for us to address the increased costs of operation. Our double bottom line flat budget does re-allocate some money and it does address some new interests, particularly in areas like assuring greater or better condition of State Game Commission properties, of insuring that we develop additional wildlife-associated recreation opportunities, and that we address a variety of conservation endeavors. To achieve double bottom line flat budget we had to take a nearly 9% reduction in our buying power. With the opportunity to develop or identify new positions in operations, we identified 16 different positions and the associated costs for those positions in salaries, benefits, other operating costs, and contracts are about \$1.6M. This is program increase, not a component of a flat budget. Those positions were identified to provide a number of services that we believe are crucial, not just because of Departmental perspective but because of what we hear from our clientele. Some of those positions represent new conservation officers, the ability to open the warm-water fish hatchery that we expect to come online in Santa Rosa, and an ability to meet our obligations and responsibilities toward Mexican Wolf recovery with the objective of ultimately achieving recovery and having the Mexican Wolf be a state-managed species; also, a new position to enhance our abilities to attract and manage additional partnership opportunities with not only the federal government but also a variety of private interests. A high-priority is several FTE's that would be associated with developing greater wildlife-associated recreational opportunities throughout the state. With that statement about what our budget has achieved, I'll offer 3 questions that don't have to be answered this moment, but I offer them for your thinking as we hear remaining details about the budget: (1) Will a double bottom line flat budget be sufficient to provide the public services and increased program opportunities that are desired by the Game Commission on behalf of our constituents? (2) How aggressively does the Game Commission want to work with Department staff to pursue approval from the Governor to obtain selected increases in the base budget that are pertinent to addressing the difficulties that we identify? and (3) is it acceptable for us to pursue up to 16 new FTE positions and associated costs based on the rationale that we will have presented regarding the services and opportunities that we believe are important to develop and provide on behalf of the Commission and Department's constituency?

**Commissioner Alfredo Montoya** Will you be answering those 3 questions through the remaining presentation or do we ask you to answer them now?

**Director Thompson** I offered them now but I hope that we are able to answer them in large part, if not we will address them at the end of the presentation. Some of the difficulties in achieving a flat budget are the sheer magnitude of the funding that we need to identify to re-allocate to stay flat and yet address important programs basically meant that it wasn't possible to just take a little trim here and there but rather to look at some substantial programs. Some things that we have suggested reducing are that we would decrease waterfowl food production efforts because there are relatively large expenses associated with doing that and when we identified these items, it was bearing in mind the relative efficiency or cost effectiveness of doing various things. We're not saying that we think it's unimportant to produce waterfowl foods, but we find it necessary to take some cuts. In no cases are we proposing to eliminate anything but to do strategic cuts. We've identified several contracts in the Wildlife

Management Division that would remove some of our capabilities with respect to getting spatial analysis and GIS services. We need to reduce the Sikes Act Habitat Program simply because we needed to identify a sufficient amount of money and with this reduction, we have less ability to pursue all possible options in that program. We identified the need to reduce some of the support provided to the Cooperative Fish and Wildlife Research Unit at NMSU, a research and technical assistance function that helps us rather substantially. We've had to reduce some of the ability to move personnel so we will not be as responsive as would be advisable in insuring that we had personnel based in the most effective locations. We identified the removal of contract funding to help us be in a responsive position regarding any possible future remediation needs with respect to Terrero Mine. I wanted to emphasize the fact that to achieve this budget, we had to make deep and substantial cuts to find the funding.

**Commissioner Pino** Did you meet with all the Commissioners separately to go over that draft budget?

**Director Thompson** We scheduled meetings with all of the Commissioners. In a couple of cases we needed to take care of things by telephone but we have had communication with all Commission members in the process of developing this budget.

**Commissioner Pino** The reason I ask is because the detail budget is not in our packet today so I'm assuming that every member has seen the detail budget before this meeting because we're not able to review it here this morning.

**Director Thompson** Yes, we've gone over the budget with each of the Commissioners and responded to all the questions that were asked and also made adjustments with respect to the comments they provided and those are reflected in the summary material.

**Barbara Morin** The Department's budget is comprised of 4 programs: Sport Hunting and Fishing, Conservation Services, Depredation Damage, and Administration Programs. The summary before you incorporates the 4 programs and the budget that we'll be submitting to the Department of Finance and Administration, and the Legislative Finance Committee. The flat budget has to be equivalent to or the same as our current operating budget and our current operating budget is FY 2005 and the budget we'll be submitting is for FY 2006 is \$28,024,600. Instructions from the Governor's Office did allow us to re-allocate resources, so in some cases some programs are higher and others lower. The Administration Program has a tremendous increase because of the directive from the Governor's Office that all state agencies transfer all information technology resources that had been diversified within all of our 4 programs, to the Information Services Division within our Department and with all state agencies.

**Director Thompson** One of our obligations was to attempt cost containment and other possible endeavors. Several of those items include \$50,000 directed as cost-saving initiatives that are part of the Save Smart Program which is a component of Governor Richardson's initiatives to provide more efficient and cost-effective government. We've also identified \$30,000 in cost savings associated with special hunts data entry where we believe the online process will provide some efficiency. We've identified \$20,000 in the telecommunications area, achieving improvements in our administrative cost measures and processes of about \$10,000, so that's over \$100,000 in cost-effectiveness and efficiency that led to savings also embedded in achieving the flat budget.

**Commissioner Pino** We're back at the same level as in the current year. There are no increases as far as income projections for the coming years. Do we have adequate income to essentially provide services without cutting future services?

**Barbara Morin** Based on our long-term projections for the Game Protection Fund, this is the fund that supports the majority of the Department's operations, we're estimating that we will have sufficient cash to operate through FY 2006. However, based on pricey expenditures that the Department has made over the last couple of years, we find that in FY 07 the Department will face some significant shortages. If we do not find additional income, vis-à-vis, a license fee increase, then it will impact the current operations of the Department and there will have to be significant cutbacks.

**Commissioner Alfredo Montoya** You presented a flat budget and then an option which is an increase of \$1.6M which would put us at \$29,600,000 plus, and if we got a request for a flat budget, Director Thompson, have you and Chairman Riordan paved the way if we opt to go for an increase of that size if it ever got to the Governor's desk, would he approve it?

**Director Thompson** We are engaged in some discussions along those lines and I'll point out that on the 26<sup>th</sup> of August, we're scheduled to meet with the Governor to discuss this budget and an important consideration of the Commission will be the degree to which you're willing to allow the staff to make some additional adjustments based upon the Governor's recommendations to us and some elements to that discussion will be the program increase

that's been proposed. This program increase if all of it were approved by the legislature, and of course, all this will relate to a combination of legislative approval and Governor's approval would put us in a very close place with respect to cash balance. We can't go into this with an expectation that each and every program increase position would be approved but rather that we presented a case for them. I guess to make a long answer short we're in the process of doing what it is you've talking about but will not know enough about that until our meeting on the 26<sup>th</sup> of August.

**Co-Chairman Alfredo Montoya** So, Director Thompson, your request to this Commission or your recommendation would be that we opt for the budget inclusive of the increase?

**Director Thompson** Our recommendation to the Commission today is to approve the base budget, which is a flat budget, approve our seeking the program increase as is described here which involves 16 FTE's and associated operating costs and also provides us the flexibility to further meet with the Governor and include in the final budget any additional recommendation and allowances that he makes.

**Commissioner Henderson** Does that mean if we approve the base budget and give negotiating authority with the Governor, does that mean that this budget will have to come back before the Commission?

**Director Thompson** Because of the tight timeframe where we have to submit a final budget by the 1<sup>st</sup> of September, our preference, but of course at your discretion, is that you would approve the budget as presented or as adjusted, and allow us the flexibility to work with the Governor because we will have literally 4 days following that meeting. It's a matter of your comfort zone with what's been presented and how we've described and justified things, but we do believe in this case we'll need that latitude to effectively include any adjustments that the Governor would request.

#### **Public Comment:**

**Andy Dimas** Retired BLM wildlife biologist. I'd like to have heard more in terms of the causes for the flat to declining budget to address long-term solutions rather than what the budget is this year.

**Oscar Simpson** President of New Mexico Wildlife Federation. The public hasn't had the opportunity to review this document. We'd like you to approve more than \$1.6M. We need to be brought into the loop to help support in the legislative process to get fee increases.

**Commissioner Henderson** I believe the Sikes Act is a critically important program. The Sikes Act is not a cut but a postponement expense because the Sikes Act has been behind in its expending of resources but the Sikes Act money will be allocated and spent, correct?

**Director Thompson** That's correct. This is a proposed cut that can be managed more readily in the total scheme of things to achieve the flat budget. The money is not lost. The funding that is accrued would remain available, but for this year the proposal would mean that there would be a narrower total ability to develop and attempt to implement projects.

**Barbara Morin** The Sikes Act is established by statute as a revenue source. The Department cannot spend the revenues that are generated for the Sikes Act in any other way, so the Sikes Act was not cut. It was postponed. The money remains available to the Sikes Act. It's not being diverted to any other program or being used in any other way.

**MOTION: Commissioner Pino** moved to approve the Department's FY '06 Budget as presented contingent upon making changes to reflect allowable adjustments based on subsequent discussions and coordination with the Governor prior to submission by required deadlines for executive and legislative processing. **Commissioner Sims** seconded the motion.

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

#### **AGENDA ITEM NO. 8. Department Capital Budget Plan and Request**

**Presented by Tod Stevenson.** - The Department presented and discussed a Capital Budget Plan and Request for Commission evaluation and approval for processing by Department of Finance and Administration in conjunction with the 2005 Legislative Session. The Capital Budget over 4 years (FY 2006-FY 2009) is more comprehensive than prepared previously and identifies more than \$27,000,000 of needs, mostly to maintain or enhance Department facilities and provide dam safety.

**MOTION: Commissioner Henderson** moved to approve the FY '06 Capital Project Plan as presented by the Department. **Commissioner Alfredo Montoya** seconded the motion.

**Commissioner Henderson** It's my understanding that our request for severance tax bond dollars is new to the Department?

**Tod Stevenson** No, we actually have used requests for severance tax bond, the difference being that when we've done that before, we've been able to match those much more significantly with Game Protection Fund dollars. We simply have to move more significantly in that direction because we simply don't have that cash available that we could budget or do it out of bond interest retirement fund to be able to do this level of a project.

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

**AGENDA ITEM NO. 9. Wildlife Conservation Restoration Grant Program (WCRP)--Project Opportunities**

**Presented by Lisa Evans.** - January 2001, the Department dedicated its one-time, \$822,000 WCRP apportionment to the design and development of a wildlife conservation education center. The Department will use a portion of the \$822,000 to purchase a building design and fund the development of a wetland, educational landscaping and trail system at the Santa Fe headquarters site, but the NM State Legislature has not approved adequate funding to construct the center. The remaining apportionment must be spent or it will revert to the U.S. Treasury. The Department will provide the Commission with project ideas and seek guidance regarding the liquidation of the apportionment.

**MOTION: Commissioner Henderson** moved to direct the Department to use the remaining WCRP apportionment (approximately \$650,000) to fund educational and wildlife-associated recreational projects that are beneficial to the Department's mission in a manner that is consistent with State Procurement and Purchasing Rules/Regulations, and engagement of additional conservation partners. **Commissioner Alfredo Montoya** seconded the motion.

**Chairman Riordan** I like the idea of elk viewing and us going ahead and moving forward with some other use there, either the trail system or some other educational information. The \$350,000 going to the Educational Center in Espanola, what exactly are you doing with that?

**Lisa Evans** They've expanded the Wildlife Center and it's my understanding they're moving their location and they've requested for 3 components of that expansion: 1) for a classroom within their building; 2) an outdoor viewing facility for their rehab animals; and 3) I'm not sure what the third is but they did break it out into a request. Because of the state procurement laws we cannot simply approve their funding request, it's going to have to go out as a request for proposal and they will have to submit a proposal and then we'll go through a ranking committee and then issue funds.

**Chairman Riordan** What I'd like to see is that trimmed back somewhat, maybe the classroom and any additional funds there if you could get with Commissioner Henderson, as Chairman of the Land Use Committee, for discussion as to where he'd like to go and see how we could get more active out in the wild instead of just in Espanola and if you could go to Commissioner Alfredo Montoya because that Educational Center is in his area.

**Commissioner Henderson** These were requests and we're not authorizing nor approving anything today other than transferring the monies from the Department's Education Center to a future decision-making process.

**Public Comment:**

**Oscar Simpson** Advertise to the public so we can have some input.

**Jim Bailey** Board Member of the New Mexico Wildlife Federation. Regarding the last 3 Agenda items, I've heard very little in the budget discussions about problems maintaining habitat in this state and some of the money in the last Agenda item could perhaps have been directed in that direction. The Department has for many decades had the authority to lease or purchase habitat.

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

**AGENDA ITEM NO. 10. Biennial Review of New Mexico Threatened and Endangered Species (17-2-40, NMSA 1978)**

**Presented by Chuck Hayes.** - The Department presented its draft recommendation regarding status changes to the state list of wildlife that is classified as threatened or endangered under the New Mexico Wildlife Conservation Act. These recommendations were based on a review of the biological status of all species listed as threatened or endangered, and comments received during the initial public input period. This recommendation will

be followed by a second public comment period on the Biennial Review, and a subsequent presentation to the Commission for final approval of any changes.

**Commissioner Sims** Did the opposition to uplisting the sand dune lizard come mainly from industry?

**Chuck Hayes** The organizations are listed in your materials but the main oppositions came from industry. We had similar comments from a couple of different groups representing the petroleum industry.

**Commissioner Sims** Does the territory of the sand dune lizard cover properties that are within Otero Mesa?

**Chuck Hayes** No, it doesn't. Unfortunately I have just a paper map but it's essentially all east of Roswell. It's a narrow crescent that goes from a little northeast of Roswell down between Eunice and Hobbs. It's the sand dune shinnery country.

**Commissioner Sims** What do you see as the main destruction of the habitat?

**Chuck Hayes** What we've seen the last couple of years, with the increase in oil prices and activities, is removal of habitat due to construction of new well pads.

**Commissioner Sims** If we wanted to increase habitat for the sand dune lizard, would that curtail development of the oil and gas industry?

**Chuck Hayes** We have considered these within that conservation plan we've developed. We've got recommendations in there that do, for new development, include a limitation on oil well density; however, this is within occupied habitat. So what we would ask could be in some cases, moving well pads a couple of hundred meters, could be shrinking the size of the impacts, that kind of thing. Actually, our recommendations allow for a 25% decline. That's a little bit of a hard sell dealing with BLM and Fish and Wildlife Service who are looking at a candidate species are not trending toward listing. What we're looking at is specific to oil and gas development activities. The distribution of where new well development is in trying to minimize that within that narrow habitat of occupied and suitable habitat, yes.

**Chairman Riordan** My concerns are oil and gas industry contributes a tremendous amount of resources and revenues to the state. I haven't heard anything about how proactive we're going to be to increase habitat.

**Chuck Hayes** The primary threat to habitat at least during the time the plan was developed, was loss of shinnery oak dune habitat through brush control to increase grass. That we have largely dealt with and addressed by working with BLM and tried to get those activities to occur outside of occupied habitat. From that perspective, we've done a fair job on that end in dealing with what is the top threat. Both of these in terms of impact to habitat obviously far outstrip anything else going on. We're attempting to be proactive in developing recommendations that we believe will secure the species and will prevent federal listing. As I mentioned, it is a candidate species. It does have scrutiny from the conservation community even from beyond being a candidate species, so we're trying to develop some recommendations in a more flexible framework that we believe will allow the types of activities that do contribute tremendously to the economy to proceed with much less regulatory procedure than they would if they were federally listed and if there's a consultation process and all that involved.

**Chairman Riordan** Have you had comments from the cattle growers?

**Chuck Hayes** Yes we have. The biggest comments were about whether we can add or subtract to the list during the process and the concerns about whether the recommendation that by uplisting result on things being restricted on federal lands.

**Commissioner Sims** What I see that we're doing with the lesser prairie chicken in a lot of areas is we're going out there and we're doing some brush control with shinnery oak and the lesser prairie chicken range is in the same range as the sand dune lizard.

**Chuck Hayes** On the surface it looks that way. On the ground it's not a conflict despite the fact that you see that being utilized in some places. You're correct that lesser prairie chicken and sand dune lizards share an overall range, but when you get to the microhabitat level, they don't. Sand dune lizards are restricted to big sand dune blowout systems that clearly do use the shinnery oak flats there but they aren't dispersing through grassland mixed with shinnery oak. The other thing is that we recognize that our conservation recommendations are completely voluntary on private and state lands and some are going to choose not to implement this. We've considered that within development of the conservation plan so to some extent we know there's going to be imbalance by the individuals because we're simply recommending these and we don't have the ability to enforce them.

**Commissioner Sims** In Eunice and Hobbs there's prime habitat for sand dune lizard and prairie chicken and some of those areas are a hot spot for oil and gas industry as far as state land and sale of oil and gas leases. I think it's



something we've got to think about and move carefully with a balanced look at what we're doing with economy, what we're doing with 2 species.

**Chuck Hayes** We have worked with that stakeholder group and a herpetologist and met with folks including industry representatives and land managers and negotiated some land management practices that could be approved by the whole group and they've come to agreement. They're now in the process of taking that back to other representatives and see if they're willing to do so. The process we're talking about is 1 of trying to get folks to agree to this as opposed to forcing it on them.

**Commissioner Henderson** It's my understanding that the Department has not been inconsistent in its relationship between sand dune lizard and lesser prairie chicken as it relates to shinnery oak. I'm not sure we've made recommendations of removing shinnery oak. BLM has and we've been concerned about that agency's recommendations on shinnery oak but I would hope that the department has been reasonably consistent on that, am I correct?

**Chuck Hayes** I'm not as familiar with what's been going on with prairie chicken. The 1 thing that comes to mind is there's an experimental project we're involved in adjacent to our wildlife areas where we're looking at the effects of shinnery oak. That might be perceived as a situation where at least experimentally, we support evaluation of use of brush control on prairie chicken habitat but overall your statement's generally correct and have expressed that concern to BLM for several years.

**Commissioner Henderson** The Commission's and the Department's recommendations is an appropriate 1 for the sand dune lizard. It's also been 4-5 years since the recommendation was made to elevate the lesser prairie chicken for consideration for the Wildlife Conservation Act to be on the list and it has yet to be reconsidered for that recommendation, but I'll say your characterization is correct in that we've spent more time talking about lesser prairie chickens than we have on sand dune lizards. In those discussions, it's been my observation that it's primarily coming from agency conservationists, ranch community and oil and gas industry and I just want to state that though the discussions have not always gone smoothly, the farm and ranch industries have been more willing to work with the agency and the conservation community in trying to resolve differences. Why is it that our list doesn't track with the federal list, as in the Mexican Spotted Owl, the classic example?

**Chuck Hayes** In terms of species that are on the federal list under the Endangered Species Act, it largely does track. We've got things on the state list not on the federal list because their range barely gets into New Mexico and so it may be rare within the state and not rare overall. The 3 exceptions of things on the federal list and not on the state list are the Mexican spotted owl, razor backed sucker, and Chiricahua leopard frog which is a new listing that is not on our list. To my knowledge those are the only 3 lists on the federal list of the things we have authority for, not counting plants and butterflies that aren't on our state list.

#### **Public Comment:**

**Caren Cowen** New Mexico Cattle Growers Association. We don't see enough biological or ecological data to support a change in listing at this point.

**R.L. Posey** The lesser prairie chicken has been the object of Commission discussions for several years. Commissioner Ray Westall stated in December 2002, that he was not in favor of listing anything that we did not know what we had or how to control it and that's my comment; we don't know what we have or how to control it.

**Jim Bailey** New Mexico Wildlife Federation. We support both of these uplistings.

**Commissioner Sims** Do we know how many lizards are out there and do we know that number is declining?

**Chuck Hayes** On a range wide basis the answer is no. We don't have a range wide estimate. We're using information from the studies using that as our best information to apply to what's going on in other places and extrapolating that to what's going on range wide.

**Jim Maynard** Western Resources Enhancement Coalition. We do not support the uplisting.

**Lilly Rendt** I support the uplisting.

**Oscar Simpson** President of the New Mexico Wildlife Federation. We recommend the uplisting for the Jemez mountain salamander and the sand dune lizard.

**Chairman Riordan** We need to tread carefully before we move any species up to endangered status because there are far-reaching implications.

**Commissioner Henderson** The Department has not been as aggressive as some would like in the listing process and this recommendation is a thoughtful recommendation and those that raised the concern about the increase or decline of absolute populations is an unobtainable level of definition of population. We'd never list or delist a fish species because we've no capability of knowing absolute populations. All we can go by is by the Department's recommendation on what trends are. Our program simply raises the threat or lack thereof of various species in this state.

**MOTION: Commissioner Henderson** moved that the Commission accept the Department's initial recommendation for the 2004 Biennial Review, as presented, and direct the Department to open a minimum 14-day comment period prior to developing a final recommendation for Commission approval. **Commissioner Alfredo Montoya** seconded the motion with clarification by allowing Chuck Hayes to proceed to the next step with his work

**Chairman Riordan** We have conflicts. How do we knock down habitat in 1 area and save habitat in another? We need to look at that and you need to have better documentation as to what the numbers are and what the science is. Director Thompson, what is the binding effect on this if we take this action in September?

**Director Thompson** The action on the slate in September would be to consider accepting the recommendation for uplisting the species and at that point they would be subject to treatment under the Wildlife Conservation Act with those categories, but as Mr. Hayes stressed, the Wildlife Conservation Act does not provide for land use regulations with respect to those species. It will raise recognition of these species and their circumstances.

**Chairman Riordan** I'm willing to have more discussion. We need to be more aggressive and not just try and preserve what exists.

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

#### **AGENDA ITEM NO. 11. Revised Fee Schedule for Commercial Use of Game Commission-Owned Properties**

**Presented by Luke Shelby.** - Revisions to a previously adopted fee schedule were recommended based on further evaluation requested by Legislative Finance Committee and discussion with industry representatives. Revisions included deletion of some categories no longer considered applicable, adjustment of some fees and terms to more adequately reflect approaches to valuation, and clarification of intent for use of the schedule.

**Commissioner Sims** I believe this is a meeting in the middle with the oil and gas industry and levels more the playing field in the industry.

#### **Public Comment:**

**Dan Najjar** Representing the statewide association of Rural Electric Coops and we agree with these changes.

**MOTION: Commissioner Sims** moved to adopt a revised fee schedule for commercial activities on State Game Commission properties as presented with 19 activity categories and an associated table of prorated values for terms of less than 35 years. **Commissioner Alfredo Montoya** seconded the motion.

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

#### **AGENDA ITEM NO. 12. Amend Big Game Rule (19.31.8.30, NMAC) Regarding Allowing Ibex Hunting in Big Hatchet During 2004-2005 Hunting Season**

**Presented by Dan Brooks.** - The Department continued discussion with the State Game Commission about listing the Big Hatchet WMA in Game Management Unit 26 as open for Ibex hunting, which is consistent with other parts of the Big Game Rule. Chairman Riordan, you did make an inquiry about our agreement with the BLM and we have that and it's in your books. The 1 thing I would point out is that the agreement is signed October 6, 1970, and it talks about the Department's responsibility and the Bureau of and Management's responsibility, but you specifically asked about the numbers on the Florida's and how that was determined. Under page 2, it talks about the carrying capacity and it says that the Department agrees to maintain Ibex numbers within the carrying capacity of the range as determined by the Bureau, so hopefully, by the next Commission meeting, the Southwest Area's personnel will have met with the BLM and we'll see what their concerns or what they believe their carrying capacity is and if that's changed. The Southwest Area has brought forward judicious numbers to try and get that Ibex population up to that carrying capacity so that in the future we can have the maximum recreation opportunities available when it comes to hunting.

**Chairman Riordan** Do we have a lot of lion predation in that mountain?

**Luis Rios** There's some predation that occurs on the mountain due to lions. We've actually witnessed when we've done flying surveys some of the kids taken by eagles.

**Chairman Riordan** On those numbers that BLM has stated we can have, I'd like to protect that resource. I think it contributes to the Town of Deming, it contributes to the outfitters and their sources of revenue, and hotel industry and I look at that resource.

**Commissioner Sims** Do Ibex have any history of carrying scabies?

**Don Brooks** I'm not aware of any, but I'd leave that open in case R.J. has some comments.

**Public Comment:**

**John Dimas** Registered lobbyist for wildlife and environmental issues. If you don't get Ibex out of the Big Hatchet they're going to ruin it for the bighorn sheep.

**Discussion item only.**

**AGENDA ITEM NO. 13. Amend 19.30.6.11, NMAC, Regarding Preventative Cougar Control in Bighorn Sheep Ranges**

**Presented by Eric Rominger.** - This amendment will extend the period during which preventative cougar control in bighorn sheep ranges can be conducted from the current end date of October 1, 2004 to October 1, 2007. It also adds a requirement of a summary report evaluating the effectiveness of preventative cougar control due at the conclusion of the extended period. This report is in addition to the evaluation currently required in October 2004. The extended period request is because cougar control had limited effectiveness during the first 3½ years of the program due to a variety of circumstances. Also, language was clarified to state that any cougars harvested by sport hunting within the explicit bighorn sheep ranges won't count against the "harvest limit" of the cougar zone in which the specific bighorn sheep range lies.

**Commissioner Henderson** What are the 4 mountain ranges and what are we talking about in terms of size?

**Eric Rominger** The 4 desert/mountain ranges are the Sierra Ladron southwest of Albuquerque; the Peloncillos, on the Arizona line and Bootheel; the Big and Little Hatchets combined also in the Bootheel, and then the San Andres population that was started in 2002 where we currently have contractors.

**Public Comment:**

**Jim Bailey** We support this project and applaud the predator control program that's actually being evaluated.

**Oscar Simpson** President of the New Mexico Wildlife Federation and we fully support this project and commend the Department for taking aggressive action to control the mountain lions in order to give the bighorn sheep a better propagation.

**Lilly Rendt** I don't approve of the 5-year period because at the rate mountain lions are being killed there won't be any left. Where did the partly domesticated ewes come from?

**Eric Rominger** Bighorn sheep released in New Mexico have come from 2 sources: wild sheep captured from Arizona and out of our propagation facility in Red Rock. In addition we've radio-collared wild bighorn sheep and monitored their mortality rates and these were born on the mountain. Mortality rates are virtually identical between wild-born sheep and sheep from the Red Rock facility.

**Lilly Rendt** The problem is that there's not enough prey in that district and this is the easiest prey. I feel this is not indicative of real wildlife research so I'm against it.

**John Dimas** It's a well-known fact that when a sheep is radio-collared, the lions will get it. They've done studies in the San Andres where they've radio collared them and the lions went directly for them. That cost that year was 4 contractors and they got 3 lions—did you pay them all year? Was it costing \$30,000+ per lion? They did the study on deer and they went out there and trapped them and the coyotes were running \$215 a piece just to trap them so it's not cost-effective. There's a predator-prey relationship—when predator and prey live together they learn to respect each other.

**Katrina Hummell** Animal Protection of New Mexico. APNM supports the proposed requirement for a summary report that would evaluate the effectiveness of cougar control methods.

**Chairman Riordan** Please get us a copy of that Armendaris Ranch report.

**Jeffrey Davis** I would argue that we don't have an informed public on this matter. The Department knows a great deal about the predatory effects of lions on sheep but I wonder whether the Department also has equal knowledge on the effects of human predation on cougars.

**Chairman Riordan** Are the deer coming back in the Ladron area now?

**Eric Rominger** We've had 2 spring surveys and 1 fall survey on bighorn sheep since that occurred and the deer numbers have remained similar. We've only surveyed the bighorn sheep portion on the Ladron's, but I don't have those numbers before me. Also, Commissioner Sims, regarding disease issues with ibex that is a possible concern. I was more concerned when I came to New Mexico but I realized afterwards that ibex and desert bighorn were housed nose-to-nose at Red Rock during the initial stages of that release. Desert bighorn and ibex have been nose-to-nose at the Red Rock pens and no disease transmission occurred. There is the possibility and domestic goats have been implicated on disease issues, so our preference would be to keep those separate because these animals could have contracted something since being released from Red Rock.

**Chairman Riordan** I don't think this Department has ever or will ever be in favor of eliminating cougars. That's not the objective of the Commission or the Department. What it is, is trying to control predation for the benefit of other wildlife species and not have them go unchecked. We don't have an overabundance of cougars but we need to look at what the numbers are and use information we have as a management tool.

**Eric Rominger** I've published perhaps 1 of the only publications looking at the effect of radio collars on mortality and it's a difficult thing to do but the 1 study we have was in the San Andres during the extinction. The mortality rate appeared to be actually slightly higher on uncollared bighorn sheep because the only remaining bighorn sheep was a radio collared bighorn sheep and we went from about half the herd collared, all the un-radio collared sheep disappeared off the mountain and 90% of the radio collared sheep, so there's no evidence in the literature that radio collars increase predation on these bighorn sheet. Finally, we feel that on small ungulate populations, regardless of whether they're deer, bighorn sheep, the possibility to be top-down regulated or top-down limited by predation, there's a large body of literature that shows predation can control small populations of ungulates.

**Commissioner Pino** As you harvest cougars, are you taking any kind of information from those animals so that we can learn more about cougars?

**Eric Rominger** Yes, virtually all of the harvested cougars under contract have gone to the Museum of Southwestern Biology at UNM. There have been 1-2 exceptions. Hides and skulls were collected for aging and those are all in what I would assume is 1 of the largest museum collections in the world today.

**Commissioner Pino** Is anything published as a result of those studies?

**Eric Rominger** We have not gotten ages back on these harvested lions but we anticipate looking at the age structure of these harvest lions when the teeth analysis come back.

**Commissioner Pino** I think that the fact that this extension is for a limited number of years if it were from now until the end of time, I would have difficulties supporting something like that so since it's limited, I think we can all learn from information gathered.

**Eric Rominger** We're also running annual lion track surveys in all 4 of these mountain ranges and that has been done for 5 years. We run between 35-40 kilometers of lion track surveys as a part of this study to index lion populations in these desert bighorn sheep ranges.

**Discussion item only.**

#### **AGENDA ITEM NO. 14. Use of Piscicides in Native Fish Restoration**

**Presented by Mike Sloane.** - Piscicides (fish toxicants) are an essential tool for the restoration of native species but are also controversial based on the need to introduce chemicals into the waters of the state. The Department presented to the Commission data and information concerning use of piscicides. The Department seeks Commission direction on future application of piscicides for restoration of native fishes. The 2 native species that we're seeking to restore are Rio Grande Cutthroat and Gila Trout. These 2 species cannot out compete introduced Rainbow Brook or Brown Trout. To date, we've restored 125 miles of stream throughout New Mexico. The 2 piscicides we're discussing are Rotenone and Fintrol (Antimycin). All piscicides need to be registered with the Environmental Protection Agency and with the New Mexico Department of Agriculture. All piscicides are considered pesticides and fall under federal labeling requirements. Application other than according to label is a federal crime. Applicators must be licensed by the New Mexico Department of Agriculture by passing a written applicators exam.

They also have to pass a U. S. Fish and Wildlife Service course developed in consultation with the EPA to become certified applicators. Piscicides have been used in fisheries management for over 40 years. Restoration projects have and will create unique opportunities for anglers, and economic activity in local communities. There's been no substantial scientific evidence that piscicides when used according to label instructions cause any harm to humans or non-target animals. Piscicides are currently the only tool available to effectively complete restorations and without these tools state fisheries managers could lose the ability to manage these important native trout populations as well as face the potential of not being able to effectively manage unwanted or injurious introductions. Despite these beneficial attributes, conflicts remain regarding use of such chemicals in aquatic systems and the characteristics of fish populations that should be candidates for removal by such methods.

**Public Comment:**

**Dr. Ann McCampbell** I disagree with the characterization that no harm or anticipated harm or no undocumented harm from antimycin use clearly will impact amphibians. On the genetic purity standard, that turns the whole thing upside down. We're trying to protect native species. We have an Endangered Species Act and yet the whole point is we're trying to stop eliminating species. We're trying to nurture and protect the environment in a better way and to take a broad-spectrum poison into a stream in the name of restoring a sub-species fish to the detriment of the other creatures, intuitively doesn't make sense.

**David Boyce** It seems to me that pouring poison into pristine streams is not a good water management tactic. I'm in favor of restoring native fishes but the method that we're using is broad based and impacts things that we may not know about.

**Jim Bailey** You have a mandate to recover these species and maintain Rio Grande cut throat under the Wildlife Conservation Act. Fintrol is not a broad-spectrum poison as it has been characterized. There's no data showing loss of any native species from the use of Fintrol and the issue of genetic purity is not as simple as 95% genetically pure will be satisfactory.

**Sam Hitt** We don't use broad-spectrum pesticides to control spruce budworm, we don't use broad-spectrum pesticides on public lands lightly for any pest or problem, but we're still using these broad-spectrum piscicides and this is a chemical that kills everything that breathes with gills. We have to look at each of these projects that these chemicals would be used and I would suggest that the Commission take its authority to look at each individual project. There's a growing nationwide movement to use the combination of alternative methods. Further research and implementation will be part of our future program to restore native fish.

**Lou Woltering** Representing the Regional Forester for the Southwestern Region of the Forest Service. We support the use of piscicides to restore native fisheries where applied consistent with EPA label requirements and believe this provides for protection of the public and other resource values they are concerned about.

**Jan Crawford** There's support in the environmental and angling communities for Game and Fish to use these established tools for native trout restorations, including the use of piscicides.

**Mike Maurer** President of New Mexico Trout. We support the Department in the use of this tool in appropriate streams and when used with the proper management practices.

**Larry Bell** Assistant Regional Director for External Affairs for the U.S. Fish and Wildlife Service. U.S. Fish and Wildlife Service supports the Department's use of piscicides provided the strict guidelines are followed. We fully support the use of piscicides as an aid in restoration and recovery and believe its appropriate use should continue.

**Bud Starns** Representing the Department of Agriculture. We regulate pesticides in the state. We firmly support the processes that you're using presently and we firmly hope that you will maintain the use of these particular agents to recover the species.

**William Schudlich** State Chairman of the New Mexico Council of Trout Unlimited. Supports the appropriate use of piscicides by the Department.

**John Dimas** Support the use of Rotenone, don't have information on other piscicides.

**Stephen Siegfried** I'm the Outdoors Editor with the Silver City Daily Press. Do not support the Department in the use of piscicides, and ask that the Commission look at the case of Animas Creek.

**Dr. Lilly Rendt** Does not support the use of piscicides as a remnant of the use of DDT.

**Dr. Richard Becker** as past President of Albuquerque Wildlife Federation. Does not support the use of piscicides by the Department.

**Doug Murray** with the NM Interstate Stream Commission. Supports the Department's appropriate use of piscicides.

**Jerry Burton** as a retired Fish and Wildlife Biologist, support the Department's use of piscicides.

**Ilse Bleck** representing the Rio Grande Chapter of the Sierra Club. Our organization has serious reservations regarding the use of piscicides to rid the streams of non-native species.

**Dutch Salmon** Does not support the Department's use of piscicides.

**Commissioner Sims** Does this chemical come with MSDS?

**Mike Sloane** I believe it does.

**Commissioner Sims** I understand MSDS is pretty strict about skin contact, it's a poison?

**Mike Sloane** It is labeled as that.

**Commissioner Sims** I have a real problem that in most cases in New Mexico and my part of the country, our water quality is diminishing rapidly and to go out and put something that's a poison into our wilderness areas just doesn't make sense. If we're going to deal with fish in a hybrid manner and we can't deal with the hybrids and we're going to go out there and kill, are we going to go into the next hybrid situation of mule deer, and white tail? If 1 of those get uplisted it doesn't make sense to me to take a product out there that if we don't get a kill out we're going to kill them back and if we have introduction of fish whether it be through foul play or some bird in reintroduction of fish, the project has failed at the cost of a lot of trout that we've wiped out for no reason. I can't see the logic in the method of introducing a poison to something as precious in New Mexico as water.

**Commissioner Henderson** I've 2 questions, the introduction of endangered species and the other is genetic. Who is it that makes the decision about the genetic portion, is it Fish and Wildlife or is it the Department?

**Mike Sloane** With the Gila Trout, it's the Fish and Wildlife Service through the recovery team. With the Rio Grande cutthroat trout, it's been the Department and we've spent great sums of money trying to sort all that out and come to what we feel is a reasonable standard where you currently use 99% purity and then we try and preserve other populations that are pure down to 88% as still a viable population worthy of keeping. Streams that we select as streams to be restored have lower purity.

**Commissioner Henderson** So, in terms of the Gila, Fish and Wildlife Service would not accept 95%-96% and we're required as a Department to go back and try to get up to that 99% standard?

**Mike Sloane** I believe that's correct and in a recent document, they were looking at the west slope cutthroat and they allowed hybridization in that particular instance because it co-existed with Rainbow trout so there was some expectation that you might have hybridization. Neither the Gila trout nor the Rio Grande cutthroat trout was ever living with Rainbow, Brown, Brook trout so hybridization from that perspective would not be acceptable.

**Commissioner Alfredo Montoya** I'm convinced that it's safe and that we'd be worse off and in more danger if the cutthroat was listed. The repercussions to that would be serious to our economy, to our way of life. As a Commission we would lose control of the Rio Grande cutthroat. The fact that the Interstate Stream Commission who's in charge of monitoring and managing the waters in New Mexico has signed on, the fact that we follow strict EPA guidelines, the fact that the Forest Service is a willing partner, the Department of Agriculture has indicated that they too are in support, U.S. Fish and Wildlife as major partners have signed on and are very confident with our efforts if we're to proceed. Any of you that have been through the NEPA process are aware that it's an extremely thorough and extensive review of what you're going to do. The fact that the NEPA process is required for these activities further convinces me that we're on safe ground if we proceed with what the Department is requesting.

**Commissioner Pino** We've gotten many letters on steel traps and snares. Those tools are used to take 1 animal at a time. What we're talking about is wiping out a lot of fish, all the fish within the stream system. I have difficulty with continuing the practice of poisoning the water system.

**Chairman Riordan** I had a discussion with Commissioner Arvas and he has extreme difficulties with proceeding with the Animas Creek poisoning and feels that all the other alternatives have not been explored. We're in support of trying to go ahead and reintroduce the Rio Grande cutthroat trout and support the Gila trout. I'm against the poisoning. We have to go ahead and determine as the Department and as the Commission, at what point is purity okay working with the federal government and get a standard and get something that we can all live with instead of going back and wiping out a creek 3 times. I'm not sure that we're still at a standard that we want to go ahead and be at and looking at doing this again. I had a discussion with Commissioner Jennifer Montoya who called me last night from Mexico. She said err on the side of conservation and in her statements she was having a difficult time accepting the use of this piscicides in our streams. We have not established a standard and we need to work closer

with Fish and Wildlife Service and come up with a standard that they feel is agreeable and that we can live with so that we're not continually chasing 100% pure strain trout that I think is unattainable and look at something that is more attainable. To arbitrarily kill that top stream when those are basically Gila trout, and you can dilute their genes by reintroducing the Rio Grande cutthroat, you can have an effect on that and you don't go ahead and try to shoot that 100% purity. I have a problem when all the government agencies are on board on something, but the agencies aren't always right. There are alternatives we can develop to attain something that's reasonable, and as Commissioner Pino said, not going out there and poisoning our wilderness.

**MOTION: Commissioner Pino** moved to disallow the Department to continue use of chemicals for fish population management and that we search and seek alternative ways of managing fisheries within the state. **Commissioner Sims** seconded the motion.

**VOTE:** Voice vote taken. Commissioners Riordan, Pino, and Sims voted in the Affirmative; Commissioners Alfredo Montoya, and Henderson voted in the Negative. **Motion carried.**

**Chairman Riordan** We're in support of what you do, Michael out here for the Game and Fish Department. We're asking and directing that we go ahead and look at some alternatives and we're not closing the door on this, we're closing the door on this on the Animas Creek situation. If you have some other necessary emergency issues, bring it back to the Department.

**Commissioner Henderson** I'd like to explain my vote, and as Commissioner Pino said, this was not an easy vote and my vote against the motion was primarily for my own sense of consistency. I don't like the use of chemicals in removing fish species or plant species but I also have voted before on issues of salt cedar and herbicides and I don't like removing the tool. I'll always support that tool to be a tool of last resort not first resort. I'm not in favor of actions in the Animas. I think that's a demonstration of where we can do other things before we go into the use of chemicals and I hope that Fish and Wildlife Service and Department of Game and Fish staff do put their heads together.

#### **AGENDA ITEM NO. 15. Shooting Preserve License Application for Shiver Preserve**

**Presented by Brian Gleadle.** - The Department submitted for approval an application for a shooting preserve permit for Jim Shiver of Moriarty, NM. Mr. Shiver has submitted the application in accordance with 17-3-35 through 17-3-42, NMSA, 1978 Compilation (Regulated Shooting Preserve Act) and 19.35.3, NMAC, Shooting Preserves. Mr. Shiver will be releasing pheasants, chukars, bobwhite quail, and Gambel's quail in accordance with the shooting preserve activities. Mr. Shiver's property is located approximately 5 miles north of Moriarty adjacent to NM State Road 41, consisting of approximately 154.4 acres.

**Chairman Riordan** What kind of crops is Mr. Shiver going to grow?

**Mr. Shiver** Alfalfa and planting some grain.

#### **Public Comment:**

**John Dimas** Here we go again bringing in some more exotics. When you introduce exotics, you've got the potential to introduce new diseases.

**Chairman Riordan** Where's Mr. Shiver getting his birds from?

**Brian Gleadle** Since Mr. Shiver is not a licensed propagator himself, he cannot grow those birds, so he will have to outsource to another licensed propagator at which time those birds are going to have to be maintained under a license from the State of New Mexico as long as those birds are coming from New Mexico.

**Chairman Riordan** They're inspected by us?

**Brian Gleadle** Exactly. If they were to come down with any Newcastle disease or anything, obviously that would decimate the stock that that propagator would have and the release would obviously not be allowed nor would it be quarantined because of EID and the Environment Department.

**MOTION: Commissioner Sims** moved to approve the issuance of a permit to Jim Shiver contingent upon the Shiver Farm Preserve meeting the requirements of law and rule regulating shooting preserve. **Commissioner Alfredo Montoya** seconded the motion.

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

**AGENDA ITEM NO. 16. General Public Comments (Comments limited to 3 minutes)**

**Public Comment:**

**Oscar Simpson** The public needs to be involved and we need to have copies of handouts that were limited especially on the budget aspect. We don't get the data that is given to the Commissioners and it's pertinent that we have that prior to meetings, and on the website.

**Director Thompson** It's just not possible for us to put every piece of information that might be in the books on the website particularly if it's 15-30 days in advance because some of this material doesn't generate that quickly. I want to emphasize to Mr. Simpson that we do appreciate that and we have put a substantial amount of material on the website since the first of this year. We're still a work in progress, but with respect to your comments on the budget, the bulk of the budget development actually came into play after the last Commission meeting and was literally being developed up through the beginning of this week.

**R.L. Posey** I represent the Otero County Grazing Advisory Board. My concern today is elk depredation in Otero County. The decrease in livestock grazing has caused a serious financial problem for the County.

**Chairman Riordan** We will contact Doug Moore and have some discussions with you and him in the future. Mr. Hayes [Roy Hayes], what's the count of elk in Unit 34 and how permits do we have issued in Unit 34 for this coming hunting season?

**Roy Hayes** I believe the last estimate was 2,390 and for this hunting season it's 2,160 elk permits.

**Chairman Riordan** I think that's aggressive on the side of Game and Fish.

**AGENDA ITEM NO. 17. Closed Executive Session**

The State Game Commission adjourned into closed Executive Session, pursuant to Section 10-15-1 (H)(1) NMSA 1978, to discuss matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any identified individual(s) that may have violated their professional code of conduct as per 19.30.8, NMAC. If in the Commission's determination, an individual shall be served notice, he or she will be afforded an administrative hearing following 19.31.2, NMAC. Further discussion may occur on matters of personnel, litigation, and land acquisition.

**MOTION: Commissioner Alfredo Montoya** moved to enter into Closed Executive Session pursuant to Section NMSA 10-15-1(H)(2)(7) and (8) of the Open Meetings Act in order to discuss limited personnel matters, litigation, and land acquisitions. **Commissioner Sims** seconded the motion.

**Roll Call:**

**Commissioner Arvas – Absent**

**Commissioner Henderson – Yes**

**Commissioner Alfredo Montoya – Yes**

**Commissioner Jennifer Montoya – Absent**

**Commissioner Pino – Absent**

**Commissioner Riordan – Yes**

**Commissioner Sims – Yes**

**Motion carried unanimously.**

**Commissioner Alfredo Montoya** moved to reconvene the State Game Commission meeting. **Commissioner Sims** seconded the motion.



**Roll Call:**

**Commissioner Arvas – Absent**

**Commissioner Henderson – Yes**

**Commissioner Alfredo Montoya – Yes**

**Commissioner Jennifer Montoya – Absent**

**Commissioner Pino – Absent**

**Commissioner Riordan – Yes**

**Commissioner Sims – Yes**

**Motion carried unanimously.**

**Chairman Riordan** The matters discussed in the Closed Executive Session were limited to the items on the Agenda for the Closed Session. No action was taken in the Closed Session.

**AGENDA ITEM NO. 18. Notice of Commission Contemplated Action**

**Presented by Bruce Mazuranich.** - The State Game Commission, while meeting in Executive Session, heard the Department recommendation to send a Notice of Commission Contemplated Action to any outfitter or guide that evidenced and information indicated may have violated their professional code of conduct or other matter contrary to 19.30.8, NMAC, or 17-2A-3, NMSA 1978.

**MOTION: Commissioner Alfredo Montoya** moved to accept the Department's recommendation and send a Notice of Contemplated Action to the registered guides and outfitters discussed in Executive Session. **Commissioner Sims** seconded the motion.

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

**AGENDA ITEM NO. 19. Approval of Professional Service Contracts**

**Presented by Jim Karp.** - The Department recommended that the Commission approve entering into professional services contracts with the New Mexico Attorney General for legal services in connection with the Eagle Nest Permit 71 litigation, and with Holland & Hart and Mark Sheridan for expert water issue services in connection with that litigation. Each contract will be subject to such terms and conditions as shall be approved by the Chairman. The Commission has been named as a party of interest in the pending Eagle Nest litigation and in order to be adequately represented, the Office of the Attorney General has proposed an engagement letter setting forth the terms under which that office will represent the Commission. Under the terms of that engagement letter, the Commission is required to engage the services of a water law expert inasmuch as the terms of the engagement letter exclude water law issues from the purview of the Attorney General's representation. The Department has contacted and the Department and the Chairman have met with Mark Sheridan of the Firm of Holland & Hart and an engagement agreement for those services as an expert has been proposed for execution by the Commission subject to the approval of counsel for the Commission. Service by Mr. Sheridan will be provided only as requested by the Chairman and an hourly basis with total costs not known at this time; however, it is anticipated that those services with respect to water law issues will be minimal given the posture of the litigation as the matters mostly in issue are contractual statutory and other than water law. However, there will be some water law issues.

**MOTION: Commissioner Alfredo Montoya** moved to authorize the Chairman on behalf of the Commission, to finalize engagement agreements with the Attorney General in seeking out the expertise that is necessary regarding water law in such manner as required and remain within the Procurement Code limitations subject to the State of New Mexico with Holland & Hart and to execute such agreements on behalf of the Commission upon the Chairman's determination that such agreements are satisfactory in form and in substance. **Commissioner Henderson** seconded the motion.

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

**AGENDA ITEM NO. 20. Adjourn**

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

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

**Meeting adjourned at 5: 30 p.m.**

**s/Bruce C. Thompson**  
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**Bruce C. Thompson**, Secretary to the  
New Mexico State Game Commission

**9/23/04**  
\_\_\_\_\_  
Date

**s/Guy Riordan**  
\_\_\_\_\_  
**Guy Riordan**, Chairman  
New Mexico State Game Commission  
**Minutes by: Katie Gonzales**

**9/23/04**  
\_\_\_\_\_  
Date