

**MINUTES**  
**NEW MEXICO STATE GAME COMMISSION**  
Spencer Theater for the Performing Arts, Inc.  
Airport Highway 220  
Ruidoso, NM 88312  
March 31, 2005  
9:00 a.m. – 5:00 p.m.

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

Meeting called to Order at 9: 23 a.m.

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

**Chairman Riordan – present**

**Vice Chairman Montoya – present**

**Commissioner Arvas – present**

**Commissioner Henderson – present**

**Commissioner Pino – present**

**Commissioner Salmon – present**

**Commissioner Sims – absent**

**QUORUM: Present**

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

Introductions made by approximately 73 members of the audience. **Chairman Riordan** introduced newly-appointed **Game Commissioner M. H. “Dutch” Salmon.**

**AGENDA ITEM NO. 4. Approval of Minutes (December 15, 2004—Albuquerque, NM).**

**MOTION: Commissioner Arvas** moved to approve the Minutes of the December 15, 2005 State Game Commission Meeting in Albuquerque 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 Arvas** moved to approve the Agenda for the March 31, 2005 State Game Commission Meeting as presented. **Commissioner Montoya** seconded the motion.

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

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

- **Quarterly Depredation Report (Brandon Griffith)**
- **Revocation of Hunting and Fishing License Privileges (Dan Brooks)**
- **Commission Committee Reports (Commissioner Arvas)**
- **Recognition of Commissioner Jennifer Atchley Montoya**
- **Election of Chairman and Vice-Chairman**

**MOTION: Commissioner Arvas** moved to approve the Revocation Report as submitted by the Department. **Commissioner Henderson** seconded the motion.

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

**Chairman Riordan** I'd like to say that the Department of Game & Fish had a tremendous Legislative Session and Commissioner Arvas will give us the Committee Report.

**Commissioner Arvas** During the 2005 Legislative Session, the Game Commission and the Department of Game & Fish had 7 Governor-approved legislative initiatives plus HB 5, the Department's Operating Budget appropriation bill. We were successful in getting all 7 initiatives passed by the House and Senate. Of significance was legislative approval of a resident and non-resident license fee adjustment effective April 2006 that would provide much needed revenue.

**Director Thompson** The appropriation to the Department for the FY 2006 Operating Budget beginning July 2005 represents about a 7.8% increase in budget over the FY 2005 Budget. This is due in no small part to Governor Richardson's support for the Department. We had a tremendous amount of support from quite a number of legislators who stood behind the Department and what they believe are important services to sportsmen, landowners, and interested participants.

**Commissioner Arvas** Thank all of our lobbyists and the staff for their tireless efforts in getting through this session.

**Chairman Riordan** I thank Pat Block, who worked extremely hard, Assistant Director Luke Shelby, Deputy Director Tod Stevenson, and Director Thompson. I'd also like to thank Caren Cowen with New Mexico Cattle Growers Association, John Boretsky. We had Cecilia Abeyta from the Farm & Livestock Bureau helping us. Bill Sauble helped us, Jeremy Vesbach from New Mexico Wildlife Federation. Thank you for standing up on those bills. I apologize if I forgot anyone. **Commissioner Henderson** I'm the Committee Chair for the Lands Committee and 1 of the initiatives we started a year ago was to provide opportunities to citizens and visitors to New Mexico's game lands when they aren't in conflict with the priorities of those state

game lands. We started with the Sargent Wildlife area in the Chama area providing for interpretive opportunities and greater access to non-hunting public. We've expanded that to Bernardo state wildlife area. Again, we're in the process of upgrading the roads, adding a new weir to the property that is going to flood and create wetlands in what's called the quagmire area south of Highway 60. The Governor is getting great credit, and he should because in his capital outlay he provided resources for our Gaining Access into Nature Program.

**Director Thompson** The amount of that for properties was \$100,000 and there are \$150,000 relating directly to supporting those types of activities.

**Commissioner Henderson** We have additional resources to address other properties to provide access to the non-sportsmen community and we manage some remarkable resources and it makes sense to utilize them year round. We do that understanding and recognizing the primary use is for hunting and fishing. That's what they were purchased for and also give greater access to the general public.

**Chairman Riordan** I'd like to thank Commissioner Henderson and Commissioner Pino for your work during the Legislature. I'd like to personally thank Senator Tim Jennings who is your Senator in the surrounding area. He helped tremendously on the license fee increase. I'd like to thank Representative Mimi Stewart on the Habitat Improvement Stamp, Senator Pete Campos who was a co-sponsor of the license fee increase, Jose Campos, his cousin who stood up when Senator Campos couldn't be there, Senator Ben Altamirano, and Speaker Ben Lujan.

**Commissioner Salmon** I wanted to mention that while I supported the license fee increase, a lot of sportsmen in my part of the state feel that the sportsmen are funding too much of the bill for wildlife protection and think that we need to realize that the day will come when fishing and hunting license sales can't fund everything we need to do for wildlife in the state. Virtually all citizens benefit from our wildlife resources but not everyone pays for it and we're going to have to consider some alternative additional funding sources to keep this resource protected.

**Commissioner Henderson** We have a subcommittee to address that issue. We recognize that the wildlife resource of this state is a benefit to all citizens of the state and there's limited support from the full citizenry. We are looking for greater opportunities. A growing number of citizens are benefiting and not paying.

**Commissioner Montoya** I'm Chairman of the L.O.S.S. Committee and under Agenda Item No. 12, R. J. Kirkpatrick will be presenting an update on where we are with the L.O.S.S. Program. A survey went out to approximately 8,000 people and we haven't tabulated, but there's a timeframe that he'll present so that the Commission can be looking at recommendations and adoption of rule changes.

**Chairman Riordan** We were going to have a special recognition for former Commissioner Jennifer Montoya, but she's ill, so we'll save that for our meeting in Santa Fe.

**Chairman Riordan** We'll move on to election of Chairman and Vice Chairman.

**MOTION: Commissioner Arvas** moved to nominate Guy Riordan as Chairman of the New Mexico State Game Commission.

**Commissioner Henderson** seconded the motion.

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

**Commissioner Montoya** The other position up for consideration is the Vice Chair. I've had the pleasure of serving as vice chair the past 2 years on the Commission. I think these positions need to move around and an individual that, in my opinion, does a lot of work and has the Department's best interests in mind is Dr. Tom Arvas. I'd like to nominate Dr. Tom Arvas as Vice Chair.

**Commissioner Salmon** seconded the motion.

**Chairman Riordan** I too would like to reiterate that Dr. Arvas has put so much time and passion into this Department. I think it would be a joy to have him as Vice Chair.

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

**Chairman Riordan** I'd like to thank Commissioner Montoya who served as Vice Chair for 2 years through some extremely difficult times, personal issues over the past month, and our heart goes out to him. Thank you for everything you do.

## **NEW BUSINESS**

### **AGENDA ITEM NO. 7: Designate Reasonable Notice to the Public for Commission Meetings.**

**Presented by Jim Karp** – Section 19.30.3.8.A(1), NMAC, requires the Commission to take action at its first annual meeting to continue or amend its existing practice to determine what is reasonable notice of Commission meetings under Section 10-15-1D of the Open Meetings Act. The Department recommends continuation of the present practice of 10 days for regular meetings, 3 days for special meetings, and 24 hours for emergency meetings as reasonable notice for 2005 as contained in Section 19.30.3.8, NMAC.

**MOTION: Commissioner Arvas** moved to adopt the notice requirements contained in Section 19.3.3.8 as reasonable notice to the public as applied to public meetings held by the Commission for the year 2005. **Commissioner Henderson** seconded the motion.

**Alvin Garcia**, New Mexico Assistant Attorney General, State Game Commission Counsel, is there a resolution to that effect?

**Jim Karp** We have a resolution prepared which will be signed and included.

**Alvin Garcia** So this is approval of the resolution and the embodiment of it within the regulation.

**Jim Karp** That's correct.

**Alvin Garcia** Maybe we could amend the motion to approve the resolution that's embodied with it.

**Jim Karp** You're only required to establish what constitutes notice. We're establishing that it will be reflected in the resolution and will be signed by the Chairman and Vice Chairman.

**Alvin Garcia** I think it's semantics now, but normally commissions approve the resolution that adopts the notice requirements but often those boards and commissions don't have regulatory authority and don't put in the regulation.

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

**AGENDA ITEM NO. 8: Partnering Prospects for Fish Production.**

**Presented by Paul Cassidy, President of Aquatic Consultants, Inc.** – This was a discussion briefing to describe prospects for partnering between the Department and private and commercial interests to produce fish instate for stocking and restoration purposes. **Discussion item only.**

**Chairman Riordan** Gila trout are produced out at the Mora federal hatcheries, correct?

**Paul Cassidy** That's correct.

**Chairman Riordan** The Rio Grande cutthroat, those are the ones in the Jemez-Cebolla, correct?

**Paul Cassidy** That's correct.

**Chairman Riordan** Mike (Sloane), how many Rio Grande cutthroat do we introduce a year and how many do we have in that facility?

**Mike Sloane** We have probably between 60,000-80,000 Rio Grande cutthroat trout. In the last couple of years, we've introduced between 5,000-6,000 fish.

**Chairman Riordan** What hatcheries do nothing but produce the Rainbow trout?

**Mike Sloane** Currently all of our facilities do except the 7-Springs Hatchery in the Jemez. All the rest produce Rainbow trout, the largest of which is our Red River Hatchery near Questa.

**Chairman Riordan** How many Rainbow trout do we introduce a year?

**Mike Sloane** We've introduced a little over a million annually but in the past few years, we've been under that number. This year we'll be at or above that number.

**Chairman Riordan** So that's a million a year?

**Mike Sloane** Correct.

**Commissioner Arvas** Who do we use now as consultants?

**Mike Sloane** The only consultants we hire are for telephone surveys we use for research and polling. For hatchery design, we use a company called Fish Pro that is awarded through our competitive bid process.

**Commissioner Arvas** Where are they out of?

**Mike Sloane** Fish Pro has offices in New Mexico, Port Orchard, Washington, and Illinois, I think.

**Commissioner Arvas** I guess Paul's been talking with you about what they're planning on doing down on the Mulcock Ranch?

**Mike Sloane** I had a brief discussion with Jack Kelly probably 3 months ago and I've seen their proposal.

**Commissioner Salmon** Since the Rio Grande cutthroat is our native trout and since we're trying to increase its presence, why is it that we stock a million Rainbows in the state and only 5,000-6,000 Rio Grande cutthroats?

**Mike Sloane** The main reason that we stock so few Rio Grande cutthroat trout is because up until the past couple of years, we've had very few. We also stock them only in a location where they will actually result in a population of Rio Grande cutthroat trout that are secure. We have not done any restoration projects in recent times, so we haven't stocked very many fish. The reason we stock so many Rainbow trout is because the licensed anglers in the state enjoy catching them, taking them home and they are a sought-after resource. We are very careful to not stock them in proximity to Rio Grande cutthroat trout and to prevent any from getting into areas where we have populations of Rio Grande cutthroat trout.

**Commissioner Salmon** I think we might want to consider reversing that trend for the sake of the native species versus the introduced species. Mr. Cassidy, what's the potential in New Mexico streams for stream restoration such that streams can support their own trout so we don't have to keep stocking them in order to have a sustainable resource?

**Paul Cassidy** Yes, we do that kind of work, but what's happened over the years is that in the majority of streams in New Mexico, the demand for pressure on those streams doesn't allow for native populations of fish under those intensive fishing conditions to thrive. The amount of fishing we have on a limited number of streams necessitates the opportunity to stock those fish, otherwise there would be a very limited opportunity or literally, no fish. The majority of anglers in New Mexico still like to keep fish, so unless it's regulated, and even then there's a whole gamut of other issues, but on a majority of state waters probably not. These ideas would be in cooperation with the Fisheries Division, so this is not in place of but in addition to.

**Commissioner Henderson** What kind of costs are we talking about in terms of satisfaction to an angler?

**Paul Cassidy** There's a high cost associated with high-angler satisfaction and we won't be able to put a number on that. Our company alone, with the staff biologist and number of staff we have, costs a lot of money to hire us because we have those

individuals. The higher the angler satisfaction, the higher the cost, so whether that's stock and fish, intensive management or aquatic vegetation control, new lake aeration systems and new facilities and because what we've found, high angler satisfaction is not necessarily dependent on number of fish that are caught. One question we've gotten is the quality of the restrooms. It can be things that you wouldn't think would impact angler satisfaction, but in fact those can be high priorities, so it's not just about stock and fish or managing the algae or managing aquatic vegetation control in some of these lakes and clear water, a lot of it has to do with facilities management, access, and those kinds of things.

**Chairman Riordan** I'd like to suggest that Director Thompson get with these individuals and let's explore some possibilities. I think some of the things you've talked about deserve further consideration.

**Public Comment:**

**Dr. William H. Livingston** A number of years ago I developed a product that we used as a soil conditioner. I think this is something that the Department of Game and Fish ought to be interested in.

**Chairman Riordan** Mr. Sloane, could you get with Dr. Livingston when you get an opportunity and see if you can't set up a meeting and have a discussion.

**AGENDA ITEM NO. 9. Request for Approval of Restoration of the West Fork of the Gila and Costilla Watershed.**

**Presented by Mike Sloane and David Propst** - The Department requested that the Commission approve restoration of Gila trout in the West Fork of the Gila and Rio Grande cutthroat trout in the Costilla Watershed. The Department presented background information and discussed methods by which the restoration will be carried out.

**Commissioner Salmon** It's clear we need to do something on the West Fork. There are virtually no fish in there and the obvious choice is the Gila trout. If you do not eliminate all the non-native fish in that section, can you then proceed to down list the fish in that stream or consider that portion of the stream recovered?

**David Propst** No.

**Commissioner Salmon** That's based on some factor of the Endangered Species Act?

**David Propst** We can't consider recovery because we haven't removed the threat to the population, and the threat are the non-native fish. If we remove the threat, then it will contribute. That's not to say that if there are Brown trout in there and put in Gila trout, that wouldn't be helpful, but we still haven't removed the threat from the system. That will still be a constant management issue.

**Commissioner Salmon** The most definitive statement I've read about the requirement of the Endangered Species Act regarding impure fish was by Dr. Allendorf in 2002, in an article called The Problems with Hybrids by Allendorf, et al. A proposed policy on intercross was published in 1996. The proposed policy used the term 'intercross rather than hybrids because of negative connotations associated with that term. This intercross policy was scheduled to be finalized 1 year later but has still not been approved. It now appears that the proposed policy is likely to be withdrawn. Thus, no official policy provides guidelines for dealing with hybrids under the ESA. If I'm reading that correctly, he's saying the policy is somewhat open, has not been defined. My question is, is he correct, and if he is, why is the purity requirement interpreted by some people as being so strict?

**David Propst** I can't answer why they have not completed its policy, but from a practical standpoint, my understanding is that it is still a draft policy and that under ESA, as long as it's still a draft policy, for lack of anything else, that's basically what we follow in dealing with a federally protected species.

**Commissioner Salmon** Would the service have any comment on that Allendorf statement?

**Jim Brooks** I'm a supervisory fishery biologist for the U.S. Fish and Wildlife Service. What I want to state up front is Endangered Species Act regulatory compliance issues are not handled in my division, but I know a fair amount about it. Allendorf is, I think in part right, but to the best of my knowledge, there is no intent by the Service to withdraw that draft policy. David is correct in that it was published as a draft policy but as long as it's still there, it's not withdrawn and tends to be the position of the Fish and Wildlife Service. What that intercross policy specifically talks about is how you address look-alikes if you can't tell. If you don't have any information to suggest that it is a hybrid or not, and in this case what that intercross policy states is that you can't knowingly generate a hybrid, so you couldn't take pure Gila trout and stock it into a stream with Rainbow trout where a consequence would be a production of intercrosses. That would be illegal and against the intent of the ESA and also in the case of where you don't know if it's a hybrid or not, then you consider it pure until you know something else, and if you have genetics information that would indicate that it's an intercross or hybrid, then it's protected under the ESA.

**Commissioner Salmon** Anyone looking at this can see the possible problem in that with a standard that strict, you could conceivably restore the West Fork and if it turned out you missed a few fish or a few fish of the Rainbow variety got in there and you ended up with a genetic analysis that was less than perfect even by just a few degrees, you might lose the whole 21 miles. As a recovered stream you'd have to start all over again. Mr. Propst indicated that they were going to pursue mechanical means in the spring, and assess the results early in the summer.

**Commissioner Arvas** David, when we become involved in a project like this, do we go through a budgeting process? Do we know how much money we want to invest in this, or will invest in this? How do we draw business use of that money?

**David Propst** This is from the Department's involvement in a federal aid project. The Gila trout work has funded me at about

25% of my time on an annual basis. Most years I get about \$40,000 total state and federal money to support my involvement. The product that we're looking for at the end is the angling opportunity for something that doesn't occur any place else. How do we put a value on that? There have been economic surveys done that indicate what anglers are willing to pay or spend to go fish for something like this, but we haven't specifically done an economic analysis on this.

**Commissioner Arvas** Mike, does Fisheries enter into a budgeting process for all these projects in advance of the project's beginning, or is it something you go along with?

**Mike Sloane** The way these things work is we look at what it is that needs to be done, and identify whether it is or is not a priority. Clearly, the Gila trout program is a priority for the Department, and then we start looking at the costs and how those costs can be spread. With the Gila trout, the Fish and Wildlife Service actually does all the rearing. I believe they do the stocking, they provide help along with the Forest Service, and so our contribution is relatively small in terms of dollars. Relative to what the priority of that project is and how much we're contributing, we try and balance those and determine if that's the best use of our dollars.

**Commissioner Arvas** If someone asked you how much money spent on this project, after looking at all the numbers throughout the year, would you be able to come up with a number?

**Mike Sloane** Yes.

**Chairman Riordan** How long have we been working on this Gila trout project?

**David Propst** The Department has been involved in Gila trout restoration since the 1920's when there was a hatchery at White Creek Cabin. That effort was not successful, but then we reared Gila trout at Glenwood Hatchery in the mid to late '40's, that was of marginal success. They stopped the modern period that came about shortly before the passage of the Endangered Species Act in 1973, so 1972 was the first of our modern period effort, so our involvement has been 30 plus years, but like Mike and I indicated, the commitment and resources on an annual basis on the part of the Department has been comparatively small. That coupled with everything that we do, has to go through intensive planning, environmental compliance from the moment that a stream is initially evaluated in terms of its potential until we have a viable population of Gila trout. It's a 5-7 year process. You could compress it, but meeting the environmental compliance requirements is in part what extends it out. Again, if you put fish in the system, it takes a while to establish a population. It's not an overnight endeavor. We typically figure on 3 years from the first stocking before we might have a reproducing population.

**Chairman Riordan** David, how many Gila trout do we have at the federal fish hatchery?

**Jim Brooks** 150,000.

**Chairman Riordan** Is that the only area in the federal system that has those trout?

**Jim Brooks** Yes, sir.

**Chairman Riordan** So we have no backup if we ever had a situation like that at the Pecos Hatchery. We lost all of our fish at the Pecos Hatchery.

**David Propst** Deputy Director Stevenson reminded me to convey that we do have this Gila trout recovery effort in our Department strategic plan. It goes through an annual review both in terms of the dollar expenditures, and human resource expenditures. This is something that's considered on an annual basis, and in our long-term vision and within the West Fork of the Gila, the primary non-native that we've got there is Brown trout, so the issue of hybridization is not there with Brown trout. Brown trout are predators.

**Commissioner Henderson** Were we to approve this project, how much closer would that bring us to the recovery goal, the down listing or de-listing goal?

**David Propst** Finishing this project enables us to get the Whiskey Creek population which is a remnant population replicated. That's a requirement for down listing. That 23 miles is close to half of what we additionally want to accomplish for de-listing within New Mexico, and 1 reason why we identified this area as important is because we felt that in this contiguous area we could gain a tremendous amount both in security for the species and the amount and quality of habitat.

**Commissioner Henderson** So what are the human health considerations on this project?

**David Propst** The waterfall that is downstream terminus to this reach is about 28 kilometers from the Gila Cliff Dwellings National Monument and there's human activity around that visitation, but the first residence *per se* is at Gila Hot Springs, which is about 34-35 kilometers, 20 plus miles from the downstream terminus of the site.

**Commissioner Salmon** If after mechanical treatment it was felt that all Rainbow combinations were gone and we were imperfect in getting rid of all the Brown trout or if Brown trout slipped in later, would the presence of Brown trout, which don't hybridize with Gila trout, preclude the satisfaction of the listing requirement?

**David Propst** We don't have to worry about the hybridization point. What it does mean is that the Department and the other agencies are going to have a long-term resource commitment to going in on an annual basis if not more frequently to remove the Brown trout.

**Commissioner Salmon** We could also alter the regulations regarding Brown trout in that section and encourage people to go in and catch as many as they could and keep them all.

**David Propst** Yes, we could do that, but given what we saw in terms of any evidence of humans being in the area, it's really

infrequent so we would do it, but wouldn't rely on that to control them.

**Commissioner Salmon** But then there wouldn't be the option of additional electro-fishing to remove Brown trout periodically.

**Mike Sloane** With Rio Grande cutthroat trout we have noticed that when they co-exist in a stream the biomass of Rio Grande cutthroat trout declines even with regular removal.

**Chairman Riordan** Commissioner Salmon, we've been trying to restore this trout since 1920 and it seems it's going to be an ongoing situation. We'll probably be electro-shocking for years to come.

**Mike Sloane** I'm here to talk about the restoration of the Rio Grande cutthroat trout in the Rio Costilla watershed. This is a proposed project made up of a number of partners. The Rio Costilla Cooperative Livestock Association, a former land grant is 1 of our partners. Vermejo Park Ranch, Carson National Forest, and Valle Vidal Unit, is another. The Interstate Stream Commission and several trout clubs are involved. We're proposing a conservation population to remove fish from about 3-4 miles of stream, but the overall project will result in 150 miles of core population fish that would be available for a unique angling experience and prevent listing of the species and allow for continued persistence. In summary, we feel we have strong public support both in terms of landowners, agencies, and the public. We're taking a stepwise approach for ongoing analysis of removal techniques.

**Chairman Riordan** I received a copy of a letter by Don Blossom to the Valles Caldera National Preserve Board of Trustees from [New Mexico Magazine](#) on Introduction of the Rio Grande Cutthroat Trout. It's succinct and gives us food for thought.

**Public Comment:**

**Bob McPherson** I'm a retired scientist. The New Mexico Wildlife Federation fully supports the efforts of the Department to restore the native species of fish in New Mexico streams. We believe that the Department should have all available avenues to explore reintroduction of these fish.

**John Boretsky** I'm the Executive Director of the New Mexico Council of Outfitters and Guides. The 300,000 fishermen in New Mexico according to the recreation survey by Fish and Wildlife don't care whether the trout on the end of their line is a Brown, Rainbow, Gila, or a Rio Grande cutthroat. It's of grave interest for those people who are involved professionally, but those that are involved recreationally who are your constituents want to catch fish and they want to have a good time doing it and we might be losing sight of that.

**Carter Kruse** I'm representing Vermejo Park Ranch and Turner Enterprises. I support the proposed restoration in the Costilla watershed. Most of you realize that conservation of native species is an important part of our land management philosophy in the Turner organization and I'm here to offer our support as well as our intended participation in the Costilla restoration project.

**Dr. Arnold Atkins** Supports the proposed restoration by the Department.

**Jim Brooks** Official representative of the Fish and Wildlife Service in support of the Rio Grande cutthroat trout and Gila trout projects.

**Commissioner Henderson** How many miles of fishable streams do we have that are open and stocked with Brown and Rainbow versus the miles of streams that we're talking about with Gila and cutthroat?

**Mike Sloane** There are thousands of miles of stream that are occupied by Rainbow and Brown, and I believe it's less than 100 for both the Gila and the Rio Grande cutthroat trout.

**Dave Propst** Within the Gila drainage, there's no stream stocking of non-native trout at this time except in the vicinity of the forks where they come together, but none in the wilderness itself.

**Commissioner Henderson** We're trying to establish the ecological importance of these fish and the law in re-introduction. I also don't want to head down that slippery slope of 1 species being more important than another.

**Commissioner Pino** When I attended that meeting in Santa Fe, I was led to believe that we were going to talk about Valles Caldera and there wasn't going to be a selling job continuing to use the word "chemical". At the meeting in Santa Fe it was "poison". Let's call it what it is. As a Commission, we had already made a decision, and we said we were looking for additional research, additional time to discuss this issue, and not be put in a position of being sold a bag of goods. I saw in the presentation that you're receptive to the fact of using other tools and then coming back later after analyzing and evaluating the progress that you've made using those tools. As a Commissioner that's what I'm looking for, additional information. I'm looking for impact on humans, impact on other living beings in that river system. We haven't had enough time to address those issues. In order to do that, you have to treat the environment with care so that environment can continue to provide for you. If we look at allowing the Department to continue to work in this area and look at different tools and stay away from poisons for now and at the end when we've addressed all those and evaluated and assessed all of those above, explore alternatives. That's where we can explore the use of chemicals but you'd have to come with a lot of information. You'd have to convince me that there aren't going to be negative impacts over the long term with both animals and humans we share this earth with. At that meeting, the people from Valles Caldera made statements saying that they're not going to do anything in the river systems that would be against the wishes of the local people and I commend them for taking that position. If there are other places where people accept this kind of experimentation, maybe we can all learn from that process, but if we follow this, I think we can make some progress. If we can forget about convincing each other that chemicals are the way, try this, work with other tools and come back with information in hand and what it will teach the general public.

**Commissioner Salmon** Mr. Sloane, considering that the Rio Grande cutthroat trout is not a listed species under ESA at this time, do you or can you plan to count conservation populations as part of the recovered stream system or only the core populations?

**Mike Sloane** I think the way we're looking at this is that core populations are likely to be the only populations that would be counted toward not listing which has been the practice under the recent status review that was done where we think we have 356 core populations and they whittled that down to 13 between New Mexico and Colorado. Based on that, we would only count those as likely populations toward not listing. We do count those other populations as valuable populations based on their genetics.

**Commissioner Salmon** If you've only got 13 populations counted in 2 states, you're almost inviting a lawsuit since that would be surely less than 10% of the original range of the species, and further, if you've only got 13 populations, I'd think you'd be almost certain to lose the lawsuit if it came along. I'll note that in 1998 when a lawsuit was filed regarding the species, Secretary Babbitt, in his response denying the petition, said that the service considered that there were 200 populations total in the 2 states. I'm sure he was using something close to the conservation standard to find those 200 streams. Wouldn't it make more sense trying to keep this species off the ESA which I'd like to do. I'd like to keep state management of the species to count the conservation populations as recovered streams.

**Mike Sloane** The short answer is probably yes, but based on the most recent status review due to litigation that was conducted by the Fish and Wildlife Service, they determined that we provided them with a list of our genetic findings and with how we classified populations, we classified 35 populations within New Mexico as core. Based on a variety of factors, whether they had barriers, proximity to whirling disease, number of fish in the stream, they whittled that number down to 13 populations between Colorado and New Mexico. So while we might not disagree philosophically, the Fish and Wildlife service in their most recent status review under litigation, clearly has a very different approach.

**Commissioner Salmon** That helps me to understand a little better but I'm not quite sure how to respond to it except to say that I wish we could work out a different standard with the Fish and Wildlife Service.

**Chairman Riordan** What we suggest here is Mr. Sloane, if you can get together with Director Hall, I think we'll answer some of the questions that Commissioner Salmon has. My discussions with Director Hall were right along the lines of Commissioner Salmon. If you'd get together with them and then come back the next meeting or the meeting after, and let us know what that discussion was.

**Mike Sloane** Commissioner Pino, the Department having heard what we heard, also does not have any proposals to do any work in the Jemez.

**Chairman Riordan** The Commission is in favor of trying to restore the Gila trout and the Rio Grande cutthroat trout to sustainable populations. At the same time what we suggest here may not be the easiest method to go ahead and do that, but we're looking at balance, we're looking at common sense and if it takes an extra year to go ahead and attain what maybe someone else wants to attain and then 6 months down the road, so be it.

**MOTION: Commissioner Pino** moved to allow the Department to proceed with restoration activities, using a variety of tools excluding the use of piscicides, on the West Fork of the Gila and in the Costilla watershed and after evaluating and assessing the effectiveness of those various tools, to come back before the Commission to discuss other options and alternatives.

**Commissioner Salmon** seconded the motion.

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

#### **AGENDA ITEM NO. 10. Change to the Fishing Regulation 19.31.4 NMAC.**

**Presented by Mike Sloane** - The Department requested that handicapped anglers be added to those allowed to fish at Burns Canyon Lake near Parkview Hatchery. The Department also requested that the fishing regulations on portions of the Costilla watershed be suspended in order to allow anglers to remove as many fish as possible in advance of restoration activities. The second change was the removal of the catch and release regulation on a portion of the Valle Vidal to its confluence with Costilla Creek at Comanche Point. This would make that section of water with the 5-fish limit and would be the first step in restoration to allow the Department to evaluate a change in regulation.

**MOTION: Commissioner Montoya** moved to accept the proposed changes to the fishing rule 19.31.4, NMAC, to allow mobility-impaired individuals to fish at Burns Canyon Lake and to remove the catch and release regulation on Comanche Creek from its confluence with Vidal Creek downstream to its confluence with Costilla Creek. **Commissioner Pino** seconded the motion.

**Vice-Chairman Arvas presiding.**

**VOTE:** Voice vote taken. All present voted in the Affirmative. Vice-Chairman Arvas voted in the Affirmative to ensure quorum.

**Motion carried unanimously.**

**AGENDA ITEM NO. 11. Presentation of the Fiscal Year 2004 Financial Statements and Audit Report.**

**Presented by Patrick Block** - The State Auditor rule requires that agencies governed by a board or commission present the annual financial statements and audit report to their governing body in a public meeting. According to Section 2.2.2.10.K(3)(d) of the New Mexico Administrative Code, "Once the finalized version of the audit report is officially released to the agency by the state auditor (by an authorizing letter) and the required 10-day waiting period has passed, the audit report shall be presented to a quorum of the governing authority of the agency for approval at a public meeting." This agenda item fulfilled this requirement.

**Commissioner Arvas** Under the Sikes Act, how do we explain why we're not spending that money faster than we are?

**Pat Block** The single biggest factor is that those projects are budgeted and approved but then external environmental factors happen, prescribed burn is part of the approved projects, but it's too dry or too windy to complete that burn. If you miss the window for that burn, you have to wait until the next year, so a lot of those projects are backlogged.

**Chairman Riordan** I'd like you to stay involved with Commissioner Pino as he is Chair of the Budget Committee. Keep him informed as to what is what.

**MOTION: Commissioner Arvas** moved that the Commission approve the Department's audit report for fiscal year 2004.

**Commissioner Henderson** seconded the motion.

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

**AGENDA ITEM NO. 12. Update on the Status of the Elk Landowner Signup System Review.**

**Presented by R.J. Kirkpatrick** - The Department provided the Commission with a brief update on the status of the Elk Landowner Signup System Review. The update included information regarding the questionnaire recently mailed to approximately 8,000 hunters and landowners as well as the proposed timeline for finalizing the effort. **Discussion item only.**

**AGENDA ITEM NO. 13. Opening the Upland Game Rule, 19.31.5, NMAC, and the Waterfowl Rule, 19.31.6, NMAC, for public input.**

**Presented by R.J. Kirkpatrick** - The Department asked the Commission to open the Upland Game Rule, 19.31.5, NMAC, and the Waterfowl Rule, 19.31.6, NMAC, to accept public input or testimony and management adjustment recommendations to be used in development of regulations for the 2005-2006 license year only.

**MOTION: Commissioner Henderson** moved to open the Upland Game Rule 19.31.5, NMAC, and the Waterfowl Rule 19.31.6, NMAC, for the specific purpose of accepting public input or testimony and management adjustment recommendations for the development of regulations for the 2005-2006 license year only. **Commissioner Montoya** seconded the motion.

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

**Chairman Riordan** R.J., what I'd like to do on that Waterfowl Council is to have either Commissioner Arvas or myself be involved when we're developing the rule and regulations.

**AGENDA ITEM NO. 14. Developing Added Hunting and Angling Opportunities.**

**Presented by R.J. Kirkpatrick, Mike Sloane, and Dan Brooks** - Department staff presented novel views on additional opportunities for migratory and upland bird hunting, big game hunting and angling. Adjustment to manner and methods of harvesting wildlife to expand opportunities and enhance experiences will be included. Commission direction was sought on these ideas and others to be included in regulation development.

**Chairman Riordan** That youth hunt that we had on the Bernardo was extremely successful?

**R. J. Kirkpatrick** I'd say it was wonderful. We do think the process is the limiting factor. The application process may be to the point where we're interested in addressing it. We're talking about ways we can hold a workshop and talk to adults and the kids about the wisdom it took to buy that piece of property, the work and money that it takes to keep it going to provide the opportunity to them, and maybe a conversation about ethics and encouraging youth to continue participating in hunting sports. Then they can hunt ducks in those areas that we've identified in Bernardo and we won't have to regulate it through a draw process.

**Chairman Riordan** That's what my request would be, that we try to eliminate that draw process.

**R. J. Kirkpatrick** Also setting aside some elk hunting opportunities in various units during the next big regulation cycle to accommodate some parent/child hunting opportunities. The mobility-impaired hunters have expressed some frustration and dissatisfaction with the opportunity that they have, so we're looking at ways to increase that opportunity.

**Chairman Riordan** I had some individuals contact me about sharing the woods with the kids and having the impaired hunt at the same time and I've got issues with that. We're there to support the disabled and do what we can for them and nobody says they have to be guaranteed a 90% success rate on their elk kills. I think that putting 150 kids out in these units would not impact their hunting opportunity.

**R. J. Kirkpatrick** We will work through those issues and try to be as reasonable as possible on investigating opportunities to create combination deer and elk hunting opportunities, and deer/antelope combos. We haven't delved into that much but we're looking at expanding hunting on military property. We've been working with them, but we're going to work closer to create more



oryx hunting opportunity. Currently, the 2 options before us are creating separate seasons for collared dove seasons only and increasing the bag limits to include number of collared doves.

**Chairman Riordan** The Director and I discussed increasing the limit to 20 birds and once you get your 15 birds of white wing or morning dove, hunting must stop.

**R. J. Kirkpatrick** We're going to try to use sportsmen to resolve depredation problems when applicable. We're looking for circumstances where we've got high quality or unique hunting opportunities in various parts of the state where there's conflict between elk and cattle utilizing spring green up on forest and BLM allotments. A solution is using paintball shooters to set up non-consumptive paintball hunts in those particular areas to dissipate and decrease the level utilized by elk. We've met with Valles Caldera and they're interested in working with us to provide turkey and grouse hunting opportunities.

**Chairman Riordan** I'd like for you to explore the program that Arizona has on pheasant hunting on private lands where they're keeping habitat up. They're not clean farming. I'd like to see what kind of program they have and see what we could implement especially for Roswell, Portales, and Clovis where we should have a good population of pheasants.

**Mike Sloane** We're proposing looking at bag limits for various fish species. We'll be entering into a regulation cycle this summer and we'll talk to anglers about that. Restoration and getting more Rio Grande cutthroat trout out there for folks to get after and then also Marty Frentzel from Public Information and Outreach has developed a marketing campaign, which makes people more aware of the multitude of opportunities out are.

**MOTION: Commissioner Arvas** moved to concur with the Department's approach to take advantage of additional hunting and angling opportunities as presented. **Commissioner Salmon** seconded the motion.

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

**Public Comment:**

**R. L. Posey** I haven't been involved in the L.O.S.S. Program but the people that have talked to me about this have complained more about the non-uniformity of applying the program.

**Chairman Riordan** R. L. you might want to get with R. J. to assist you on that.

**Charles Walker** Third generation rancher in Unit 34. Director Thompson, I've complained about the depredation problems in my hay crop and I want us to be friends rather than enemies and rather than you refuting my documented losses, I wish you'd work with me and say "yes, you have a problem and we're going to work with you and try to solve it."

**Chairman Riordan** How many acres are you ranching now?

**Charles Walker** I have about 1,000 acres of deeded land and I have 24 sections of forest and BLM allotment.

**Chairman Riordan** On that deeded property, is that where you're growing your hay?

**Charles Walker** Part of it.

**Chairman Riordan** Are you growing grass or K-31?

**Charles Walker** I've grown 1 crop of oat hay. The elk ate it. Last year when I saw that happening, I cut it prematurely so I did get a few bales out of it.

**Chairman Riordan** How many acres do you have in oat hay?

**Charles Walker** 35 acres. It's dryland hay but it's choice bottomland and I generally make about 50 tons off of that 35 acres. We have documented figures and a few years ago the Forest Service offered me a raise on my allotment and I said I'd rather wait a while to give the plants more time to recover and since then the brush has come in and the elk come in and now they're threatening me with a reduction. Last year I took a volunteer reduction in my grazing allotment because the forage just wasn't there.

**AGENDA ITEM NO. 15. Consideration of Department Proposal to Trap and Transplant Rocky Mountain Bighorn Sheep.**

**Presented by Eric Rominger** –The Department presented to the Commission the current status of Rocky Mountain Bighorn Sheep populations in Northern New Mexico and the need to regulate these populations. In addition, the Department presented, for approval, a multi-year proposal to trap and transplant sheep to various locations within the state. The presentation included the biological, economic, and social issues associated with each proposed trap and release site.

**Chairman Riordan** How many sheep do you have in the Manzanos?

**Eric Rominger** In the Manzanos, we have 20-30 sheep. The Manzano augmentation would be included in that 200 sheep pending the completion of fencing that would protect those Bighorn sheep from the train kills that we've been sustaining.

**Chairman Riordan** How long have we been negotiating the fence?

**Eric Rominger** The fence has been tied to a second track. The second track is supposed to be cut beginning in the next 6 months and that fence is part of the agreement with Burlington-Northern on the double tracking. They didn't want to fence until the second line was cut, so the plan is to roll in the cost of that fencing project to this \$80M-\$100M double tracking project.

**Chairman Riordan** You're giving them 6 months. You figure they'll get something done and start a project within 6 months. We've been talking about this fence for the last 10 years.

**Eric Rominger** I've been to a couple of meetings and they look like they're going ahead and cutting the grade. The last I heard they had their environmental consultants in to look at routing and this time I think it's going.

**Chairman Riordan** For those Commissioners and members of the public that don't know, how many sheep do we lose a year there?

**Eric Rominger** Since 1997, we have documented 17 train strikes in this herd of 20-30 Bighorn sheep. In 17 documented train kills, there have been 6-7 others reported by conductors as being struck that we didn't come up with bodies, but it's been a substantial mortality factor.

**Chairman Riordan** I'd like for us to get after it. On the Manzano herd, what are you doing with the cougar situation?

**Eric Rominger** We had contractors in initially in that herd, but they didn't remove any cougars. There was a substantial amount of sport harvest in the Manzanos, about 3 years ago that seemed to make a big difference. We've not had a cougar kill mortality on a radio collared animal in 3-4 years, so it seems like the sport hunters have made a substantial impact on the lion predation in there.

**Chairman Riordan** Cougars don't call us up when they're killing the Bighorn so I'd like us to go ahead and look at what we have to do there before we put any more in and also to protect the herd because I'm getting reports that people are deer hunting and they're seeing 2 cougars in 1 canyon in a day and then the next day the same guy sees another cougar in another canyon.

**Eric Rominger** We need to take that into consideration particularly before translocation.

**Commissioner Arvas** What is the ram/ewe ratio that you have for Wheeler Peak and Pecos?

**Eric Rominger** Because of the light harvest, it probably runs 1/3 rams to 2/3 ewes on the ground in those mountain ranges. We feel both those mountain ranges have over 100 rams present with 8 permits in the Pecos population and 2 permits in the Wheeler Peak population.

**Commissioner Arvas** Why wouldn't you want to have more hunts?

**Eric Rominger** We feel 8 permits in the Pecos is about the maximum number of permits to sustain a trophy harvest. A chance to kill a full curl ram that has a possibility of making the book and that hunt was liberalized from 5 permits to 8 permits a few years ago, but 8 trophy class rams is probably the maximum you'd remove from a population of 100. In the Wheeler Peak population, we're dealing with at least 2 Tribal hunts and an auction hunter or raffle hunter that comes in there. Even though there are 2 public tags there are 5-6 rams that come out of there.

**Commissioner Arvas** That full curl ram, 6-8 years of age?

**Eric Rominger** The best 4 rams coming out of those mountain ranges are 8-10 years old, with rams in that country living 12-13 years, but this year all top rams average 10 years of age.

**Chairman Riordan** I have a problem with the translocation out of state without getting something back. I would rather us concentrate on private land owners, Tribal, other public areas that we have. I'd like to see us increase that Manzano herd. I'd also like to see us get with some of these private people and see if there are some areas where we can bring in Bighorns if they want them. I'd also like to see Bighorn on Sandia Peak. We've had issues with lion, habitat is not what it used to be. I think we can work on some agreement with Sandia Pueblo because those Bighorns move from that first peak to the second tower and back and forth. If we could do some habitat improvement there it's great for replenishing that stock, it's great for tourism, it's great for Tribal relations.

**Commissioner Arvas** We've got a desirable commodity. If you've 130-150 rams and only 8 are full curl rams, this doesn't make sense. The distinction between a full curl ram and a 7/8 curl is very difficult to make. I can't believe there are only 8 rams of harvestable age out of that 120-130 rams that are up there.

**Eric Rominger** The harvest goals that we have in the state would compare with harvest goals anywhere where trophy management is the goal.

**Commissioner Arvas** When you make the statement that there are 8 harvestable rams, obviously they're not going to kill every single one of those rams. That means part of that population of 8 is going to die a natural death.

**Eric Rominger** We hope that's a low percentage but probably that occurs. When I work with guides they're comfortable with that level because we know most of the big rams in there so we talk back and forth and we feel the 2 best rams that came out of the Pecos this year, the guides and I knew both those rams. There's been some concern that when we went from 5 permits to 8 permits we were over harvesting so we've been tracking that very closely. The Boone and Crockett scores have not changed the ages and we've increased hunter opportunity by about 25 rams.

**Commissioner Arvas** What's the minimum Boone and Crockett score for those 8 rams that you harvested?

**Eric Rominger** Out of those 8 permits virtually every year, someone will take a small ram. Any ram is a loss so we occasionally have a 1/2 curl or 3/4-curl ram taken scoring in the 140's, but we only average 1-2 rams and make the book at 180 out of the Pecos.

**Commissioner Arvas** So there is the possibility even though it might seem remote in your mind at this point in time that there are some older rams that are not getting harvested that do die a natural death?

**Eric Rominger** In that mountain range we probably lose a small percentage of the oldest rams.

**Commissioner Arvas** How big a percentage would you guess?

**Eric Rominger** Very small, probably less than 10% of the large rams and then total population is even a smaller fraction than that because each age cohort becomes smaller and smaller in terms of we don't have 16 full curl rams in there each hunting season.

**Commissioner Arvas** You do feel comfortable with the 1 trophy ram that we sell being the total number that you'd want to sell?

**Eric Rominger** That's been tried and true west wide the 1 auction and 1 raffle tag. I think the ability to sell a raffle tag augments that. We'll probably make over \$250,000 this year out of those 2 licenses.

**Commissioner Arvas** But you wouldn't want to add to that at all?

**Eric Rominger** I don't think so. Part of it is the exclusivity of the item. This is what is portrayed here, that the next 3 years we're looking at essentially all in-state transplants with the exception of the completion of this trade. The second 2005 transplant we're proposing to remove sheep from Latir, Turkey Creek domestic sheep issue resolves itself in the last 48 hours and we'll now be clear to augment that population in 2006. The schedules would be 2 traps 1 year, 1 trap the next, 2 traps the next year. The way this schedule is set up, 2006 would be a Wheeler Peak transplant, 30-40 animals with these 3 options, public/private or Tribal. Public option next year would only be Rio Grande Gorge, could we get online with the assumption that it was a place that we'd want to put sheep. Private land transplants we're looking at 2 sites, the Culebras and the Dry Cimarron which was just recently looked at, but because this transplant would be coming from Wheeler, we'd lean more toward Dry Cimarron because we're afraid Wheeler Peak sheep might come home from the Culebras. In 2007 we'd be back in our Pecos-Latir, 2 transplants. Again these 3 options coming online possibly if we really hustled would be White Rock Canyon with all its associated problems of so many agencies, the Manzano fence we'd hoped would be put in at that point and an augmentation could go there on one of these private or Tribal lands. So I hesitated to extend that transplant option past 3 years because of the unknowns. An average transplant is costing us probably \$60,000 a year, so 1 year we're paying \$120,000 in transplants and next year \$60,000 if we're doing this 2, 1 year, 1 the next, which is obviously a substantial portion of the auctioned ticket price.

**Commissioner Pino** You had the private/Tribal property, and on the private property you had some examples of places where you might transplant. There are no specific Tribal names appearing and why is that?

**Eric Rominger** The first Tribal request arrived in the last 10 days and it was the Acoma Pueblo. They are going to make an assessment to see whether or not they have Bighorn sheep habitat. They're going to start a graduate project and we're supportive of that. The sub-species issue would be a concern for us on the Acoma Pueblo. The second Tribal entity that comes up has been the Sandia, although I've not seen a specific request from Sandia. I've spoken with Chairman Riordan on that, but those are the 2 pueblos that have addressed or come to my mind as possible Rocky Mountain Bighorn sheep transplants, and perhaps only the Sandia.

**Chairman Riordan** I've contacted Governor Paisano with the Sandia Pueblo about having discussions.

**Eric Rominger** Deputy Director Stevenson has reminded me that in the early negotiations with potential White Rock Canyon release we've been in contact with the San Ildefonso and they gave us a positive response. I note that Taos Pueblo now has an established Bighorn sheep population as a consequence of our 1993 transplant. Taos Pueblo actually harvests 1-2 rams on auction sales.

**Commissioner Arvas** Do they get more money than we do?

**Eric Rominger** There was only 1 of those tags sold at a public auction at the Dallas Safari Club about 4 years ago and their price was not quite as high as ours. Since then we've not been privy to what the sale price was.

**Commissioner Salmon** What's the current status of the San Francisco River Herd near Glenwood?

**Eric Rominger** The San Francisco River population declined in the early 1990's to fewer than 40 individuals. Since then we've done 2 augmentations and although we've had a couple of lousy helicopter surveys, we think that population is probably approaching 100 this year. We thought last year the population was over 80, this year should be over 100, and the San Francisco River will be open to 1 hunt this fall for the first time after having been closed for 4 years. There are a lot of terrific rams in there. I don't know if they came from Arizona or where they came from but there are some really great rams in there now.

**Commissioner Salmon** Adjacent to the Red Rock Refuge is the public lands area called the Gila Lower Box and then about 20 miles above that is another public lands area known as the Gila Middle Box, do those 2 areas have any potential for transplants of Bighorn sheep?

**Eric Rominger** Those 2 areas did not break out in an assessment of Desert Bighorn sheep range. The area north of there, the Carlisle, was assessed as potential Bighorn sheep range. That little range that's just north of those 2 boxes on the Arizona border ranks fairly low in terms of Desert Bighorn sheep ranges because of the limited amount of habitat. I've never looked into those 2 boxes.

**Commissioner Salmon** They seem like sheep-type areas to me due to the canyon terrain, but just a thought.

**Ex-Commissioner Steve Padilla** I'm from outside Chama. About 8 years ago, the National Forest Service came to our Commission and wanted us to put Bighorn sheep in the Sandias and the Department biologist told us that was not Bighorn sheep habitat and because of that we didn't do it. The other thing is that on a trade we should get something. A few years ago our Commission got a request from either Tennessee or Kentucky for 17-18 elk and I wanted to know what we were getting in

return and I was told there's nothing those states have that we want. I said how about bass. They said they hadn't thought about fish. As a result we got over 1,000,000 striped bass for Elephant Butte.

**R. J. Kirkpatrick** On that getting something for nothing, it's costing us anywhere from \$40,000-\$80,000 to accomplish a sheep trap keeping in mind those aren't salaries for employees. If we give 25-30 sheep out of Pecos to Utah, they're basically paying the entire bill. This money source is our enhancement dollars that we use for Bighorn management in New Mexico. If Utah pays the cost, that would be \$40,000-\$80,000 that we could use for brush and P-J thinning on the Ladrones, Hatchets, or hire lion preventive services.

**MOTION: Commissioner Montoya** moved to approve the Department's process and approach presented to the Commission with regard to the management of the Rocky Mountain Bighorn sheep. **Commissioner Arvas** seconded the motion.

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

#### **AGENDA ITEM NO. 16. Biennial Review Sand Dune Lizard Recommendation 19.33.6, NMAC.**

**Presented by Chuck Hayes** - The Director made final recommendation to the Commission regarding changing the state status of the Sand Dune Lizard from threatened to endangered. This recommendation followed up on the decision by the State Game Commission in September 2004 to provide a 6-month extension to our Biennial Species Review regarding the Sand Dune Lizard under the Wildlife Conservation Act. The Commission took that action based on the Director's recommendation to allow some additional time during which we could define and establish commitments of petroleum industry and other interests to provide conservation actions that would preclude change in status of the Lizard.

**Director Thompson** Over the past 6 months, petroleum industry representatives have expressed interest in developing a mechanism to provide for Sand Dune Lizard conservation practices while reducing the potential for future regulatory requirements. They've also pointed out that some areas of Sand Dune Lizard habitat are already withdrawn from leasing for additional oil and gas development and that a few trial habitat reclamation efforts have been undertaken on BLM lands. However, there's been no willing commitment to implement conservation practices for Sand Dune Lizards and their habitats across all landownership jurisdictions. No commitment has been demonstrated across all landowner jurisdictions. Thus, there's been no demonstrated alleviation of threats to Sand Dune Lizards from petroleum extraction activities. Therefore, up listing the Sand Dune Lizard to endangered is recommended under the New Mexico Wildlife Conservation Act. Department staff will continue to assist industry representatives in their efforts to develop a mechanism for implementation of Sand Dune Lizard conservation measures across all landownerships. Upon demonstration and successful implementation of that commitment, the Department can bring a recommendation back to the State Game Commission to consider down listing the Sand Dune Lizard to threatened under the New Mexico Wildlife Conservation Act. Threat alleviation would be an indication of success by industry representatives in achieving down listing and would serve as a model that could be replicated for other species. So in summary, the recommendation is to up list the Sand Dune Lizard.

#### **Public Comment:**

**R. L. Posey** One comment that was made at the 2002 December Commission meeting by Commissioner Ray Westall who said, "I'm not in favor of listing anything that we don't know what we have or how to manage it." I don't think you know what you have or how to manage it.

**Chuck Moran** I'm the current president of the Independent Petroleum Association of New Mexico. The Association has been actively involved to stop the Lizard's up listing for approximately 10-11 years. There's been a demonstration of good faith by the industry to work to protect the Lizard and I feel the recommendation to up list the Lizard from threatened to endangered is the wrong recommendation.

**Chairman Riordan** We do appreciate everything the oil and gas industry brings to New Mexico.

**Jim Maynard** I'm with Southwest Resource Consultants based in Las Cruces. I'm here representing Western Resources Enhancement Coalition from Roswell. We're asking that the Department come forward with some commitments also because there are some things the law requires the Department to do that the oil and gas industry has not seen at this time. The oil and gas industry is opposed to up listing the Sand Dune Lizard.

**Director Thompson** We would seriously consider doing a commitment and have in part done. I do think we have the ability to work effectively and we have had communication in recent months and I stress the point made about my request for a commitment that couldn't be made. The recommendation was substantially based on the lack of a willing commitment having arisen in the past 6 months after the Commission specifically identified that was a key element.

**MOTION: Commissioner Henderson** moved that the Commission accept the Director's recommendation to up list the Sand Dune Lizard under the Wildlife Conservation Act from threatened to endangered and to modify the listing of state threatened wildlife in Regulation 19.33.6.8 accordingly. I think that the Department years ago when the Wildlife Conservation Act was originally adopted, the Commission accepted the responsibility to affirmatively protect and provide management opportunities for threatened and endangered species and this is an example of where we need to assert our responsibility. **Commissioner Arvas** seconded the motion.

**Chairman Riordan** If this motion passes, are you willing to revisit this in 3 months?

**Commissioner Henderson** Sure. When do we have a biennial review, which would be the appropriate time.

**Chuck Hays** Obviously the next biennial review would be 2006 on even-numbered years. Typically, we start those in the spring and going through all the process and all the steps takes us 6 months and we finish in late fall. That schedule could obviously be modified to anywhere within 2006 if it were the desire of the Commission, but that's our standard schedule.

**Chairman Riordan** I'm going to vote for your motion, but I'd like to revisit this in 3-6 months to see where we are.

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

**AGENDA ITEM NO. 17. Recommendations on Expending Wildlife Conservation and Restoration Program Funding.**

**Presented by Tod Stevenson** - The Department provided recommendations to the Commission regarding reallocation of the Wildlife Conservation and Restoration Grant Program funds that were originally allocated to the development of a wildlife education center at the Department's Santa Fe headquarters. The recommendation includes 6 specific projects to improve Department facilities and programs, and approximately \$162,000 for an RFP process to entertain public project proposals.

**Commissioner Salmon** Is 1 of the education project centers you're looking at involving the Heart Bar Wildlife area?

**Tod Stevenson** Not specifically. One of the things that we are looking for on the Heart Bar facility right now is the program that would allow more types of activities like bird watching. The Red Rock and the Heart Bar facility are both on that list for those activities. This clearly could provide some additional conservation education signing and interpretive signing that would go on to a place like the Heart Bar where we could put a trail system or other things as native vegetation and be able to go and talk about what types of wildlife or birds or other types of things that would be within that area. It would fit that type of criteria of part of that \$150,000 that we could use or the \$97,000 that we would use for signage.

**Commissioner Salmon** What if any public access is provided, or is there any?

**Tod Stevenson** There are significant amounts of fishing opportunities that occur at the Heart Bar area. We actually maintain a picnic area and recreational use area to the southeast side of the headquarters area. We get a significant amount of public that go use that peripherally for bird watching and other types of activities. What we'd be looking at is enhancing those types of things, providing some other types of activities to draw additional people.

**Commissioner Henderson** I've been working with the Department on this particular project and I want to commend the staff. It's important to note that these are federal funds that come from offshore oil revenues and it was the federal government's interest in using a non-renewable resource to fund more renewable sorts of wildlife activities and this list of projects certainly fits in with the intent and spirit of the law. It gives the Department some specific actions and enough flexibility to entertain public proposals and it also spreads the resources around the state in the appropriate way. Having said that, this won't be the last time we'll be having an opportunity to do this because as the game program gets up and running, there will be more resources coming in for these types of educational opportunities.

**Chairman Riordan** On 1 of the plans, installing education interpretive signage at Commission-owned wildlife areas, i.e., Bernardo and prairie-chicken areas, Commissioner Montoya also had an interest in the Humphries wildlife area in his district. You're suggesting that we allocate \$130,000 of those monies to that project. What are we getting for that \$130,000?

**Tod Stevenson** That \$130,000 would be specifically for the signs and interpretive types of things that we would put there. Those were examples and we're more than glad to get input from any of the Commissioners as to where we would start. That \$130,000 would go to the physical design and purchase of whatever types of things we would place out there on the ground that would enhance someone's ability without anyone to actually come to that area, either go on interpretive trails, come to a system somewhat like we've talked about on the Sargent wildlife area. We're talking about the elk habitat areas and give them an overlay of why it's important the different types of habitat that they can see, and what each 1 of those means for elk and wildlife.

**Chairman Riordan** In the \$200,000 that we're going to be using for the wetland construction interpretive trail development, basically that's at our headquarters?

**Tod Stevenson** That's correct. About \$120,000 plus, would go to a development of a pond system to the south and east of the building in that lower swale as you're coming into the driveway onto the property back off to your right-hand side. As you are coming into the building a pond where we'd be able to use part of the gray water that we've got allocated from the City of Santa Fe, develop a pond system with trails and other things around that we're hoping to develop enough habitat that we can actually increase the number of aquatic species that we'd be using. And, this project adds to the experience for the thousands of people that visit our building annually.

**Chairman Riordan** Who do you think is going to come and visit us to look at this \$200,000 project?

**Tod Stevenson** Based on the demand from schools systems, interest from a wide variety of people that are looking for that type of activity. We could distribute those dollars easily into the RFP process or do something else. We'd like to be able to take advantage of part of the gray water that's available and provide parts of those things, but we're glad to look at other things based on what the Commission would like us to do.

**Chairman Riordan** Can these monies be used for other habitat improvement?

**Tod Stevenson** No.

**Chairman Riordan** So you don't think they can be used for that, they can't be used for, as Commissioner Henderson said, a renewable resource, so we can't do any other ponding for hunting activities or anything like that?

**Tod Stevenson** No, those things are specifically prohibited in the way that this act is written. They're dollars that are specifically dedicated toward wildlife conservation, education, restoration, and educational types of projects.

**Chairman Riordan** So when we're talking about signage, we can work with not only our Game and Fish properties, but work with the Transportation Department on some signage. I think we've been real lax on some of that.

**Tod Stevenson** Yes, and we could very easily modify that cost or just what the intent would be. One example of that would be something like up on San Antonio Mountain where there are some pullouts where there's quite a bit of elk viewing or other types of things. We could very well use this funding to that intent. We see the ability on the wildlife areas with so many of them that it would provide some educational opportunities, but once again whatever the Commission would like to do, we're willing to do that.

**Commissioner Arvas** I get the feeling that when you decided to go ahead and re-allocate that \$652,000, was there a process that you went through, how did you come up with the projects?

**Tod Stevenson** We looked at part of our own Department staff and looked at types of activities that they proposed. We looked at some of the types of requests that we had originally with that money when we came in August. The Wildlife Center in Española and a few other people were asking for funding, that's one of the reasons we came up with RFP costs or proposed activities.

**Commissioner Arvas** Somehow, and I'll certainly leave that up to your ability to generate these types of programs, I think we need to have some sort of rating system for all these projects.

**MOTION: Commissioner Arvas** moved to direct the Department to use the remaining WCRP apportionment (approximately \$652,000) to fund the project or project concepts presented at the level of funding proposed. **Commissioner Salmon** seconded the motion.

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

#### **AGENDA ITEM NO. 18. General Public Comments (Comments limited to 3 minutes)**

##### **Public Comment:**

**Charles Walker** I'd appreciate the Commission reconsider re-doing the landowner signup system and also the depredation permits.

**R. L. Posey** I support the fee increase that the Department proposed or will propose.

**Preston L. Stone** I'm here today to visit with you about the cut in elk authorization for the private land permits for the 2005 hunting season. I request the Commission and the New Mexico Department of Game and Fish take into consideration the impact of the Peppin fire which was on the east and west Capitan Mountains in May and June, 2004. It burned 66,000 plus acres for 1 month and that greatly improved the elk habitat, forage, natural springs, and watering holes in the Capitan Mountain areas. I feel the elk authorizations should be increased on a percentage basis to meet the greater elk population and the current figures that developed 2 years ago before the fire.

**Commissioner Riordan** How many deeded acres do you have?

**Preston L. Stone** We ranch on approximately 23,000 acres.

**Commissioner Riordan** Is that deeded?

**Preston L. Stone** Yes.

**Chairman Riordan** How many permits do you get there?

**Preston L. Stone** We were receiving 3 permits and our permits were cut to 1.

**Chairman Riordan** I'd like for you to get with Roy Hayes, Area Chief, and maybe you guys can have a discussion.

**Preston L. Stone** I have a letter of appeal and I'll be giving Mr. Hayes that letter and visiting with him the following week.

**Chairman Riordan** R.J., do you have any idea how many elk we think we have in Unit 37?

**Mark Madsen** The last site survey was completed in 2003, and the estimate came back at 172 plus or minus 39.

**Chairman Riordan** 172 elk?

**Mark Madsen** 172 total elk. That's the estimate from sightability model. We actually observed 119 elk during that survey.

**Commissioner Arvas** Was that after or before the hunts?

**Mark Madsen** That's after the hunts. That would be a winter population estimate.

**Commissioner Arvas** 2004 then?

**Mark Madsen** It was actually December 2003 when the survey was completed.

**Commissioner Arvas** So what would you say since then? Did you see an increase or decrease?

**Mark Madsen** I actually don't know. The fire that happened could potentially have pulled more out of 36 into that unit. We had a survey scheduled for this year, but that survey was not completed due to some funding problems.

**Commissioner Arvas** How many elk permits did you issue for that unit?

**Mark Madsen** We have 30 landowner tags available and I believe the number would be about 90 public tags available for that unit.

**Commissioner Arvas** What would you expect in terms of a harvest rate?

**Mark Madsen** Harvest success rate, at least what we've seen in the field, has been very low, probably less than 15%.

**Commissioner Arvas** So you're talking about somewhere between 20-25 animals?

**Mark Madsen** Yes.

**Commissioner Arvas** How come we're getting all these complaints from the landowners?

**Mark Madsen** We had new signups in Unit 37 this year that resulted in another 11,000 acres being added to landowners sign up system, so we've got more players and that means that the other landowners are getting reduced this year.

**R. J. Kirkpatrick** Some ideas of the Big Game Rule that the Commission adopted last fall gave the Department's Director, as well as concurrence from the Chairman, the ability to adjust the permit levels by 20%, up or down, by GMU, by hunt code, and this circumstance given that our data may be old and elk populations may have increased because of the fire, we can make those adjustments in a timely fashion on a yearly basis while this rule is in place. We will be glad to go and do that and solve a majority of these problems before they get bigger.

**Chairman Riordan** Did we put the 5-point restriction on Unit 37?

**R. J. Kirkpatrick** I don't believe Unit 37 was in that.

**Chairman Riordan** I'd appreciate if you and Mr. Hayes could get together and have a discussion with Mr. Stone.

**Stirling T. Spencer** My issue concerns Unit 37. I've been trying to work with the Area Office for 7 years at different levels and try to build an understanding about how they come up with numbers in that area and how they come up with habitat. I've provided over 7 letters of individuals that aren't connected as to numbers they've seen on our property, pictures, discussion, gone over mapping as to the location and movement and residence of different elk that affects our property of 40,000 plus, 20,000 private in Unit 37, over 6,000 acres of private of which I'm told every year that we have no habitat for the elk. The numbers used to be 69 and now it's up to 200 in Unit 37. We have a resident herd of around 30 on about 2 sections of private and public property. We have affidavits going over 120 elk in the area. We provide the only permitted waters and patented springs for those elk. I'm not sure that the proper principles are being applied and I'd hope they'd be looked into. I think there are more than 200 head in Unit 37. Possibly we could look in the lower lands for the elk. Elk go where cattle are and I'm not a biologist but they have the same 80% ruminant system that cattle do. If you have introspective into judging elk and their management, look at it from a management position.

**Chairman Riordan** When was the last time you had a Game and Fish person out there looking at your property?

**Stirling T. Spencer** I really don't know.

**Chairman Riordan** 1-2 years?

**Stirling T. Spencer** At least. Now, they may have gone through public land and looked. I have been in their offices in the last 2 years discussing counting and we don't know what things eat. One other issue--in my last year's request, I wanted 4 bull hunts and for what we were providing from our facility, that was fair. By the time I appealed to the Roswell office, then to Santa Fe this year I get the paragraph that says "basically you have nothing but because of regulation such and such we're going to give you 1." How many times do I have to do this?

**Chairman Riordan** When you had those 3-4 permits, how many elk did you kill?

**Stirling T. Spencer** I can't tell you because I give most of these permits away. I imagine close to 80% kill out of there. I'm in it for the habitat and the betterment of the elk.

**Mark Hendricks** I represent the Stevenson Ranch south of Carrizozo. I'm also representing the 3 Rivers Ranch. I'm here to ask for an extension on our landowner permits until the end of February. We have most of the bull hunters during October-November. During this time we don't have that many cows. Most of our cowherds are moved down in January and February. It's also a safety issue as far as needing more time to get our hunters in the field safely to harvest the elk. We're happy with the number of permits we get, but we need a little more time to get them harvested right.

**Chairman Riordan** How many deeded acres do you have there?

**Mark Hendricks** We probably have about 25,000, and we probably hunt 10,000 of that.

**Chairman Riordan** How many bull permits do you get?

**Mark Hendricks** 14.

**Chairman Riordan** How many cow permits?

**Mark Hendricks** 40.

**Chairman Riordan** The issue we have, and I think I can speak for the Commission, is we get requests to extend the cow season. They want it to end March 31. There's a point where you have to draw the line and say January 31 is it. We've had requests to drop elk in April, 2 weeks before they're dropping their calves. We can't tell you how to run your business, but January 31 is where we're drawing the line.

**Mark Hendricks** You dropped it to December 31 this coming year and that's the reason I'm here.

**Chairman Riordan** R. J., since we dropped it to December 31 this year, we dropped the cow tags also? You're in what unit?

**Mark Hendricks** Unit 36.

**R. J. Kirkpatrick** All hunting ends December 31 with some units allowed an exception, but each of those ranches has to submit a Conservation Plan to be able to hunt past December 31.

**Chairman Riordan** We approved the Conservation Plan and if you show the Department where you're doing improvements on your property for the benefit of wildlife and if you have a Conservation Plan, you get with your area chief or R. J., and they have the ability to go ahead and extend that. If you improve habitat, maybe those cows will be there in December instead of January or February. R. J., make sure we put something on the agenda for the next meeting where we can deal with those issues.

**Sam Reagan** I'm from 3-Rivers Ranch. I was wondering if you could get your counter to tell us how many elk he counted on our side of the mountain?

**Mark Madsen** I don't have the exact number because they move off the top of the mountain.

**Sam Reagan** Just an estimate. Last year's estimate? Year before?

**Chairman Riordan** We'll try and deal with your issue and go ahead and do the Conservation Plan for Unit 36.

**Paul Aguilar** LFC analyst. I'm here to thank the Director, senior staff and line staff of the Administrative Offices for the support that they gave me during the recent legislative session. We had more activity from Game and Fish than I had anticipated and there were times I made requests late in the night, early in the morning, and Pat Block came down on a moment's notice when we were discussing the compensation situation with the legislators. Dan Brooks got me some information when I called him at 8:00 a.m. I wanted to publicly express my appreciation and gratitude to Dr. Thompson and the members of his staff for the support. The support you alluded to, Mr. Chairman, is due in great part to getting time sensitive, well-prepared documents done in a manner that assisted us in making recommendations to the legislature.

**Jess Rankin** I'm an outfitter from Roswell. As to Unit 37, I think Mr. Madsen is under estimating how high the hunter success is in there.

**Chairman Riordan** We're dealing with those issues in the L.O.S.S. Program. Someone who has a 60-acre alfalfa field in the middle of elk country and those elk are there only at night, but yet we're only giving them a ranch-only permit. If you're providing habitat, we want to reward those people that are providing habitat and giving them an elk permit on a ranch-only on 60 acres, it has no value. A unit-wide permit would be much more valuable to that individual. Just work with us, we're trying to do something.

**Jess Rankin** If we had different default permits, landowners could allow their hunter to hunt both properties.

**Ron Shortes** I'm representing my family as well as Catron County. Our concerns are similar as those concerns in Unit 37. When the L.O.S.S. permit contracts were mailed out last week apparently there were also cuts in most of all the units in Catron County. With the drought, the elk populations have gone down and certainly a lot of us are not at least automatically opposed to blanket cuts. If there aren't elk, there obviously shouldn't be permits to hunt elk. If Mr. Kirkpatrick can furnish to me that information before the Commission meeting next week, I might be able to head off some unhappiness or at least if I understand what's going on, I'll be more than willing to explain to the people attending the Commission meeting about what's going on.

**Chairman Riordan** R. J., when's the appeal process expire for elk permits?

**R.J. Kirkpatrick** April 15.

**Chairman Riordan** If someone's unhappy with the amount of permits they got, they need to appeal that before April 15 to the Department. Commissioners Montoya, Arvas, and I are going to have a discussion with the Director Thompson, and R. J. on losses and the number of permits on these properties. One thing we want to stress is that we understand the contributions landowners make to wildlife.

#### **AGENDA ITEM NO. 19. Closed Executive Session.**

**MOTION: Commissioner Riordan** 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 personnel, litigation and purchase, acquisition, or disposal of real property or water rights as per 10-15-1, NMSA. **Commissioner Arvas** seconded the motion.

#### **Roll Call Vote:**

**Chairman Riordan – yes**

**Commissioner Montoya – yes**

**Commissioner Arvas – yes**

**Commissioner Henderson – yes**

**Commissioner Pino – yes**

**Commissioner Salmon – yes**

**Commissioner Sims – absent**

**Motion carried unanimously.**

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



**AGENDA ITEM NO. 20. Notice of Commission Contemplated Action.**

**Presented by Dan Brooks** – The State Game Commission, after meeting in Executive Session, may direct the Department to send a Notice of Commission Contemplated Action to any outfitter or guide that evidence and information indicated might have violated their professional code of conduct or other matter contrary to 19.30.8, NMAC, or 17-2A-3, NMSA, 1978. If the Commission determined an individual should be served notice, he or she was afforded an administrative hearing following 19.31.2, NMAC.

**MOTION: Commissioner Montoya** moved to accept the Department's recommendation and send a Notice of Contemplated Action to the registered outfitters, Darrell L. Bays and to John D. Rolston, discussed in Executive Session. **Commissioner Pino** seconded the motion.

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

**AGENDA ITEM. NO. 21. Agreement Regarding Incorporation of Commission-owned Picacho Bosque Property into Newly Approved New Mexico State Park.**

**Presented by Luke Shelby and New Mexico State Parks** - The Department presented a draft Joint Powers Agreement between the Commission and New Mexico State Parks regarding incorporation of the Commission-owned Picacho-Bosque Property located south of Las Cruces into a newly approved New Mexico State Park. This agreement would retain ownership of this property by the Commission but provide authority for use of the property to State Parks to establish an outdoor conservation education/interpretation center while retaining wetland wildlife values.

**Dave Simon** I'm with the New Mexico State Parks Division. Dave Gatterman, Bureau Chief for Design and Development is also here. The property is on Game Commission property bought about 70 years ago located on the west side of the Rio Grande between Mesilla Bridge and Mesilla Dam. We'll be working with all public and private landowners to assemble the land base for this park.

**Chairman Riordan** What are we doing about the private land? Are we attempting to acquire that?

**Dave Simon** On the private land we expect within about the next 60 days to close on a purchase of fee simple property from Mr. Harris as well as a conservation easement from Mr. Harris. We expect to fee simple purchase about 13 acres and get an easement of over about 140 acres. The other 2 privately owned parcels, there are no immediate plans to do anything with that. We will act according to the wishes of those landowners.

**Chairman Riordan** I encourage you to try to acquire those properties.

**Dave Simon** That's our objective and we'll do so on a willing-seller basis.

**Chairman Riordan** Are you suggesting hunting on those properties?

**Dave Simon** The JPA before you calls for the 51 acres of Game Commission-owned property to be closed to hunting, but it would have fishing permitted through consultation with us, the Game Commission retaining full authority over both hunting and fishing, but the JPA does call for no hunting on the property.

**Luke Shelby** There's actually no place on that property that is farther away than 150 yards from an occupied dwelling, so there's no hunting occurring on that property.

**Chairman Riordan** What about the fishing? What are we going to do to make sure this is good fishing for the public?

**Dave Simon** I think that remains to be seen under the management plan, the master plan. The wetlands that are there now would provide some habitat for fishing, whether it should be open to a regular fishing season needs to be discussed between us. The river is accessible from the park and the fishing quality I can't speak well to that when there's water in the river. I assume there are some angling opportunities. In the wetlands themselves, the closest corollary I have is our Nature Center in Albuquerque where we have a pond and wetland behind our Nature Center. Within that concept, you can't rule out angling opportunity. I think the primary purpose of the area is as a wildlife refuge and we want the birds and animals to be there and undisturbed as much as possible.

**Chairman Riordan** Supervisor Rios, fishing in that river, is that good?

**Luis Rios** It's about as good as it can get around there.

**Chairman Riordan** Do you have white bass, or catfish?

**Luis Rios** White bass, large mouth bass, carp, and catfish.

**Chairman Riordan** I would like us to encourage some angling opportunity on that property.

**Dave Simon** The JPA allows for that. That's something we're working out. That's a Game and Fish responsibility and our responsibilities are to run the park. There are no financial obligations on the Commission or the Department.

**MOTION: Commissioner Arvas** moved to approve the Joint Powers Agreement as presented that will allow the New Mexico State Park to begin development of the Mesilla Valley State Park. **Commissioner Pino** seconded the motion.

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

**AGENDA ITEM NO. 22: Request by Santa Fe Fire Department for Easement.**

**Presented by Jeff Pederson** – The Commission was asked to consider the request of the Santa Fe Fire Department for an easement over portions of the Richards Avenue property for emergency access to adjacent neighborhoods. The Department recommended consideration of a terminable license.

**Jeff Pederson** Chief Sperling from the Santa Fe Fire Department is here. The Santa Fe Fire Department would like to be able to cross our warehouse property so that they can access Cerrillos Road and other areas of housing and commercial areas with their fire trucks. The 23 acres of property that we own is between the fire department and a quick access to Cerrillos Road. Since there is no city road there, they would like to have a driveway to be able to go through.

**Chief Sperling** David Sperling, Chief of City of Santa Fe Fire Department. I want to let you know how important this easement is to the Santa Fe Fire Department. Station 7 was built with the understanding that, as reflected in the General Plan of the City, a connection would be made from Richards Avenue to Cerrillos Road across the arroyo allowing emergency vehicular access to those intended areas and the connection was never initiated.

**MOTION: Commissioner Arvas** Moved to approve the Santa Fe Fire Department's easement request with a route specified by the Game Commission and granted as a license cancelable for any reason by the Commission upon 90 days' notice. The fee will be \$25 per rod, prorated yearly per the Commission fee schedule, and the roadway width will be 15 feet. The final license form presented to the Chairman for signature will be reviewed and approved in advance by a subcommittee of the Commission.

**Commissioner Henderson** seconded the motion.

**Motion passed unanimously.**

**AGENDA ITEM NO. 23: Yates Petroleum Request to Lease Mineral Rights.**

**Presented by Jeff Pederson** – The Commission was asked to consider the request of Yates Petroleum Company to lease certain mineral rights on a parcel of real property, that is no longer owned or operated by the Commission, in which the Commission retains the mineral rights. The Commission owns 87 acres of mineral rights, not land, north of Carlsbad. This property was sold in 1973. It was the former Carlsbad Game Bird Farm, but the Commission at that time retained all the mineral rights. So Yates Petroleum asked if they couldn't have a lease from the Commission to extract mineral presumably, natural gas in this instance. This is not something we routinely do and it would require Commission action. They have offered a \$350 bonus per acre up front, that would be about \$30,000, and ¼% royalty upon production.

**Chairman Riordan** When are you anticipating production?

**Jeff Pederson** We had a discussion with high-ranking people at the State Land Office that do this type of thing, and if you had good production, during good production years, you might see 5 years at \$100,000 per year come in. Don't know for sure what will really happen, but it could be a significant additional income from the lease.

**Chairman Riordan** What is the royalty percentage that's usually given?

**Jeff Pederson** It would be less than that under the law that governs the State Land Office, and they think that's a very high agreeable figure to be offering.

**Chuck Moran** I'm with Yates Petroleum Corporation in Artesia. We've been working on this project since 2001 and we are proceeding with our plans and we would like to lease the minerals from the state and I'm here to answer possible questions.

**Commissioner Henderson** Who's the surface owner now and have they been contacted, and what's their response?

**Jeff Pederson** I'm not sure who the legal surface owner is. I think there's a small facility there for developmentally challenged people and whether it's under contract or directly owned by the state, I'm not sure. But, of course, Yates would be responsible for all permitting, surface disturbance, etc., dealing with the City of Carlsbad or whatever might be required. It wouldn't be up to the Commission to do any of that work.

**Chairman Riordan** That's between you and the private property owner, correct Chuck? You deal with the surface, with the fee simple person?

**Chuck Moran** We would not even be on this surface. Our chosen location is somewhere else in the 320-acre pro-ration unit. The location is 990 feet from the north line, and 1,550 feet from the west line and we've moved it as far away from this surface as we can for the geologic formation we're chasing.

**Commissioner Arvas** That new type of drilling?

**Chuck Moran** No, this will be a vertical hole. We think we can get to the target we're chasing with a vertical hole, we just moved as far away from the hard surface part as we can. We're actually on another lease that we own. We have to put together several leases here to put together a 320-acre drill block.

**Chairman Riordan** So we may not get that ¼%?

**Chuck Moran** If we hit a gas well that under the OCD rules require that we have to produce on the 320-acre spacing unit, you would be included within that spacing unit. If the well is unsuccessful and we shrink back to a 40-acre spacing unit, you would not be included in the spacing unit. Currently, under our proposal, you are included in the spacing unit.

**Alvin Garcia** I suggest that we comply with the 13.6.2.1 or 16-2.3, of the NMSA, depending on the value of the lease arrangement to seek Board of Finance approval on this or legislative approval if it's over \$100,000 of value.

**Jeff Pederson** We're going to get minimum Board of Finance/legislative and legal approval that's required but I would think Board of Finance would be where we would go next with this.

**Alvin Garcia** It's prior to the effective date of the lease.

**Jeff Pederson** We're intending to get Board of Finance approval if you were to approve this.

**MOTION: Commissioner Arvas** moved to approve leasing the rights to 87 mineral acres in Eddy County, with a minimum bonus of \$350.00 per mineral acre, and a minimum ¼%-royalty interest, for a 5-year term. The final lease form presented to the Chairman for signature will be reviewed and approved in advance by a subcommittee of the Commission. **Commissioner Henderson** seconded the motion.

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

**AGENDA ITEM NO. 24: Sierra Nevada Management Request for Communications Tower Lease.**

**Presented by Jeff Pederson** – The Commission was asked to consider the request of Sierra Nevada Management for a lease entitling them to operate a communications tower on Green Mountain. The tower presently is in place and has been under lease to the predecessor to Sierra Nevada Management. There will be no enlargement of the scope of the tower improvement. The lease at Green Mountain for this tower is \$2,575 per year for a 10-year lease. They've proposed instead to pay a figure of \$1,200 plus 25% of whatever revenue they have on the tower. That's about ½ what the Commission has in line. We do have 2 other towers on the Green Mountain site that are both paying \$2,575 per year at this time under new leases.

**Chairman Riordan** Who's doing that?

**Jeff Pederson** Both KNME-TV and Colfax County. I did call them this last week to see what revenue they anticipated and if the Commission is supposed to get a share of the revenue, but I didn't get a call back with that figure before this meeting, so I don't have any data to give you on that.

**Chairman Riordan** What do they do?

**Jeff Pederson** They currently have one 1 telebeeper user on that tower, they say and that company is leaving as of 2006, so if they have nothing else ready to go, you'd only have the rent of \$1,200 per year, not the \$2,575.

**Chairman Riordan** I have an issue if the other users on that mountain are getting paid or paying us the fixed fee, why are we all of a sudden getting poor-boyed.

**Jeff Pederson** At the staff level, we can't approve any other such figure that's not in your fee schedule. That's why we're at the Commission with this.

**MOTION: Commissioner Arvas** moved to deny the request of Sierra Nevada. The new lease fee will be \$2,575 per year. Staff will prepare the lease form in the normal manner and present it to the Chairman for signature. **Commissioner Henderson** seconded the motion.

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

**Director Thompson** The attorneys are having a discussion about the motion on Item 23. We need to resolve that before we move on to the next item.

**Chairman Riordan** We're going to take this before the Board of Finance. We went ahead and approved the resolution, now it has to go before the Board of Finance.

**Alvin Garcia** I have some concerns about the sub-committee and about the final approval authority of the sub-committee, but I think we're okay.

**Chairman Riordan** Through the resolution, I think we're fine.

**AGENDA ITEM NO. 25. Modification to the Animal Health Emergency Proclamation.**

**Presented by Bruce Thompson** – A report was provided to the Commission concerning Modification to the Animal Health Emergency Proclamation related to a possible game park exposure to chronic wasting disease. Concurrence and further direction was requested from the Commission based on information provided in the report. Within the past month, there was a bull elk that was killed on a game park in Colorado that ultimately tested positive for chronic wasting disease and we subsequently learned that some animals that had been in contact with that elk 4 ½ years previously had come to New Mexico to a Class-A Park. I want to stress that everything else I'll be saying is about the precautionary measures that we are taking, and I stress precautionary only. There's been no demonstration or documentation of any CWD. An existing animal emergency regarding CWD was modified within the past few weeks to reflect the fact that this had occurred and to establish some temporary controls and precautions on the Class-A Parks in New Mexico until we can obtain adequate testing results from Colorado to determine what the next course of action might be. I want to stress that thus far we've been working with the Class-A Park operators and we intend to continue working with them to identify reasonable, sensible, and appropriate measures to take. You were provided with information regarding what the animal health emergency modification indicates and that temporarily prohibits moving animals in or out of these facilities and it requires that if any animals were killed in these facilities, that there would be a mandatory testing of those animals for CWD. Body parts, meat, or that type of thing could be moved as long as the facility conducted activities in the same way that we require of any hunter who is taking animals in New Mexico. This is a precautionary

move. There is no CWD identified in New Mexico. I've presented this summary for Commission acceptance and concurrence and to seek any other direction that the Commission wishes to provide.

**Debbie Hughes** I'm here representing the Hughes Brothers Ranch. I'd like for you to look at 1 thing that we could possibly work on together. The rules that the game park owners did help work on in 2002, and it talks about animal health emergencies and transportation, and all these types of things. I'd like for you to look at the power within the statute on Commission powers 17-1-15 and the changes were made where you had a committee set up that whenever you had an animal health emergency that affected 1 of our game parks, this committee came together to jointly look at the recommendations to bring back to the Commission. That committee consisted of the park owner, the Department of Game and Fish Director or his designee, the Attorney General, the state vet, U.S.D.A. vet, so it was a very concentrated but you had scientific folks, legal folks and the park owner who was actually involved in whatever the health emergency is. They're involved in the early discussions to determine what actions needed to be taken. My concern now is the way this reads, "the Commission will determine the degree of contamination as well as what actions to take or implement on quarantine treatment, disinfection, isolation, indemnification, and destruction" which are now within your rule 19.35.9.7.

**Chairman Riordan** This Commission is extremely responsive to this possible animal emergency. I think we're very sensitive to game parks, your business, what's going on there. I don't know why you would want to change this. You have access to everyone of these Commissioners. It may need to be looked at in a week, or a month, or three months, but I do think that we have lines of communication that were evidenced last night by the willingness of the Director and our Chief Law Enforcement individual. We care about you, and wildlife. We're there to go ahead and work with you just as you are there to work with us and we appreciate everything you do and please understand you have access. I wouldn't change that rule. You can call me 15 times a week. Why would you want to go and change the rule?

**Debbie Hughes** Working as a lobbyist and being involved in legislation, I'm looking beyond this Commission and the future of my children and when they don't have the same relationships or the same ability. If you're involved in the process, you can hopefully affect the outcome and you're all comfortable when it comes to the recommendation.

**Chairman Riordan** Director Thompson and Chief Brooks have demonstrated their willingness to meet with you. We're trying to get this resolved and make sure we don't have a problem. We don't think we have a problem, but we appreciate your diligence in making sure that there are no issues in working with this Department. Director Thompson, you'll be contacting them and staying in touch with them, is that correct?

**Director Thompson** Yes, that's correct. As further emphasis, whatever Ms. Hughes thinks might be appropriate language would be extremely helpful to us if we simply got a copy of the regs that were changed with suggested language that we could take under consideration.

**Chairman Riordan** I appreciate your sensitivities Director Thompson and Chief Books, and I would like for us to continue with the course we're on.

**Director Thompson** There's no specific motion indicated except whatever further direction and acceptance you wish to state.

**AGENDA ITEM NO. 26. Adjourn.**

**MOTION: Chairman Riordan** moved to adjourn. **Commissioner Henderson** seconded the motion.

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

**Meeting adjourned at 5:36 p.m.**

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

\_\_\_\_\_  
**May 20, 2005**  
Date

\_\_\_\_\_  
s/Guy Riordan  
**Guy Riordan**, Chairman  
New Mexico State Game Commission  
Minutes Transcribed by: Katie Gonzales  
MyDocs\Minutes\Minutes 2005\Minutes 3-31-05 (Ruitoso)

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**May 20, 2005**  
Date