

**Draft Minutes from March 26, 2009 Meeting of the
Administrative Procedures, Regulations, and Policy Committee
Held at NDOW Headquarters 1100 Valley Road, Reno, NV 89512**

Committee Members Present: Commissioners Scott Raine, Grant Wallace, and Tom Cavin.

Nevada Department of Wildlife Staff Present: Director Ken Mayer, Management Analyst III and staff to the committee Kim Jolly, Executive Assistant Suzanne Scourby, Deputy Director Rich Haskins, Game Staff Biologist Mike Cox.

Others present: Deputy Attorney General Bryan Stockton, Commissioners Pete Mori and Chairman Gerald Lent, Washoe CABMW members Rick Smith and Rex Flowers, public Judi Caron and Floyd Rathbun.

1. Call to Order – Chairman Raine called the meeting to order at 1:10 p.m.
2. Public Comment

Commissioner Mori asked about the upcoming Commission agenda which has an appeal on it and he asked whether the Commission has the statutory authority to grant a bonus point or a tag back to as the appellant is requesting. Commissioner Mori said it appears that the public perceive that the Commission does.

Deputy Attorney General Stockton said that is a legal question and he asked that Commissioner Mori call him to discuss further.

Commissioner Cavin said he is the chairman of the Commission's Heritage Committee and on Commission Policy 10 they have minor revisions and recommendations to address at our next meeting.

Management Analyst III (MA III) Jolly asked for a copy of Policy 10 with the changes denoted. ***(Update: Commission policies reviewed by another committee can go straight to the Commission they do not need to go through two committees.)***

3. Approve Minutes from Previous Meetings – Jan. 7 and Jan. 30, 2009

Jan. 7, 2009, Minutes

Commissioner Raine said he has a correction to the minutes from the Jan. 7, 2009, meeting regarding the motion on page 4, it was Commissioner Cavin who made the motion and Commissioner Wallace seconded the motion. It was voted unanimously on both of those items.

Public Comment - Judi Caron said to the committee and Chairman Raine that she tried to find the minutes and could not.

It was noted by staff that the minutes were posted by the new webmaster in a different place (under the Commission agenda support material) than usual.

It was moved and seconded to approve the January 7 meeting minutes as amended. All in favor.

Jan. 30, 2009, Minutes

There was discussed that the order of things should be corrected as stated by Commissioner Wallace, items going to the CABMW first and then the Commission. That would be changed staff indicated.

It was moved and seconded to accept the Jan. 30, 2009, meeting minutes with the change that was noted. All in favor.

4. Revision of Charter and Policies Previously Discussed

A. Rewrite proposed amendments to Committee Charter, and Approve

Commissioner Cavin moved to review the charter and amendments again, and to have recommendations to finalize at their next meeting. Commissioner Wallace seconded the motion. All in favor.

B. Approve minor language changes and redundancies to Commission Polices 2, 21, and 22.

Commission Policy #2

MA III Jolly said that from reviewing the two sets of minutes from January that the committee wanted to add a list of publications to be added to Policy 2. That is just a minor change, and that has been added in page 1 and 2.

Ms. Judi Caron said for clarification on page 1 Commission Policy #2 publications list available for sale, and asked if the water atlas is included in the guzzler book.

It was moved and seconded to amend Policy 2 with any additional information on the water atlas/guzzler book added to the policy, and to forward to the Commission for approval. All in favor.

Commission Policy #21

MA3 Jolly noted that at the last meeting in January the Committee had noted that there was an identical paragraph that was featured twice in Policy 21. She explained that the cause of this was that in the scanning of the signed version of the policy back in November of 2007, which was formatted differently than the previous page. The amendment today would simply fix that error, removing the repetitive paragraph.

Members of the public asked that this be clearer on the draft amended version, striking out the repetitive language so that they could see the before and after.

MA3 Jolly explained that the last page was a scanned PDF which prevented those lines from being edited on the computer, but that she could manually edit it and revise for the website.

Commission Policy #22

MA3 Jolly noted that the Committee had noted that they wanted to correct the spelling error on Policy 22, the word increasing on line 2 under the "Introduction" section. That was the only change.

A member of the public asked which definitions were being used for this policy.

Game Division Chief Mark Atkinson said definitions used in Policy #22 were tiered off Bureau of Land Management (BLM) definitions, as is the case with other work.

It was moved and seconded to approve the policies with amendments as presented and send the policies to the Commission recommending approval. All in favor.

5. Discussion of Questions Previously Asked For

A. Discussion on having petitions come to this committee first to bring out questions and additional information needed by the petitioner (Pros and Cons discussion)

MA Jolly III said the petition process is described in NAC, and we also developed a flowchart which was worked through with Attorney General's Office and was presented last year at the County Advisory Board to Manage Wildlife (CABMW) workshop.

Commissioner Wallace explained that where this came from is that there was confusion at a previous meeting with petitions that had very little information, and some CABMW's had voted against supporting petitions without more information.

Staff clarified that whatever we received from the petitioner, we send to the groups prior to the meeting. If the Department doesn't receive anything other than the petition form, that is all we have.

There was discussion about the lack of quality petitions and that sometimes petitioners present new information at the meeting. There was also discussion that sometimes staff has information about whether the petition idea can be done but that is only communicated at the meeting, and by phone to the petitioner.

Public Comment –

Rick Smith, Washoe CABMW, said some petitions and support material not sent before the CABMW meeting, but presented differently at a Commission meeting.

Judi Caron said for six years she was on a CAMBW and very hard on board and her take is that when someone writes a petition and submits it to board and they don't have the petitioner's participation at their board meetings that makes it difficult to decide on the petition. Ms. Caron said it used to be common practice that they would deny the petition simply based on whether the petitioner showed up.

She referenced the earlier discussion about the information that staff has on the petition idea being presented only at the Commission meeting, and suggested the petition be put on two Commission agendas: first as informational, and then on the next Commission agenda as action.

Ms. Caron said in the past if a petition came up without petitioner present the Commission would deny the petition. She asked that petitions be informational and would take out a few steps.

Commissioner Cavin said the most recent example was a regulation for a non-resident applying for a guide's tag and not getting one because of an error and not being able to be in the regular draw. He said the boards did not understand the purpose of the regulation.

Chairman Raine said that possibly helping the petitioner with the form, and notifying them and others of the questions about the petition should occur earlier. There is the possibility of using the committee as a vetting process of hearing the questions about the petition before the Commission hears them. He asked DAG Stockton for his opinion.

DAG Stockton said legally there is no difference, it is a policy choice. Having the committee hear it first, then communicate to the Commission their discussion. If you rewrite the regulation (this would be required in order to change the petition timeline), you could have petitions required to be in so early that it could cause issues.

Commissioner Cavin said it is specific in NAC what the deadlines are, and that would make it very difficult to have on an agenda within 30 days.

Commissioner Raine said this may be something to bring up at a future committee meeting and bring a draft back of NAC changes and policy.

DAG Stockton said he would recommend against having petitions go through the APRP Committee first as it is repetitive. The committee needs to keep in mind that changing a regulation is expensive and when you do have changes, to keep in mind that even small changes cost a lot, and it may be more efficient to save up and make several at once.

Director Mayer said we need to propose and reject some of these petitions as they come in. We try to go overboard and provide opportunity to these folks, but frankly we should send some petitions back. He said policy direction on petitions can often times be made early on.

The poor quality of petitions was discussed, as compared to some very well researched and well written petitions such as the Silver State Tag.

Commissioner Cavin said we will see this in action tomorrow when the full Commission hears two petitions with little information.

In conclusion, Director Mayer said the Director's office will put their heads together and make some recommendations on the process in the coming months.

B. Status Report on Requests for Information

B Sub #1. Enforceability of Commission Policies, what if it's violated, etc.

Chairman Raine asked what happens if a Commission policy is violated.

DAG Stockton answered that policies are not law, but guidelines. Policies have not been through the process that laws, statutes and regulations go through. He said he is not sure what Chairman Raine means by enforceability because policies are guidelines for the Department and Commission Policies tell the Department their vision. Under state personnel laws the Commission cannot discipline an employee.

Chairman Raine responded that he wanted to know internal processes would be if an employee didn't follow Commission Policy.

Director Mayer said not following a policy is supervisory issue and if you have an employee who violated policy there could be reasons. He said the supervisor would work with them and need to provide them opportunities to understand. He said if it is a chronic problem with an employee, then it becomes a disciplinary action, from informal meetings, to taking action with sanctions. And ultimately the worst case, ending with termination. Director Mayer said in his experience, most of the time he has found that people have not maliciously violated a policy it is because of the situation or they did not know.

Chairman Raine asked about perceived violations – what is the best method for the Commission or general public to report this. Director Mayer explained that he would ask that the information or perception to him or the deputy director. He said on these types of issues, communication is key.

Public Comment

Mr. Floyd Rathbun said he is a member of the public and has been involved in meetings, workshops, and information from NDOW has not always been factual and there was no recourse to fix it and then content becomes part of report. He said when an NDOW employee does not have the facts and won't correct it that he needs to know who you go to because you get stonewalled by hierarchy. Mr. Rathbun said he would like to see a process for how the general public could enforce correction of information in a report.

Director Mayer said that is a two way street and knows we have had differences of opinion with Mr. Rathbun, specifically on disease transmission by sheep, and that the Department must rely on the science, not politics. He suggested that he contact Game Division Chief Atkinson, Deputy Director Haskins, or himself. He said NDOW's mission is to be correct in our science.

Mr. Mayer pointed out that if NDOW staff doesn't know the answer to something, they will say that, and that the Department always strives for accurate information to the public. Director Mayer stated that when people give us data, he needs scientific information. The politics happen at the Commission level, but the department needs to come back to the data. Director Mayer said he has told biologists that we don't want political stuff from the field, and the he has committed personally that what we say is correct.

B Sub #2 - How to change NDOW plans and documents

Chairman Raine gave an example that if there is a faulty plan, the public and the Commission needs to know how to change that internal plan or document.

Director Mayer said by statute the Department is the scientific arm of state government, and that plans are not perfect. He said that if the Commission or public find something that they don't agree with, they should point it out.

Director Mayer said NDOW may not agree but will base our recommendation on the best biological analysis.

Dir. Mayer used the example of domestic sheep and wild sheep, which may be philosophical debate, but the Department will stick with science and follow that direction. He said we would like to know if there are flaws with management plans.

Deputy Director Haskins said management plans are obsolete the day they are done, and plans are specifically designed to be dynamic and change. If someone sees flaw or change no one would be offended by that being pointed out. He said divisions have Standard Operating Procedures that the Commission does not see, but are approved by the chief, and again, they are designed to be dynamic. A good plan should be dynamic and subject to review and change will come based on input.

B Sub #3 - Policy 24 suggested changes to from Game Division to reflect current practices

Big Game Staff Biologist Mike Cox quickly reviewed Policy #24 and found some changes, but main issue was to address new language to accommodate allocation of junior deer tags. He pointed out language on the bottom of page 4, where current deer herd status and the Commission in conjunction with CABMWs will decide percentage of projected buck harvest.

There was discussion that Mr. Cox saw additional changes he would like to make, and that this policy will continue to be worked on within the Game Division before coming back to the Committee and the Commission.

B Sub #4- Ability to create authority to resolve disputed tags where not covered by regulation

DAG Stockton gave breakdown on Commission's authority: The Commission does not have authority to give a tag or bonus point. He said courts have equitable remedies but administrative boards and tribunals don't have that authority – decisions go both ways. He clarified that if an entity has explicit authority in NRS, they can do it, but if they don't have it written in NRS, it is pushing the envelope. To do so could necessitate a lawsuit.

There was discussion that the Legislature is already in session and it would be too late to propose such a change to NRS. Also there was discussion that the issue can be discussed at a later date.

B Sub #5 - How petition process publicized?

MA III Jolly said as mentioned before, this process is outlined in NAC on our website, and we also have a flowchart and forms for petitions and appeals, and staff provides that information to public who request it.

6. Discussion of new policies and new suggestions to existing policies

A- Discussion on possible instruction to draft a policy on recognizing the vital importance of other multiple uses of our public lands in maintaining healthy habitat and healthy wildlife populations.

DAG Stockton said as far as federal lands the federal government has jurisdiction over those and NDOW does not.

There was discussion about revising Policy 66 because of its description of multiple uses of land or creating a new policy. There was also discussion about writing something as an

advisory capacity instead of management, writing a resolution, and gathering input from the public.

Staff asked that the committee tell us what they wish to accomplish, and then we can help find the appropriate mechanism for the committee.

Committee Chairman Raine asked Mr. Rathbun for further explanation, as he was the one who brought up this idea.

Mr. Rathbun wished for a policy supporting the multiple uses to give guidance to biologists so that they don't do something detrimental to rural economies as they cooperate with the federal government. Then he explained that he had serious concerns about seeing NDOW vehicles parked at the Forest Service and BLM offices all the time and not in the field.

Director Mayer pointed out that in a state where 80% of the land is federally owned, he would frankly, be upset if biologists *weren't* at the federal partners' offices all the time bugging them. That is the only way for NDOW to get into the processes, for our biologists to be in constant contact with those federal partners. He then pointed out examples of how biologists comment on every single land use plan, every single management plan, and how vital this work is to the Department, and the state's wildlife.

There was discussion about the time being limited and Chairman Raine asked whether the committee wanted to continue this item at another meeting. Commissioner Cavin suggested putting it on another agenda that is not so full.

Chairman Raine agreed and asked if anyone has input, to bring it and it will be discussed for new policies.

B -Discussion and Possible Instruction to Draft Changes to Policy 66 so that it guides purchases, transfers, the sale of real estate by, to, or for NDOW

Chairman Raine asked if the Commission should have a role here and give guidance.

Staff pointed out that there were two existing policies that relate to land use, Policy 64 and 66.

Deputy Director Haskins said Commission Policy #64 and #66 are both on those topics but two separate issues.

Chairman Raine said due to time constraints we need to go to item #7 as there is another committee meeting due to start. The rest of the items on the agenda were not heard due to time constraints.

7. Next Meeting – Discussion of agenda items, date, location, time for next committee meeting.

MA III Jolly suggested putting items that were not covered on future agendas.

Chairman Raine asked if there were any further items or anything from Heritage.

Commissioner Cavin said the next Heritage meeting is going to be a long meeting where we take care of projects.

Chairman Raine said we will have these items, Heritage, and policies we did not have time to hit on today and the charter for action.

Meeting adjourned at 3 p.m.

Note: The minutes have been prepared within 30 days of the meeting and are a synopsis of the meeting. At the Department of Wildlife headquarters in Reno is a complete record of the meeting, including recordings; and all the exhibits received/referenced during the meeting. The record is available upon request for review.