

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
Administrative Procedures and Regulations Committee
Nevada Department of Wildlife
1100 Valley Road
Reno, Nevada
Thursday, February 9, 2006
4:00 p.m.**

DRAFT MINUTES

1. Call to Order – Chairman Lurie
2. Approval of Minutes – Action
Committee minutes from the November 17, 2005 meeting.
3. Approval of Agenda - Action
The Committee will review the agenda and may remove items from consideration or adjust the order of presentation.
4. Member Items – Informational
Committee members may present emergent items. No action may be taken by the Committee. Any item requiring further action will be scheduled on a future Committee agenda.
5. Public Comment Period - Informational
Persons wishing to speak on items not on the agenda may do so. Testimony is limited to no longer than 5 minutes for each speaker. No action may be taken by the Committee. Any item requiring further action will be scheduled on a future Committee agenda.
- 6.* Commission General Regulation 339 (LCB File No. R198-05) - Action
The Committee will review the proposed revisions to Commission's Rules of Practice, NAC 501.140-501.195, including hearings and petitions.
- 7.* Policy 1 Guidelines for the Commission - Action
The Committee will review Policy 1 for revision, additions, or consideration for moving sections into permanent regulation.
8. Public Comment Period – Informational
9. Future Committee Meetings – Chairman Lurie - Action

Nevada Board of Wildlife Commissioners Administrative Procedures and Regulations Committee: Chairman Ron Lurie, Vice Chairman Jim Jeffress, Commissioner Jack Robb, Commissioner Bevan Lister

Patty Wagner, NDOW Committee Staff
Others Present: Commissioner Mike Riordan

Thursday, February 9, 2006

1. Call to Order – Chairman Lurie called the meeting to order at 4:05 p.m.
2. Approval of Minutes – Chairman Lurie asked for approval of the November 17, 2005 meeting minutes.

COMMISSIONER ROBB MOVED TO APPROVE THE NOVEMBER 17, 2005 MINUTES. COMMISSIONER JEFFRESS SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY.

3. Approval of Agenda – Chairman Lurie called for approval of the agenda.

COMMISSIONER JEFFRESS MOVED TO APPROVE THE AGENDA. COMMISSIONER ROBB SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY.

4. Member Items – Chairman Lurie asked if there were any member items. There were none.
5. Public Comment Period – Chairman Lurie asked if there was any public comment. No member of the public spoke.
- 6.* Commission General Regulation 339 (LCB File No. R198-05) – Chairman Lurie explained that CGR 339 revises Nevada Administrative Code 501.140 through 501.195, the regulations for the practice and procedure before the Board of Wildlife Commissioners. These sections include the hearing and petition processes.

Chairman Lurie further explained that the Committee was tasked with bringing these administrative processes up to date and to provide clarification for the Commission and the public in matters dealing with these processes. The Committee reviewed and made revisions to a proposed regulation at the November 17, 2005 meeting. Before going through the draft regulation and policy, Chairman Lurie offer the following general statements.

Hearings

A hearing is a process whereby a person has the right to request the regulating body (Commission) hear their case. A person can request a hearing any time the person feels he/she has been wronged by a decision of the Department. The request for a hearing may occur under two scenarios: (1) The first is when the individual is convicted of one or more wildlife violations and loses license privileges due to accumulated demerits. In these types of hearings, the

Commission may only determine if the Department followed the proper noticing. The Commission cannot change the court's conviction and resulting demerits. (2) The second situation for hearings occurs when the Department denies an application for a license or permit. In these types of cases, the Commission may consider the evidence and arguments and could take action to uphold the Department's decision or reverse the decision in favor of the applicant.

Petitions

The petition is a process for filing, amending, or repealing permanent regulations. However, in the absence of a process for changing Commission policy or annual regulations for seasons and bags, the Commission has allowed the public to use the petition process to request changes. CGR 339 clarifies that the petition process is only for permanent regulations. The processes for making changes to Commission policy and for annual regulations for seasons and bags have been added to the draft Commission Policy 1.

Chairman Lurie went through each section explaining the changes.

Section 1. Adds new sections/language in sections 2, 3, and 4.

Sec. 2. Adds a definition of "appellant." Appellant is any person who requests a hearing. The word replaces "petitioner" which will be used only to refer to someone who petitions the Commission for permanent regulation changes.

Sec. 3. Says if an appellant requesting a hearing fails to appear without good cause, then the Commission can dismiss the case with prejudice. If the case is dismissed with prejudice, it will be the final adjudication and the appellant will not be able to keep bring the matter back to the Commission.

Sec. 4. Adds language to require the appellant to file a written pre-hearing statement which includes all documents/evidence that will be used at the hearing; name and address of the appellant; a brief statement supporting the position of the party; and a list of witnesses and a brief summary of the proposed testimony.

Sec. 5. Says the words and terms used in this chapter have the meanings ascribed to them in these sections.

Sec. 6. Clarifies the definition of a "petitioner" as someone who is requesting the adoption, filing, amendment, or repeal of a permanent regulation.

Sec. 7. Clarifies the Commission can hear any matter within their jurisdiction.

Sec. 8. Requires that a person aggrieved by a decision of the Department request a hearing in writing within 30 days after he receives the notice from the Department. This section further clarifies that the hearing will be placed on the

agenda for the next regularly scheduled Commission meeting unless the appellant and the Department agree otherwise. The existing language in subsection 6 says the Department may grant a stay of its decision pending the hearing and adds language to clarify the exception for a hearing involving demerits which requires a stay of decision until the hearing.

Sec. 9. Says an appellant or a petitioner may be represented by an attorney licensed in Nevada.

Sec. 10. Clarifies all persons appearing before the Commission will be courteous and the Commission may exclude the appellant or petitioner or the attorney for the appellant or petition from the hearing in order to maintain order during a hearing.

Sec. 11. In a hearing involving demerits, this section clarifies that a procedural error would have to affect the substantive rights of the appellant. To explain—a “typo” in a notice will not constitute a “procedural error.”

Sec. 12. Deletes subsections 2 and 3 of this section. The deleted subsection in have been covered in Sec. 4 of the proposed regulation for evidence exchange and pre-hearing statements.

Sec. 13. Clarifies that a hearing may be continued more than once if the continuance is requested in writing and only for good cause. The intent is to curtail delays for hearings without good cause.

Sec. 14. Clarifies the order of a hearing. 1. When the hearing is as a result of demerits, the Department will present its evidence first with the appellant cross-examining the Department and questioned by the Commission. In these hearings, the Department has the burden of proof. 2. When the hearing is a result of the denial of a license or permit, the appellant will present its evidence first and then be cross-examined by the Department and questioned by the Commission. In these cases, the appellant has the burden of proof. (For example, if the Department denies a commercial fishing operation, the appellant would have to prove that the operation would not be deleterious to the resources.)

Sec. 15. Clarifies that the petition process is for permanent regulations and excludes the “annual regulations” for seasons and bags (per NRS 233B.038 2 (o) “regulation defined” excludes classification of wildlife or the designation of seasons for hunting, fishing or trapping.)

Sec. 16. This section for default judgment for failure of a party to appear is being repealed.

Chairman Lurie said he thought this was a good process and that it met the Committee and Commission's objectives, that it was a good template for the processes.

Commissioner Lister said the process still gave him some discomfort as the Nevada Constitution requires separation of powers and he was struggling with the issues.

COMMISSIONER ROBB MOVED TO APPROVE CGR 339. COMMISSIONER JEFFRESS SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY.

- 7.* Policy 1 Guidelines for the Commission – Chairman Lurie stated that as part of the Administrative Procedures and Regulations Committee review of the rules of practice before the Board of Wildlife Commissioners, the Committee is reviewing Commission Policy 1. Chairman Lurie went through the policy section by section.

The sections for Policy, Purpose, and Procedures 1-3 have no changes.

Under Procedure No. 4, Conduct of Meetings, (a) and (b) are recommended for deletion. These are covered in statute and in the proposed Commission General Regulation 339.

Under Procedure No. 5, Compensation of Members: Official Duties, no changes.

Under Procedure No. 6, Adoption of Commission Policies, adds language to allow the public to request the Commission adopt, amend, or repeal a Commission policy by submitting a letter addressed to the Chair.

Under Procedure No. 7, Adoption of Commission Regulations (seasons and bags), adds language to allow persons who want to request the Commission adopt or amend a commission regulation outside the normal county advisory board process to submit a letter to the Chair.

Under Procedure No. 8, Approval of Budgets for County Advisory Boards to Manage Wildlife, no changes.

The Committee members had no additional comments.

COMMISSIONER JEFFRESS MOVED TO APPROVE POLICY 1. COMMISSIONER ROBB SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY.

8. Public Comment Period – Chairman Lurie asked for public comment. There was no comment.

9. Future Committee Meetings – Chairman Lurie asked for a date for the next meeting. The committee members discussed having a meeting, if there agenda items, on the Thursday before the next Commission meeting.

There was no further business and Chairman Lurie adjourned the meeting at 4:45 p.m.