

**Approved Minutes from the June 25, 2009 Meeting of the
Administrative Procedures, Regulations, and Policy Committee
Held at Pershing County Community Center, 820 Sixth Street, Lovelock, NV**

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

NDOW staff Present: Management Analyst III (staff to the committee) Kim Jolly, Administrative Assistant IV Trudy Davis, Administrative Assistant II Maryanna Enochson, and Program Officer III/License Office Supervisor Maureen Hullinger.

Others Present: Sr. Deputy Attorney General David Newton.

1. Call To Order– Chair Scott Raine

Chairman Scott Raine called the meeting to order at 3:35pm.

2. Public Comment Period

Public Comment period was opened, there was none.

3. Possible action on minutes from March 26th Committee meeting*

The Committee reviewed the draft minutes, and asked for any comment. It was moved and seconded to approve the March 26, 2009 draft minutes. All in Favor.

4. Possible action on Committee Charter*

Chairman Raine asked for the Committee to review the draft Committee Charter, and asked staff for feedback on the added sections. Staff Kim Jolly commented that the Committee had requested that the pertinent statutes be added to the Charter, which was shown in green, bold, and underlined font. There was discussion about the Charter. It was moved and seconded to approve the amended Committee Charter. All in favor.

5. Discussion of Petition Process

Staff Kim Jolly provided an overview of how the petition process occurs today, and that research on the processes of other state wildlife agencies was done. There was discussion on the petition process and the pertinent Nevada Administrative Codes and forms. It was noted that updating of P-1 will provide more clarification.

6. Discussion and possible action on Commission Policy 1*

- **Possible division of Policy 1 into multiple policies***

Section on CABMW Budgets

The Committee discussed how they had all reviewed the support material ahead of time. Staff pointed out that as stated in the draft of P-1, the Finance committee has begun to develop a new policy on the CABMW budgets because there are many items that aren't covered in NRS or in P-1. The APRP committee should remove the existing section (8) on CABMW budgets, out of P-1 since it will be replaced with a stand-alone policy developed by the Finance Committee. It was moved and seconded to strike existing section 8 out of P-1, and advise the Finance Committee that we've done so. All in favor.

Splitting the Policy

Next, the committee discussed the division of Policy 1 into multiple policies.

Staff stated that there were some available policy numbers to use, but that some policies had been repealed. DAG Newton suggested that the Department use numbers and letters such as 3A and 4A in order to avoid confusion with those repealed policies.

Staff noted that other state wildlife commission's have policies with singular topics, such as one on petitions. The committee discussed that the separations should be by topic, as this was the most logical.

They discussed if the petitions and appeals sections should be separated, or kept together. Committee members asked if they were two entirely different things. Staff gave an example of the difference between a petition and an appeal: a recent petition was the Eureka County Advisory Board that brought forth a petition for the Silver State Tag –a new idea. By contrast an appeal is if someone has a grievance with regard to their tag or license.

Thereafter there was discussion about the appeals process in front of the Board of Commissioners.

After the explanation, the committee agreed on separating the draft into 3 separate policies, and then to get into the specific language review.

It was discussed whether the new section 9 from the draft language (on acceptance of gifts) should be placed into its own policy, or should stay in Policy 1. From reviewing the "Purpose" of the policy including definition of official duties, the committee agreed that section 9 on gifts made sense within P-1 because it fit within the general guidelines of the Commission.

It was moved and seconded to separate the draft P-1 into 3 separate policies: sections 1-6 and new section 9 would become P-1, remove section 7 that deals with petitions and make it a separate policy on petitions including its proposed language, and remove the new proposed section 8 that deals with appeals and make it a separate policy on appeals, with the number to be determined by the Department. All in favor.

Review of language of Policy 1

The Reference section of Policy 1 was reviewed first. Staff explained that the NRS and NAC references that pertained to the petition and appeals processes would be removed from the reference section of P-1, and applied accordingly to the new policies. The two new NRS 501 references will stay because they pertain to the new section on donations. All references will go to the appropriate policies. The Purpose section of Policy 1 was reviewed and revised to strike the part about review of the county advisory board budgets and the new language on adoption of regulations.

Review of the new proposed section 9 (number will be changed to section 7) on "Acceptance of gifts..."

Commissioner Raine said there was some language that he was hesitant about. He asked about the format. Staff clarified that to be consistent in style, first the new NRS is summarized to show where the authority for it the acceptance of gifts language, then is the meat of the new policy. Chairman Raine asked if Mr. Newton had a chance to review the new language and summary and what he thought of it.

DAG Newton suggested changing the words "reiterates" to "state" in the first and second paragraphs of the "Acceptance of gifts..." section.

Commissioner Cavin asked whether the new language would be in print anytime soon, Staff Jolly said probably not. DAG Newton added that if we're lucky, the new language would be in print by February.

Chairman Raine mentioned that he would like to strike the part about monies so designated by the grantee because the whole intention of this section was to have the Commission make sure if something is donated to a certain place, it goes there. Raine thought that this sentence eliminated the Commission's ability to ensure money is spent as intended.

DAG Newton said he reads that part differently, and did not see that the sentence cuts them off. Rather he sees that sentence this way: if the individual giving the money did not state where it was going to go, this gives the Commission ability offer input to the department on where that money is going or should go.

Chairman Raine said he was a little confused. DAG Newton said that he would strike the comma that is after "allocated" and before "if" because he thought that comma may be creating part of Raine's concern as there shouldn't be a pause there. The change (in the 3rd paragraph, 2nd sentence) would read "the commission may offer input on which programs monetary gifts should be allocated if not so designated by the grantee."

The committee then discussed adding a separate sentence in that section to allow the Commission to ensure that the money is spent where designated and that as a duty of the Commission.

They added the sentence, "the Commission shall ensure that gifts, grants, donations, and bequests are used for their intended purposes." (Added behind the word "grantee" and before the "State grants")

The chairman restated the all changes made to Policy 1. It was moved and seconded to make those changes and forward to the Commission for adoption. All in favor.

Discussion on Petition Policy

Chairman Raine opened discussion on the creation of a petition and regulation input policy.

Staff gave an overview of the proposed language that she and Chief Game Warden developed. It clarifies for individuals and the Commission the variety of very complex types of regulations (CRs, CGRs, and seasons and bags) and how input can be made during the adoption of proposed regulations. Staff made a point that we would not want to require people to use the petition form for seasons and bags in these cases because that is unnecessary.

Policy and purpose statements were discussed. Purpose - "To provide a format to inform all parties of their responsibilities and opportunities for input on proposed seasons and bags, and opportunities to suggest new regulations or comment on proposed regulations." The committee prepared a policy statement, and purpose statement for the new policy.

For the Procedures section A (seasons and bags), the group discussed letters being sent to the Chair vs. the Secretary. Staff explained that this was just clarifying and directing mail so that the input could be copied to proper people, as it was the job of the Secretary as administrator to deal with the paperwork. The Committee determined to add after "to the Chair" the phrase "care of the Secretary". The committee also determined that they should add fax as a method for providing input.

The committee changed the portion about input for upcoming season from "should" to "must" be submitted before the upcoming season. They added the option for input by fax and added a fax number.

Commissioner Cavin asked DAG Newton about emails without identifying information, and how serious to take those. The committee discussed the issue of general input and what level of formality those should be considered lacking name, address. They determined that all input should be required to contain at least a name, address and phone number to identify the author.

On Section B - the input on proposed permanent regulations (CGRs) was revised to require the same identifying information as was noted earlier.

Section C

Section C- Regarding the section on individuals who submit a petition, Commissioner Wallace asked if they could change "should" to "must" attend the Commission meeting. DAG Newton noted that under the Open Meeting Law someone can send a letter and it becomes part of the official record so he'd suggest that we operate under that premise. Persons do not have to show up, they can simply send comments in and it has to be acknowledged.

DAG Newton recommended striking the section "the whole process may take 9 months". The Committee agreed, but in order to inform petitioners, decided to add "this is a lengthy process".

The Committee discussed the section under petitioner responsibilities. There was discussion about the requirements placed on petitioners, and the need of petitioners to contact staff during their research on the issue. There was discussion that petitioners should do their homework.

Staff asked what the legal requirements were for what NDOW requires of petitioners, and how we could change the form. DAG - The petitioner does not have to fill out the form by him/herself, and should contact staff to help them. NAC 501.195 (which was developed by the Commission and Department) requires the petitioner to answer questions about the economic information.

Chairman Raine noted returning an incomplete petition form was too harsh and subjective.

DAG recommended they change it to "it may be returned with an explanation of the deficiencies."

The committee did not want to require staff to spend a lot of time trying to figure out economic impact of a petition isn't thorough. There was also discussion that petitioners should still get opportunity to get a hearing and possibly a Committee should review petitions before they are returned or placed on Commission agendas.

Petitioners get hearings now, since all petitions are placed on the Commission agenda, and some are very unprepared, or do not show up at all for their hearing. The proposed language was trying to provide NDOW with the ability to return a petition if it needed to be more thoroughly completed, and encourage them to work with Division staff to prepare the petition.

It was noted that rather than Committee, staff should be the ones reviewing the petition forms, and could submit the form back with the notation of the holes. Chairman Raine wanted to still provide the petitioner an option for a hearing even if it was returned.

Commissioner Cavin noted that it is important that staff work with petitioners prior to something being placed on an agenda, the public will create better petitions. He mentioned that should be telling them to contact staff first.

It was determined to change it to "if the petition form is not substantially complete, it may be returned to the petitioner with an explanation of the deficiencies."

There was also discussion on adding text to the petition form itself to suggest that petitioners contact NDOW staff to help them fill out the parts of the form that require research in questions 3-9 (the economic effect of the regulation, estimated cost to NDOW to enforce, the long term effects, whether their proposed regulation would overlap or duplicate existing federal regulation).

DAG Newton said that at any time staff could alter the form it would just need to be consistent with the NAC which defines what information is required by the petitioner.

Roles and Responsibilities

Then there was discussion about the section of the draft petition policy on "Staff Responsibilities". Chairman Raine did not understand why that was needed. Staff Kim Jolly responded that during petition hearings sometimes NDOW staff was provided an opportunity to comment after the petition presentation, sometimes they were not, but there definitely needed to be that opportunity.

Chairman Raine said that he thought that made it appear that a decision had been made in advance of the hearing.

Staff clarified that the Commission makes the decision to accept or deny the petition, not staff, and that the Commission should be making the decision based on what is presented during the petition hearing.

He didn't see why there needed to be a staff recommendation part, if they are asked, they could give it because Commissioners do not need that.

Ms. Jolly pointed out that staff is hired as the technical experts. If staff see that in their technical opinion the petitioner is pursuing something that is contradictory to mission of department or to Commission Policy, that would be an example of why they would suggest denial.

Chairman Raine drew attention to the portion they discussed about the other portion, that information should be made based on what is presented at the hearing.

DAG Newton said that what staff is requesting is that they be given an opportunity to be heard on the petition itself.

Commissioner Cavin said that perhaps instead of the phrase "recommendation" he would like to hear both sides of the story, instead of per say, the negative side.

Staff said that maybe the language "during the petition hearing" was bad wording and maybe "after the petitioner presentation" would be better or staff shall present the background on the issues.

Raine said that he did not think that he needed advice from staff on what to do, but preferred the context about the issues and history.

NDOW Staff Maureen Hullinger who was present in the audience brought to light an example where someone might petition the Commission for a regulation change for an exotic species to be allowed in Nevada. Staff responsibility is to provide the Commission info regarding that exotic species and the harm or no harm that that would cause, like Quagga mussels, or exotic African frogs. It is staff's responsibility when there is a petition is to provide the Department's stance on what that petition is, which could be good or bad.

There was then discussion about how what language to make that point. Staff Kim Jolly noted that the purpose in adding staff explanation in there was so that staff would not have to prepare a huge report and send it out, but rather to make a presentation during the hearing so that it was efficient, and Commission would not pre-decide until after they'd had the hearing.

Chairman Raine said he liked that better, and he did not want the petitioner to think that they had pre-decided to side with Staff because they'd already discussed it in the office, or something. He made a similarity to the CABs

The committee decided on the language “Staff will provide background information, and pros and cons pertaining to the petition.” Kim Jolly asked when in the process that should be mentioned. DAG Newton said staff should do this during the hearing process. That was added to the phrase.

“Staff will provide background information, and pros and cons pertaining to the petition during the hearing process”

DAG Newton noted the Commission wasn’t actually making a decision, just determining whether to initiate a rulemaking process, not adopting or implementing a new regulation.

A question was posed whether we could guide the CABs in how they provide input – such as CABs should wait until after the hearing to make a recommendation. Should be based on all information at the hearing, however they entire membership of a CAB is not present in the hearing.

Language was clarified to outline all opportunities for input. CABs public input section – was edited to notify CABs that they would not receive enough information (only the petition form) to make a recommendation before a hearing.

It was moved and seconded to have staff make the changes discussed to the new policy on the petition process and adoption of regulations. All in favor.

The committee took a ten minute break.

Discussion of the Appeals Policy (new section 8 of P-1)

Chairman Raine reconvened the meeting and opened discussion on the draft portion of Policy 1 that will be made into its own policy, as an Appeals policy. They prepared a Policy statement and Purpose statement and noted that this policy would be short.

Under the Procedure section, there was discussion about a short paragraph. DAG Newton suggested that instead of the language which states “Commissioners are a quasi-court” he recommended “Commissioners are acting in their quasi-judicial capacity” because in the legal realm, quasi judicial is what that the process is called and if there is a question that is what they would look at whether Commissioners were acting in that capacity. Chairman Raine noted that we should begin the section, “During appeals hearings”, and then add the suggestion by DAG Newton. The committee then agreed on adding the rest of the draft language, updating the other entry.

DAG Newton also noted that he had a concern about the language that appeals information only being distributed to Commissioners, and that all non-confidential parts were still public record and the public was still entitled to that during to the hearing. He suggested we add the phrase “prior to the hearing” at the end of the 2nd paragraph, and adding another paragraph:

“All non-confidential information will be available to the public at the hearing.”

The committee then discussed the portion about CAB and public comment on appeals. Staff explained that the new paragraph that started, “It is inappropriate...” was added after the March CABMW Workshop when Commission DAG Bryan Stockton pointed out that there should not be any discussion between anyone prior the appeals hearing. Staff asked whether we should be taking public comment during the appeals hearing. DAG Newton clarified that the Commission is only required to take public comment in the public comment section of the agenda, not on each item. The fact that the Commission has taken public comment on each item is at its discretion.

The Committee then updated the similar language on quasi-court to quasi-judicial.

There was then review of the procedure section on the appeals policy. DAG Newton noted that the only thing he wasn't sure about was whether information regarding the appeal could be withheld prior to the hearing, and stated that the Commission should verify that with Bryan Stockton. Staff noted that Bryan had confirmed that. Chairman Raine agreed with staff and said Bryan was worried it would be grounds for an appeal. DAG Newton said he would defer to Bryan since he hasn't looked into it, and if DAG Stockton has, then that is fine.

Commissioner Cavin noted the section where it stated Commissioners will not engage in discussion" and asked whether Commissioners could talk to Bryan, and Law Enforcement.

DAG Newton noted that they could talk to Bryan, but if Law Enforcement staff were witnesses they should not talk with them prior to the appeal hearing. They are supposed to decide the case based on what is presented during the hearing, and gave a reference to a court and jury. If Commissioners know an item is coming up and have a particular interest in an area or someone with an interest in it, and they go talk to them, in essence they have removed themselves from being able to determine the case impartially.

The Committee agreed that for clarification and warning of that fact, they should insert a sentence after the sentence that ends "prior to an appeal hearing" and before the sentence which says "information about appeals".

The new sentence should state, "Commissioners will decide an appeal based solely on evidence presented at the hearing, including any pleadings or other documents submitted by the parties."

DAG Newton mentioned that the good news is that the committee will see this draft again before they implement it.

It was moved and seconded to make the changes discussed that would be made into a new commission policy. All in favor.

7. Other Business, next meeting

Chairman Raine asked about P-24 draft. Staff mentioned that she pulled it because Game Division staff wanted to make some more changes. The timeline for that draft is very close.

The group discussed having a telephonic meeting in the next month to review and possibly clean up these policies one last time. They would try to bring forward these 3 policies for approval at the same time, to the August Commission meeting.

Staff noted that she would not be able to be at the August Commission meeting because of trip planned for over a year, and that she didn't want to leave them unprepared to discuss it in that meeting. If they want her to be there to present it, September would be the meeting. Staff mentioned that the Committee could present it on their own however and just be able to clearly explain the reasons for dividing the policy, and why the changes to the petition part of the policy were being made. There was then discussion that the Chairman should mention in tomorrow's announcements what had occurred as information.

8. Adjourn*

The Committee adjourned at 6:06 pm.