

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
Administrative Procedures and Regulations Committee
Nevada Department of Wildlife
4747 Vegas Drive
Las Vegas, Nevada
Thursday, November 17, 2005
3 p.m.**

Draft Minutes

1. Call to Order – Chairman Lurie
2. Approval of Minutes – Action
Committee minutes from the September 22, 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 - 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

David Newton, Deputy Attorney General
Patty Wagner, NDOW, Committee Staff
Doug Hunt, NDOW Deputy Director (via teleconference)

Others present: Commissioner Chris MacKenzie, Commissioner Mike Riordan

Friday, November 18, 2005

1. Chairman Lurie called the meeting to order at 3:10 p.m.
2. Chairman Lurie asked for the approval of the minutes from the September 22, 2005 meeting in Reno.

COMMISSIONER JEFFRESS MOVED TO APPROVE THE MINUTES. MOTION SECONDED BY COMMISSIONER LISTER. THE MOTION CARRIED UNANIMOUSLY.

3. Chairman Lurie asked for approval of the agenda.

COMMISSIONER ROBB MOVED TO APPROVE THE AGENDA. COMMISSIONER LISTER SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

4. Member Items - Informational

There were no member items.

5. Public Comment Period

No members of the public were in attendance.

6. Commission General Regulation 339 - Action

Patty Wagner said Nevada Administrative Code 501.140 through 501.195 contains the regulations for the practice and procedure before the Board of Wildlife Commissioners. These sections include the hearing and petition processes.

The Administrative Procedures and Regulations 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 hearings and petitions. As requested at the September 22, 2005 Committee meeting, a proposed regulation has been prepared, Commission General Regulation (CGR) 339, and a revised Commission Policy 1, General Guidelines for the Commission, for discussion at this meeting. Before going through the draft regulation and policy, the following general statements were provided.

Regulatory/Policy Process

The Committee will review the proposed CGR 339 and revisions will be made. Once the Committee is satisfied with the proposed regulation, the Department will submit CGR 339 to the Legislative Counsel Bureau (LCB) for review and conformance with the statutes. LCB will draft CGR 339 into the appropriate legalese. While LCB may change the wording in CGR 339, they cannot change the intent of the proposed regulation. The legal notices for workshop and hearing will be sent out and the proposed regulation will be scheduled as an action item on the Commission agenda. Depending on your progress today, we have time to put it on the February Commission meeting if the Committee is ready. The Committee Chairman would make recommendations at the workshop and hearing for the Commission's support in approving the regulation. Once approved by the Commission, the regulation must be reviewed by the Legislative Commission's Subcommittee to Review Regulations at their next meeting. Once approved, the regulation is filed with the Secretary of State before it is final.

For Commission Policy 1, the process would be for the Committee to review and make changes to the draft and then to take the policy to the Commission for the first reading. Again, depending on your progress today, the first reading could occur at the February meeting with the second reading in March for approval.

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 hearing occurs 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, we have 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.

Commissioner Jeffress asked after the regulation goes to LCB for drafting, would they see the regulation again. Ms. Wagner affirmed the process from the workshop to the hearing to the Legislative Commission's Subcommittee to Review Regulations to the Secretary of State before the regulation is final. Mr. Newton explained the timing of submitting the regulation prior to June 1 of a legislative year, then the regulation would be permanent; otherwise, the regulation would be temporary. Doug Hunt explained the new process involving the Legislative Commission's Subcommittee to Review Regulations would add time to process.

Review of CGR 339

Section 1. Adds new sections/language in sections 2 through 5.

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 name and address of the appellant; reason for the license denial, revocation, or suspension; the position of the appellant; a list of witnesses and a brief summary of the proposed testimony. Chairman Lurie said this would give the Commission more information so they would know what they were going to listen to at the hearing. Ms. Wagner handed out a draft form for consideration that could be used to request an appeal.

Sec. 5. Adds the declaratory order or advisory opinion process for individuals who want a review of a permanent regulation when there may be concern or confusion over the interpretation or intent of the regulation.

Mr. Newton explained that the Tax Commission had a similar regulation. Commissioner Lister asked if this allowed any individual to get an opinion. Mr. Newton responded that it would and cautioned that if we allow the public to request a review for advisory opinion, that we may need to restrict the review to an actual situation and not a hypothetical situation. The Committee discussed this section and was concerned that it could open the floodgates for requests from the public.

COMMISSIONER ROBB MOVED TO STRIKE SECTION 5 FROM THE REGULATION. COMMISSIONER LISTER SECONDED THE MOTION. THE MOTION WAS APPROVED UNANIMOUSLY.

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. Shortens the time a person who feels he has been wronged by a decision of the Department can request a hearing from 30 days to 10 days after receiving the notice. The request for hearing must be in writing and will be placed on the agenda of 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.

The Committee felt shortening the time a person could appeal to 10 days would be too short and wanted to allow 30 days. David Newton said that the Environmental Commission allowed 10 days and are now in the process of increasing the time as the 10 days was not sufficient time. The Committee wants to leave the time frame at 30 days. The Committee declined to change “his” to “their” after Mr. Newton explained that the use of “his” in regulations was gender neutral. Commissioner Lister asked if we send the form out with the notice or if it was available on the web. Mr. Newton suggested we put the form on the web as not everyone is going to appeal. Commissioner Robb said he sits on the other side. He has people complain on a regular basis and they make these people take a couple of steps before they get to an ombudsman or appellant-type situation; they have direct conversation and cannot just get a form if they want to appeal a bill without talking to a couple of people. This process keeps down the number of people who appeal.

Sec. 9. In a hearing involving demerits, this section clarifies that a procedural error would have to affect the substantive rights of the appellant. So a “typo” in a notice will not constitute a “procedural error.”

Sec. 10. Deletes language but adds it as new in Sec. 4 of the proposed regulation for evidence exchange and pre-hearing statements.

Sec. 11. Clarifies that a hearing may be continued once and explains the process beyond the first continuance. The intent is to curtail delays for hearings without good cause.

Sec. 12. This section for default judgment for failure of a party to appear is being repealed. Mr. Newton explained that it is being replaced with the section that allows dismissal with prejudice for failing to appear without good cause.

Sec. 13. 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.) Commissioner Lister expressed concern with the statement “the Commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.” He said he was not an attorney at which time the Committee agreed they would defer to Commission Chairman MacKenzie.

Sec. 14. 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.) We will cover a person’s request for change to seasons and bags in Commission Policy 1. Chairman Lurie called for the motion to accept the proposed regulation with the discussed changes with the understanding that it would go to the Commission for workshop and hearing in February for final adoption.

COMMISSIONER JEFFRESS MOVED TO ADOPT PROPOSED CGR 339 WITH THE CHANGES. COMMISSIONER LISTER SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

7. Policy 1 General Guidelines for the Commission - Action

Ms. Wagner said the sections for Policy, Purpose, and numbers 1-3 of the Procedure 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. Lurie said the only thing remaining would be Robert’s Rules of Order.

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. This process would be used instead of the petition process and requires certain information be provided.

Under Procedure No. 7, Adoption of Commission Regulations (seasons and bags), adds language to allow persons who want to request the Commission adopt, amend or repeal a commission regulation outside the normal county advisory board process to submit a letter to the Chair. The person must provide certain information which may not be acted upon until the regularly schedule meeting to approve these types of matters.

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

Chairman Lurie said he did not hear any changes so he called for a motion.

COMMISSIONER LISTER MOVED TO APPROVE THE REVISED COMMISSION POLICY 1. COMMISSIONER JEFFRESS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.

The policy has to be read twice, so it will be placed on the February Commission meeting for the first reading and March for the second reading.

8. Public Comment Period

No public comment.

9. Future Committee Meetings

Chairman Lurie recommended we have a meeting before the next Commission meeting on February 3-4, 2006. The Committee members agreed to meet prior to the Commission meeting on February 3, 2006 at 8:30 a.m. at the Clark County Government Center.

There was no further business and the meeting was adjourned at 5 p.m.