

STATE OF NEVADA  
BOARD OF WILDLIFE COMMISSIONERS  
Administrative Procedures and Regulations Committee  
Nevada Department of Wildlife  
1100 Valley Road  
Reno, Nevada  
September 22, 2005

*Minutes*

1. Call to Order – Chairman Lurie
2. Introduction of Vice Chair Jeffress and Members – Chairman Lurie
3. Approval of Minutes – Action  
This is the first meeting of the Committee; therefore, there are no minutes for approval.
4. Approval of Agenda - Action  
The Committee will review the agenda and may remove items from consideration or adjust the order of presentation.
5. 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.
6. 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.
7. Committee Responsibilities - Action  
The members will discuss and may take action on the Charter to establish the purpose and objectives of the Committee.
8. Review of the Rules of Practice - Action  
The Committee will review the Administrative Procedures Act (NRS 233B) and then initiate a review of the Commission's Rules of Practice, NAC 501.140-501.190, to consider revisions or additions which would be scheduled for a future Committee meeting.
9. Open Meeting Law – Wayne Howle, Deputy Attorney General - Informational  
The Committee will receive information on the Open Meeting Law requirements.
10. Policy 1 Guidelines for the Commission - Action  
The Committee will review Policy 1 for revision, additions, or consideration for moving sections into permanent regulation.
11. Future Committee Meetings – Chairman Lurie - Action

Board of Wildlife Commissioners present for the Administrative Procedures and Regulations (APRC) Committee: Committee Chairman Ron Lurie, Committee Vice Chair Jim Jeffress, Committee Member Bevan Lister, Committee Member Jack Robb

Others present:

NDOW Director Terry R. Crawforth  
Staff to the Committee Policy Analyst Patty Wagner  
Deputy Attorney General Bryan Stockton  
Judi Caron, Washoe CABMW

Thursday, September 22, 2005

- 1 Chairman Lurie called the meeting to order at 5:10 p.m.
- 2 Chairman Lurie introduced Vice Chairman Jeffress and the committee members: Commissioner Lister and Robb.
- 3 Approval of Minutes – Action – First meeting – no minutes.
- 4 Approval of Agenda – Action –

COMMISSIONER LISTER MOVED TO APPROVE. MOTION SECONDED BY COMMISSIONER ROBB. MOTION CARRIED UNANIMOUSLY.

- 5 Member Items - None

- 6 Public Comment -

Judi Caron, Washoe CABMW, requested that a public comment period be added to the end of the agenda so that the public can comment on what was discussed during the meeting.

Chairman Lurie agreed and stated that most meetings he has conducted have public comment at the end to allow participants a chance to listen although the meeting but it can make the meeting last longer.

- 7 Committee Responsibilities – Action

Chairman Lurie said the committee may take action on the draft Charter (contained in committee support material) to establish the purpose and objectives of the committee.

COMMISSIONER ROBB MOVED TO APPROVE AS WRITTEN. COMMISSION JEFFRESS SECONDED THE MOTION. MOTION CARRIED UNANIMOUSLY.

- 8 Review of the Rules of Practice - Action

Chairman Lurie said the committee will review the Administrative Procedures Act and initiate a review of the Commission's Rules of Practice (contained in committee support material).

Deputy Attorney General (DAG) Bryan Stockton said DAG Howle drafted a memo dated Aug. 29, 2005, in which he discussed the Rules of Practice contained in NAC 501.140 through 195 for the Commission, and said the Commission needs to decide how formal they want the procedures to be. Right now the procedures are fairly loose as to how cases are presented, with the chair designating who goes first, and it is usually the

Department for appeals. DAG Stockton reviewed the memo contained in the support material and answered questions from the committee members as he proceeded.

Chairman Lurie said for clarification that the committee will develop rules for hearings and then pass them on to the full Commission for adoption and that would be the policy for anybody who had a petition. He said he is a firm believer in having all the information you can possibly have when you hear a petition, and it will be something we have to discuss to come up with the right procedure and policy.

DAG Stockton said they would go to the Commission as changes to the regulation and go through the regulatory process.

Secretary Crawford said he would recommend the committee amend the current Rules of Practice to modernize them. In the case of someone with a suspended license due to demerit points it is probably appropriate for the Department to get up and prove that they followed the proper rules such as giving notice, etc., and could also be done through the briefing which would prevent the Commission from being hit cold because we would have exchanged briefs. The other item is who presents first, and it gets confusing because an action is taken by the Department to not issue a permit and the applicant appeals that, and if the Department counsel goes first, it is like having the defendant going first in a criminal case. The confusion arises from having to explain why you are not guilty first and the Commission has the option to structure it one way or the other. He said the Environmental Commission changed their rules because it was exactly the same way as the Wildlife Commission. He would request that staff provide potential Administrative Code changes to modernize that process and it would make the process clearer for the Commission, and the Commission would know more before the actual hearing started. It would be more efficient and logical.

Commissioner Jeffress said before we develop a process to change the appeal process, how varied are the appeals heard by the Commission?

Secretary Crawford said the only appeals heard by the Commission are with demerit points and that is strictly whether or not the Department followed the correct procedures, and the others are all permit related.

DAG Stockton suggested if we do something where the Commission has the option of how they are going to proceed with the hearing, we probably need to have the chairman issue a pretrial order where he tells them exactly what is going to happen such as briefs, etc., for each case.

Secretary Crawford said his preference is for the rules to be spelled out without options such as if it is a 12 demerit situation it is handled this way, and if a permit situation it is handled this way.

Commissioner Jeffress said he is a neophyte as far as experience with these types of cases and is looking for thoughts and ideas from the Attorney General's Office and the Department's preferences and then discuss it further for "what-if" scenarios.

Commissioner Lurie said in the year he has been on the board we've had a lot of informal hearings and he prefers to be more formal and have information presented to us beforehand. If you had a brief you would not have to ask a lot of questions that we should already have the answers for. The Rules of Practice are something to be discussed at each meeting.

Secretary Crawford said staff can provide draft amendments to the existing process and make the process very structured and well-done.

The committee discussed the Commission's authority for the appeal process because many of the cases heard by the Commission are appellants appealing a court decision though the Commission who does not have the authority to reverse a court decision.

Secretary Crawford said there are two different situations: The first is standard hunting and fishing license violations that were adjudicated in court and has generated 12 demerit points and the only authority the Commission has is to make sure that the Department followed the proper process—that the individual did accumulate 12 points and the Department provided notices within the 60 and 90 days. Where it gets complicated is that the defendant comes in and says he did not know he would lose his license otherwise he would have fought the case in court. At this point there is nothing anybody can do about the decision and it is very frustrating to everyone, but it is something he needed to take up with the judge in court. He said at the next meeting draft regulation changes will be provided for this area which would be enough time to get a permanent regulation crafted. The other cases involve the several types of permits issued by the Department, and there has not always been a court process involved in those. There is more latitude for the Commission with those cases such as where someone did not completely fill out their permit application. He said those are the cases where the Department goes first and everyone is scratching their head trying to figure out why we are defending ourselves before anybody has explained why we have to defend ourselves.

DAG Stockton said that he needs to get direction from the committee since this is the first meeting to discuss where they want to head.

Commissioner Robb said he would like a formalized process where the appellant knows what the outcome is because the appellant does not know that even if the Commission did agree with him there is nothing they can do. He said the way it stands now is that they know they are not going to get anyplace and they still request an appeal, and he would like something that would allow the Commission to deny an appeal.

DAG Stockton said the Commission is a governmental board and due process is a civil right and includes notice of what the government is doing to you and provides the opportunity to be heard. If you deny them the opportunity to be heard, you are subject to suit. So even though someone knows they are going to lose, he can demand a hearing and take up the board's time and that is their constitutional right.

Secretary Crawford said when an appeal is received by the Department on a 12-point demerit license revocation, staff is directed to check and make sure that all the proper processes have been followed so that we don't bother the Commission. The Chief of Law Enforcement does contact the appellant to explain the process and that we are not retrying their case whether they did it or not. The majority of people say if that is all it is, they are not going to bother with the appeal. If staff did not do that, you would have more appeals on the agenda.

DAG Stockton said he and DAG Howle would recommend that NAC 501.140 be updated to include everything the Commission is responsible for, and also that the committee look at 501.165 although we are not recommending any change there. He said on the section for hearing de novo that he will conduct research to see how far you can go with a continuance. DAG Stockton said in regard to petitions for declaratory opinions that is required by NRS 233B, the Commission does that currently through its petition process but we need to have a declaratory/advisory opinion procedure for the case where someone may come and say the Department is interpreting a statute this way and they think it is wrong and they want the Commission to tell the Department what the statute or regulation means. He said the Commission has both policies and regulations. Policies

are guidelines and do not have the same stature in court as regulations. Things that the Commission wants to do that apply generally to everyone need to be in regulation rather than a policy because if challenged, the court can invalidate the policy. DAG Stockton said that DAG Howle suggested looking at the nonresident quotas policy that may need to be put into regulation.

Secretary Crawford said the Commission's authority in NRS 501.181 to make broad policy predates the State's Administrative Procedures Act, and we have been following the rules for 50 years before the State did. There was an additional requirement that said before the Commission sets a season or a bag limit, they have to go through a notice procedure and that does predate the Administrative Procedures Act. We are playing catch-up with the Administrative Procedures Act regulatory processes which are newer than the rules we have been following for a long time. If you make a policy and have a policy on how you make broad policy, then it is probably okay; however, when we get into how to implement the policy now we should move to regulation. He said most of Policy #24 is more regulation than policy.

Chairman Lurie said the direction to staff would be to approve these with the changes discussed for the committee to make them more stringent and understandable.

Secretary Crawford said for the committee, does the petition process apply to policy and does it apply to season and bag regulations? He said the intention of petitions has always been for permanent regulation changes but the Commission has allowed it to be used to change policy and season and bags. If we are more specific about what we are applying the petitions to, we would make it clearer to the public. If we are not going to allow them to petition for a policy change, then we have to be able to tell them what the process is. If you look at the petition form we have now, it is very difficult to petition for a policy change because the form is laid out for a regulation change. It confuses people and they do not provide us with the right information. He said the form needs to be cleaned up and the bottom-line interpretation is what is the petition process for— permanent regulation, or does it include policies and seasons and bags? If we apply it to policies and seasons and bags, we need to change the form.

Chairman Lurie said that is the direction he had heard that the Commission wants to do and that is one primary reason for establishing the committee. He suggested that we proceed in that direction especially with a new form, and this item will stay on the agenda for the next meeting with direction to bring this back with changes and options for next meeting.

- 9 Open Meeting Law – DAG Stockton said this item will also be discussed at tomorrow's meeting, but basically the purpose is to keep the public's business happening in public. He said there can be no backroom deals and that requires that you don't have a quorum of the board debating toward a decision on an issue. He said, for example, it is easy to send out an email to everyone; however, you cannot have an email debate and what can happen is that you want everybody to know what you think about a certain issue and if a person in the email replies to "all" that is a violation of the Open Meeting Law.

- 10 Policy #1 Guidelines for the Commission - Action  
The committee will review Policy #1 for revision, additions, or consideration for moving sections into permanent regulation.

Secretary Crawford said that in the earlier discussions about Rules of Practice in NAC 501.140 there are probably some things in Policy #1 that should be in 501.140 and at the committee's direction, staff can take a look at those items that are implementation not policy.

Chairman Lurie said since this is the first meeting that would be a good direction to include anything you think we would need.

Secretary Crawford said for example the "Public Comment" period could be formalized or left as choice of the chairman. He said over the years we have had public comment at the start, middle, and end of Commission meetings, and provide the public comment time for each agenda item.

Chairman Lurie said the next meeting will be November 17, 2005, at 3 p.m. at the NDOW Las Vegas office.

Meeting Adjourned

Note: The minutes are a synopsis of the meeting. At the Department of Wildlife headquarters in Reno is a complete record of the meeting, including cassette tape recordings for one year; and all the exhibits received/referenced during the meeting. The record is available upon request for review.