



STATE OF NEVADA

DEPARTMENT OF WILDLIFE

Game Division

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MEMORANDUM**March 7, 2016**

To: Nevada Board of Wildlife Commissioners, County Advisory Boards to Manage Wildlife, and Interested Publics

From: Brian Wakeling, Administrator, Game Division *BFW*

Title: **Commission General Regulation 456, Special Incentive Elk Arbitration Panel, LCB File No. R031-15 – Workshop-Public Comment Allowed**

Description: The Commission will consider permanent adoption of the temporary regulation which expired November 1, 2015, relating to amending NAC 502.42283 by which the Commission may facilitate decisions by appointing or serving as the arbitration panel should arbitration of elk incentive tag awards become necessary.

Presenter: Game Division Administrator Brian F. Wakeling

Agenda No: 20 A

Summary:

The Commission has repeatedly heard testimony regarding Commission General Regulation 456, Special Incentive Elk Arbitration Panel. This regulation was initiated by concerns brought by the White Pine County Advisory Board to Manage Wildlife (CABMW), which had been involved with some of the arbitration processes. The way the arbitration process operated required participation by a local businessman, local livestock producer, and a local CABMW member. While those individuals were very familiar with the local situation, there was difficulty navigating personal relationships at the local level. The proposed amendment to NAC allows for the Commission to act as the arbitration panel or to appoint an arbitration panel that may be developed from a broader geographic area of the state rather than the local community. In June 2015, the Commission did address one arbitration request using this process under temporary regulation.

CGR 456, Special Incentive Elk Arbitration Process – Workshop

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During adoption of permanent NAC, Legislative Counsel Bureau (LCB) and the Legislative Commission have questioned specific language choices recommended by the Department that directly influence the application of the Administrative Procedures Act (APA). The primary concern expressed by the Legislative Commission deals with the ability of an arbitration panel to issue a final and binding decision without providing a means for appeal. In short, an appointed panel may be able to provide such a decision, yet when the Commission acts in this capacity it may be deemed an administrative act that must be consistent with the provisions of the APA. The attempts by the Department to recommend acceptable language to adequately describe this nuance have thus far fallen short.

**REVISED PROPOSED REGULATION OF THE BOARD
OF WILDLIFE COMMISSIONERS**

LCB File No. R031-15

July 15, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 501.105, 501.181, 502.142 and 502.160.

A REGULATION relating to wildlife; authorizing the Board of Wildlife Commissioners to serve as the arbitration panel, or to appoint an arbitration panel, to decide a dispute between a landowner applicant and the Department of Wildlife; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Board of Wildlife Commissioners to adopt any regulations necessary relative to the manner of qualifying and applying for tags for hunting wildlife. (NRS 502.160) Existing regulations set forth the procedure for appointing a panel to arbitrate a dispute between a landowner applicant for a special incentive elk tag and the Department of Wildlife. (NAC 502.42283) This regulation authorizes the Commission to serve as the arbitration panel, or to appoint an arbitration panel, to decide a dispute between a landowner applicant and the Department. This regulation also authorizes the Commission to set forth the procedure for filing a claim and the process under which a claim must be resolved through arbitration.

Section 1. NAC 502.42283 is hereby amended to read as follows:

502.42283 1. The Commission may ~~select an arbitration panel from the residents of the county in which an owner applicant resides~~ *either serve as the arbitration panel or appoint an arbitration panel* to:

(a) Decide a dispute between a landowner applicant and the Department concerning the number of special incentive elk tags that the Department should award; or

(b) Determine whether a party who possesses a special incentive elk tag has adhered to the terms of the agreement entered into to obtain the tag.

2. ~~{An arbitration panel must consist of three members to be selected as follows:~~
- ~~—(a) One member representing the local business community.~~
 - ~~—(b) One member representing persons actively engaged in the production of agriculture. Persons engaged in the production of agriculture shall, upon request, provide the Board of Wildlife Commissioners with a list of prospective members.~~
 - ~~—(c) One member representing either a local hunting or sportsmen's organization, or the county advisory board to manage wildlife. The county advisory board to manage wildlife shall, upon request, provide a list of prospective members.~~
 - ~~—3. A member of an arbitration panel must be a resident of the county he or she serves.~~
 - ~~—4. The term of office of each member of the panel is 2 years.~~
 - ~~—5. Each arbitration panel shall select a chair from among its members.~~
 - ~~—6. An arbitration panel will be called to serve at the request of the Director or his or her designee.~~
 - ~~—7. Each member of the arbitration panel serves without salary, but may receive the per diem allowance and travel expenses provided for state officers and employees generally while performing official duties of the arbitration panel.~~
 - ~~—8.} The *Commission, or the* arbitration panel ~~{shall:} appointed by the Commission will:~~
 - (a) Review the evidence submitted by a claimant and the Department before making a determination; and
 - (b) Render a decision in an expeditious manner, but not later than ~~{20 days after receiving notification to serve on a claim.~~~~
 - ~~—9.} *July 1 within the year following the date on which the claim is filed.*~~

3. The decision of the *Commission, or the* arbitration panel *appointed by the Commission,* is final and binding on the parties if it complies with the provisions of NAC 502.42253 to 502.42283, inclusive, and applicable laws of this State.

4. *The Commission will set forth the procedure for filing a claim and the process under which a claim must be resolved through arbitration.*