

**DRAFT MEETING MINUTES  
NEVADA BOARD OF WILDLIFE COMMISSIONERS  
ADMINISTRATIVE PROCEDURES, REGULATIONS, AND  
POLICY COMMITTEE**

MONDAY, JULY 17, 2017 AT 3:00PM  
NEVADA DEPARTMENT OF WILDLIFE, HEADQUARTERS, MAIN CONF. RM  
6980 SIERRA CENTER PARKWAY, SUITE 120, RENO, NV 89511

**1. Call to Order and Roll Call of Committee Members**

Chairman McNinch called the meeting to order at 3:05pm.

Members present: Chairman McNinch, Commissioners Wallace, Hubbs, and Valentine.

Nevada Department of Wildlife staff present: Deputy Director Jack Robb, Game Division Administrator Brian Wakeling, Habitat Division Administrator Alan Jenne, Administrative Assistant III Kailey Taylor, and Management Analyst III Jordan Neubauer.

Attorney General’s present: Deputy Attorney General Josh Woodbury and Senior Deputy Attorney General Bryan Stockton.

Members of the public present: Rex Flowers and Fred Voltz.

**2. Approval of Agenda**

No comments from the members. No public comment.

**COMMISSIONER WALLACE MOVED TO APPROVE THE AGENDA AS PRESENTED. COMMISSIONER VALENTINE SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**3. Approval of Minutes**

Commissioner Hubbs will abstain from voting on the August 11, 2016 meeting minutes.

No member comments on the August 11, 2016 meeting minutes. No public comment.

**COMMISSIONER VALENTINE MOVED TO APPROVE THE MINUTES FROM THE AUGUST 11, 2016 MEETING AS PRESENTED. COMMISSIONER WALLACE SECONDED THE MOTION. THE MOTION CARRIED 3-1. COMMISSIONER HUBBS ABSTAINED.**

No member comments on the June 22, 2017 meeting minutes. No public comment.

**COMMISSIONER WALLACE MOVED TO APPROVE THE MINUTES FROM THE JUNE 22, 2017 MEETING AS PRESENTED. COMMISSIONER HUBBS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**4. Commission General Regulation 470, Miscellaneous Petitions, LCB File No. R095-16**

Chairman McNinch discussed the suggested changes to the regulation.

Senior Deputy Attorney General Bryan Stockton explained the suggested changes. He talked about subsection 3 being redundant. He said subsection 3 should be eliminated completely. He explained the 30 day limitation and how to work around it. The vote to approve the petition will initiate rulemaking. The vote has to happen within 30 day of receiving the petition.

Commissioner Hubbs talked about the relief and how to obtain it if there was a denial.

Senior Deputy Attorney General Bryan Stockton said in reality there is very little relief. The courts will review it for abusive discretion but they are not supposed to substitute their judgement for that of the Commissions. If the Commission votes to deny they will have a hard time getting a court to force the Department to move forward with a regulation changes, unless the regulation change is mandated by statute. He provided an example of a case that is happening now. They have to have standing. They have to have a tangible injury from the agency action in order to have standing. There are options under NRS 233B.135. The other option is declaratory judgement action, where they ask the court to declare whatever the board did to be an error.

Commissioner Hubbs asked about the Department denying the petition.

Senior Deputy Attorney General Bryan Stockton said that he thinks the Department can deny the rulemaking. As a practical matter, if it is going to be denied, it has to be denied within 30 days and the Commission does not meet every 30 days. The next three suggested changes provide a work around, but from a legal stand point the Department can deny the petition and will have to if they cannot initiate the rulemaking. If it is more than 30 days between the time the petition is filed and the next Commission meeting then it will need to be denied. There is no way for the Department to initiate rulemaking within 30 days. The Department will automatically deny the petition. If the agenda has already been posted for the next meeting there is no way to put the petition on the agenda, so the petition will be denied. The Department will contact the petitioner and will agree upon which meeting the petition will be heard. The 30 days won't apply because the petitioner will agree to the extension to the next meeting. It is technical but in compliance with the law.

Commissioner Hubbs is wondering if this will be confusing to the petitioner. Can we direct them to a good time to file? There will be ample communication with the Department and the petitioner. Would they refile when it fits the guidelines for filing or would they just agree to an extension?

Senior Deputy Attorney General Bryan Stockton said they would waive the 30 day requirement. They would not need to refile they would just agree that it could be heard at the next Commission meeting. The Department posts the agenda 2 weeks before the meeting, so the County Advisory Boards to Manage Wildlife (CABMW) have time to review it. He said the Department can give out the information when the petitioner asks for the form. It is not the information you want to add to the regulation.

Chairman McNinch said we are meeting the intent of the law.

Senior Deputy Attorney General Bryan Stockton said these regulations are written for agencies that do not have to wait for the board to approve it.

Commissioner Hubbs asked who can initiate rulemaking.

Senior Deputy Attorney General Bryan Stockton said we suggesting specifying in regulation that the vote of the Commission will initiate rulemaking and therefore the Department will not be able to initiate rulemaking.

Commissioner Hubbs asked when the rulemaking would be initiated.

Senior Deputy Attorney General Bryan Stockton pointed her to the suggested changes.

Deputy Director Jack Robb said these changes take us to where we currently are. Petitioners like to have the option of the meeting location. They like to be heard in close proximity to where they live. The Department works with the petitioners.

Senior Deputy Attorney General Bryan Stockton said this will need to go back to the Legislative Counsel Bureau (LCB) for a revision because these are substantive changes.

Chairman McNinch asked about the suggested changes. If the Department denies the petition because of the timeframe issue, the petitioner can resubmit another petition, right?

Senior Deputy Attorney General Bryan Stockton said they can resubmit it within the new timeframe. There are no consequences to the initial denial from the Department. Most people will just want it heard at the next Commission meeting.

Public Comment –

Rex Flowers asked about the vote to approve. Should it say accept instead of approve?

Chairman McNinch thanked Rex, it should say accept.

Commissioner Valentine feels better. It clarifies the submittal process for him. Once it is accepted, does it go to the Department for the 20 day review for legal authority?

Senior Deputy Attorney General Bryan Stockton said the Department would give input within the 20 days. He assumed that part would stay in. It would be a waste to accept the petition and then have the Department review.

Chairman McNinch explained the public comment in the past.

Senior Deputy Attorney General Bryan Stockton said he cannot give legal advice to the public. He wants to think about it.

Chairman McNinch said we could add to the policy the courtesy of informing the petitioner if there was or was not legal authority.

Senior Deputy Attorney General Bryan Stockton said regulations are binding so do not add it to the regulation, policy would be better.

Commissioner Valentine said he understands.

Senior Deputy Attorney General Bryan Stockton said legal authority would still need to be determined and communicated to the Commission.

Commissioner Valentine asked if this needs to be revised and sent back to the LCB.

Management Analyst III Jordan Neubauer said the Commission will need to vote on the changes before sending back to LCB for a revision.

Senior Deputy Attorney General Bryan Stockton said we can re-write it now for the workshop.

Commissioner Hubbs asked about the procedural denials. Deny with or without prejudice?

Senior Deputy Attorney General Bryan Stockton said the denial would say it would be denied without being able to meet the statutory deadline. It can be in the denial letter from the Department. Do not deny with or without prejudice.

Commissioner Hubbs said a true denial will be at a Commission meeting for a lack of legal authority.

Senior Deputy Attorney General Bryan Stockton said yes, that is how he envisions it.

Chairman McNinch said or because the Commission does not believe it is something that needs to be pursued. He went over how he wants to regulation to look. Delete subsection 3, change subsection 4 to subsection 3 and add a subsection to include the changes from Senior Deputy Attorney General Bryan Stockton. The feedback loop can be provided in the policy.

**COMMISSIONER VALENTINE MOVED TO RECOMMEND TO THE COMMISSION TO RE-WRITE THE PROPOSED COMMISSION GENERAL REGULATION 470 LCB FILE NO. R095-16 WITH INCORPORATING SENIOR DEPUTY ATTORNEY GENERAL BRYAN STOCKTON'S SUGGESTED CHANGES. COMMISSIONER WALLACE SECONDED THE MOTION.**

Chairman McNinch asked for clarification.

Commissioner Hubbs asked about changing the word "approve" to "accept."

Chairman McNinch said yes.

Commissioner Valentine and Wallace agreed.

**THE MOTION PASSED UNANIMOUSLY.**

**5. Review of Commission Policy 9 – Americans with Disabilities Act (ADA)**

Management Analyst III Jordan Neubauer said at the time the Department feels that this policy is redundant and outdated and needs repeal. The Department and Commission, as governmental entities abide by the federal ADA guidelines.

Senior Deputy Attorney General Bryan Stockton said to take a look at the agenda. We have to have the information for the accommodations.

Commissioner Hubbs asked about the ADA and hunting for the disabled; should the Commission put that in the Policy?

Senior Deputy Attorney General Bryan Stockton said it is a good suggestion. This agenda item deals with Commission Policy 9 and board meetings. The discussion needs to be restricted to board meetings.

Chairman McNinch said this policy does seem redundant. The ADA is a very powerful law.

Senior Deputy Attorney General Bryan Stockton said it does not have to be repealed; although it is redundant, there are no legal consequences either way.

Commissioner Valentine said people have voiced the need for ADA. If this needs to be repealed he does not have a problem with it.

Deputy Director Jack Robb said if federal funds are involved on a project we have to put the ADA in as a component. There are so many laws around it that we are better off keeping track of the law. The policy is secondary at this point.

Public Comment – None

**COMMISSIONER WALLACE MOVED TO RECOMMENDED TO THE COMMISSION TO REPEAL COMMISSION POLICY 9 AS RECOMMENDED BY**

**THE DEPARTMENT. COMMISSIONER VALENTINE SECONDED. THE MOTION CARRIED UNANIMOUSLY.**

**6. Review of Commission Policy 29 – DRAFT Arbitration Process for Applicants Dissatisfied with Elk Incentive Tag Awards**

Chairman McNinch asked if everyone reviewed the new policy.

Senior Deputy Attorney General Bryan Stockton said there is a regulation in NAC that contradicts this policy.

Game Division Administrator Brian Wakeling said we updated the NAC last fall. He provided some history. He thinks the Committee should strike “beginning in 2016.” This process was adopted by the Commission and used in one arbitration hearing that the Commission handled.

Senior Deputy Attorney General Bryan Stockton said he apologizes; he was looking at an old regulation.

Commissioner Hubbs asked about the NAC.

Game Division Administrator Brian Wakeling said it is directed by the final clause of NAC that the Commission define this process. The process was defined previously.

Chairman McNinch asked about the policy statement. Since this provides for the arbitration process should we modify this? He read how it could be modified. He asked if “will” should be changed to “must.” He asked about the composition of the Committee.

Game Division Administrator Brian Wakeling said the original intent was that it would be a Committee of three. He explained how the members would work.

Chairman McNinch asked if a Committee of the Commission could make the final determination.

Senior Deputy Attorney General Bryan Stockton said to add the LCB file number to the policy. Subsection 3 says, “the decision of the Commission or the arbitration panel appointed by the Commission is final and binding.”

No Public Comment.

Commissioner Valentine asked about changing “will” to “must.”

Chairman McNinch said the intent is clear. He is less worried about it.

Commissioner Valentine asked about the Committee makeup. Does there need to be clarification on the three members?

Chairman McNinch said adding small clarification to that would be helpful.

Commissioner Wallace asked about changing the policy statement.

Chairman McNinch said he can live with it. It implies that this policy is associated with the fair and equitable distribution of incentive tags.

Game Division Administrator Brian Wakeling said that the Department added the policy statement.

Chairman McNinch said he is fine with it. It is a sensitive subject with landowners. He is fine trying to be clearer too.

Commissioner Valentine is wondering about clarifying the members. Do we want to specify 3 members? He thinks it is clear the way it is written.

Chairman McNinch said it is clarified on the record so he is okay with it.

Commissioner Wallace said to just remove "beginning in 2016."

**COMMISSIONER VALENTINE MOVED TO RECOMMEND TO THE COMMISSION TO APPROVE COMMISSION POLICY 29 WITH STRIKING "BEGINNING IN 2016" AS PRESENTED BY THE DEPARTMENT. COMMISSIONER HUBBS SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

#### **7. Review of Commission Policy 63 – Protecting Wildlife from Toxic Ponds**

Habitat Division Administrator Alan Jenne said this policy needs to be updated to come into compliance with the recent NAC changes. He reviewed the suggested changes to the policy.

Commissioner Hubbs said that she does not feel that the Committee should repeal the policy. She asked what the Department does and how they track the wildlife. She knows there is a lot of bird loss. If there is a zero mortality stance, what does the Department do?

Habitat Division Administrator Alan Jenne said there is a quarterly reporting from each of the permit holders. There are about 87 active permits. The number of mortalities, especially since this policy was written and the laws were put in place, has declined about 63 percent. There is voluntary reporting. He provided some statistics. We have 3 industrial pond permitting biologist that actually work with industry and conduct inspections. There is language written into the permits. It has decreased the amount of bird loss.

Commissioner Hubbs asked if the reporting is voluntary.

Habitat Division Administrator Alan Jenne said that is correct. We conduct inspections. They do not want to put their federal permits in jeopardy.

Commissioner Hubbs asked about the policy lacking. She thinks the policy should reference a regulatory process that we have on the ground to meet the permitting requirements.

Habitat Division Administrator Alan Jenne read from the policy.

Commissioner Hubbs said she did not understand how we are ensuring wildlife is protected. She talked about the solutions for reducing wildlife mortalities.

Habitat Division Administrator said he will add in perimeter fencing, pond covering and chemical or temperature neutralization into typical permit language conditions.

Chairman McNinch said to change “that” to “of” on the bottom of page 2. On page 3 under number 4 “insure” should be “ensure.”

Habitat Division Administrator Alan Jenne said he would make those changes.

Public Comment –

Fred Voltz is concerned with number 5 on page 3. We have the same situation with trapping and the non-target data that is voluntary reporting. We need something stronger. He would like to see mandatory quarterly reporting from each industrial pond operator of wildlife killed by consumption of toxic water. Even though the Silver Peak evaporative ponds for the lithium mines have been added to the licensing process from the last change in legislation, there are 1,000 acres of evaporative ponds that are using water and are an attractive nuisance. He does not think there is a need for it given the technology. There are other techniques being used. He would like to know the mortality results. Although Mr. Jenne said the mortality rates decreased at a number of these facilities it does not seem like we are getting accurate totals by this voluntary reporting.

Chairman McNinch went over the questions asked by Elaine Carrick through email.

Habitat Division Administrator Alan Jenne said generally this is the company's reputation. They do not like to be complacent and non-reporting. We do get mining companies reporting. They call it their gold standard reporting. Silver Peak has submitted reports. Often times, the mortality associated with the ponds are usually migratory birds. U.S. Fish and Wildlife Service (USFWS) will come after projects to bird impacts.

Chairman McNinch asked about USFWS and their mandatory reporting.

Habitat Division Administrator Alan Jenne said no, they do not have mandatory reporting, but they will investigate if they find out about migratory bird takings.

Commissioner Hubbs asked about the taking of migratory birds by these ponds.

Habitat Division Administrator Alan Jenne said yes, the USFWS will get involved. They will investigate.

Commissioner Hubbs asked about the voluntary versus mandatory reporting.

Habitat Division Administrator Alan Jenne read from NAC 502.485. It appears that the reporting is mandatory. He can add that to the policy.

Commissioner Hubbs said she thinks that is an important piece to add.

Chairman McNinch asked if there is a reference in the policy to voluntary reporting.

Habitat Division Administrator Alan Jenne said no. He said number 5 does mention the clearinghouse for mortality data.

Chairman McNinch said we need to check the forms and remind industry that this is mandatory.

Commissioner Hubbs would like to include the mandatory reporting of wildlife mortality data under number 5. We should say that permittees are required to report all mortality data.

Habitat Division Administrator Alan Jenne said we are trying to get things updated with the change of this regulation.

Chairman McNinch asked if it would be on a quarterly basis.

Senior Deputy Attorney General Bryan Stockton read from the NAC. The permit should establish the reporting date.

Chairman McNinch asked if this policy should come back to the next Committee meeting.

Commissioner Wallace wants it to come back to the Committee.

Commissioner Valentine agrees.

Chairman McNinch asked for a motion.

Commissioner Hubbs is wondering in terms of the overall goal to stay on track with the schedule if this should go forward to the Commission. She wants to make sure we are not repealing this policy.

Chairman McNinch is fine with revising.

Commissioner is okay with revising too.

Commissioner Hubbs thinks Mr. Jenne has done quite a bit and she would like to add a couple of points in regards to the manner of which the Department is making sure that we are trying to meet zero mortality and that there is a mandatory

reporting requirement. She would like to take it to the Commission to stay on schedule.

Management Analyst III Jordan Neubauer said staying on schedule is ideal, but if the Committee feels that they need to review it again, we can go that too.

Commissioner Wallace said he was thinking about bringing it back to the Committee to allow staff to get the changes put together, but if that time is not needed we can take it to the Commission.

Chairman McNinch said we are fine to move forward to the Commission.

**COMMISSIONER HUBBS MOVED TO RECOMMEND TO THE COMMISSION TO REVISE POLICY 63 AS PRESENTED BY THE DEPARTMENT AND ADD THE CHANGES TO THE MANNER IN WHICH THE ZERO MORTALITY IS MET AND ADD VERBIAGE AS TO THE MANDATORY REPORTING REQUIREMENT. COMMISSIONER VALENTINE SECONDED THE MOTION. THE MOTION CARRIED UNANIMOUSLY.**

**8. Future Committee Meetings and Agenda Items**

Chairman McNinch said the next meeting will be on Thursday, August 10 at 3pm in Minden, NV at the Douglas County Administration Building.

Public Comment – None.

Commissioner Wallace thanked staff.

Chairman McNinch agreed.

**9. Public Comment Period**

None.

The meeting was adjourned at 4:44pm.

Note: The minutes are only a summary of the meeting. A complete record of the meeting can be obtained at the Nevada Department of Wildlife Headquarters Office at 6980 Sierra Center Parkway, Suite 120, Reno, NV 89511.