

APPROVED MEETING MINUTES
NEVADA BOARD OF WILDLIFE COMMISSIONERS
ADMINISTRATIVE PROCEDURES, REGULATIONS, AND POLICY COMMITTEE
WEDNESDAY, APRIL 13, 2016 – 3:00 PM
NDOW Western Region Office, 1100 Valley Road, Reno, NV 89512

Present: Management Analyst III Kim Jolly, Chair David McNinch, Deputy Attorney General Harry Ward, Administrative Assistant IV Katie Simper, Chief Game Warden Tyler Turnipseed, and members of the public Fred Voltz, Caron Tayloe, and Rex Flowers.

By Phone: Commissioners Grant Wallace and Commissioner Paul Valentine

1. Call To Order

Called to order at 3:02

2 Approval of Agenda - Chair David McNinch (For Possible Action)

The Committee will review the agenda and may take action to approve the agenda. The Committee may remove items from the agenda, continue items for consideration or take items out of order at any time.

No public comment.

Wallace motioned to approve, Valentine approved motion, passed 3-0

3 Approval of Minutes – Chair David McNinch (For Possible Action) The Committee will review and may approve the DRAFT Minutes from the meetings on January 13, 2016 and February 18, 2016. (*Support material)

Reviewed no changes, no public comment, Valentine motioned, Wallace seconded. All in favor as presented, motion approved 3-0.

4 Review and Recommend Changes to Nevada Administrative Code (NAC) 501.140 – 501.190: Appeals - Chair McNinch (For Possible Action)

The Committee may take action to approve draft amendments for recommendation to the full Commission. (*Support material)

Commissioner McNinch – focus our attention on two aspects. First, relates to the hearing process. If we are making changes in policy we need to make changes in the NAC itself. Next, look at updating the special meeting process to include conducting appeals as a separate meeting and to also notifying the appellant that there are limits that the commission can provide them during the appeal.

NAC 501.150 Request for hearing concerning denial, revocation or suspension of license or permit; time and notice of hearing; stay of decisions of Department.

Committee went through sections one at a time. In the draft language 501.150, Section #3 has tracked changes to read “The Commission will include the hearing on the agenda “a special and separate meeting.” Kim Jolly stated we need to write it so it gives us more flexibility; it’s the “for the next regularly scheduled meeting” part that is not flexible for the Department.

Commissioner Wallace asked about section #3 special meeting. Problems with 30 day timeline we would have to have a special meeting, but if we can tie it to a scheduled meeting it would work best.

Harry Ward said he had two concerns; the past appeal went on for 3 hours and there was not a hearing within 30 days. You are going to run into a problem if there is not a meeting in 30 days, unless you get an ok from the appellant to go over the 30 day.

Chairman McNinch said he doesn’t see where it says we have to have a hearing within 30 days; the appellant has to respond within 30 days.

Commissioner Valentine asked if we could leave the language “for the next regularly scheduled meeting” and then add our draft language “or hold a special meeting.” All agreed with this.

Kim Jolly, regarding Section #4, our executive secretary sends out the notices. Kim read the specifications that have to be on the notice within 20 days.

Harry Ward said the problem with reducing it to 10 days we are going to get complaints that we are not giving them enough time to get their ducks in a row.

Chairman McNinch said he was more comfortable leaving it at the 20 days, putting the burden on the Department not the appellant.

NAC 501.155 Representation of appellant or petitioner.

Chairman McNinch said I think we should not add the separate Deputy Attorney General to represent the Commission and Department to this. Chairman McNinch stated that he doesn’t see why this needs to be in here. He asked is this something we would want to in NAC or Policy.

Kim Jolly replied the appellant does not have to follow commission policy, that’s why I put in the NAC that “If the appellant has hired an attorney to represent him or her, he or she will notify the Department in advance.” It clues us into the fact that this appeal will definitely need more time allotted to it.

There was discussion that appeals with attorneys take longer because more questions are asked, etc.

Harry Ward – Commission could say since you did not notify us and you have an attorney so we are going to continue this to a meeting with more time.

Chairman McNinch asked, if we added this, could the Commission say you did not meet our requirements if they show up with an attorney that we didn’t receive advance notice about, could we say we are not going to hear your appeal? Harry Ward replied we could ask for a continuance, to delay it to a future meeting because we didn’t receive the notice. Harry Ward said that leaving it the way it is drafted is sufficient.

Commissioner Valentine suggested they change hired to “retained” an attorney”. Agreed.

NAC 501.160 Conduct at hearing; maintenance of order.– no changes

Next they reviewed amendments to section **NAC 501.165 Hearing de novo; evidence and allegations at certain hearings.**

Chairman McNinch - Add comments to inform appellants that there may be limited ability of the Commission to provide remedy when and appellant pleads. The Chairman also asked the DAG, **what is a hearing de novo?**

DAG Ward explained that “De Novo” is Latin for "anew," which means starting over, as in a trial de novo. It is like a Mulligan in golf, a re-do get to do it over again.

There was discussion that this section 1 of NAC 501.165 is very misleading to the appellant, if they’ve been convicted already, with that language in there, it makes it sound like they get to retry their case. Yet, right below it, in section 2(b) we have that “the Commission can consider only allegations of procedural error committed by the department that affect the substantive rights of the applicant.” And in section 2(a) that they “can allow to be presented only evidence in the record of the suspension or revocation of the license.... that is on file with the Department.” It’s giving them false hope.

Chairman McNinch read section 2. If we are going to add to this we should put #3. Ward replied, that is probably where you would put the number three.

Chairman McNinch asked do we want to work the wording here or do it in a May 12 meeting? He also asked DAG Ward if we can change the wording “de novo”.

Harry Ward said no, this is a real legal term.

Chairman McNinch suggest we ask the department to draft some language that we can give to the DAG to drive home the message that if you have been convicted you may not want to spend a lot of time on it at our level.

Commissioners Wallace and Valentine agreed this should be put into NAC and policy. Even if we put it in there you still are going to have those ones that still want to appeal their case but it could eliminate some also.

Next was review of **501.170 Discovery**

Kim Jolly – only hear what is relevant not what has already been heard.

Harry Ward commented that the Commission will limit the discovery to the documents The Commission is going to hear only what they are responsible for.

Commissioner Wallace asked do we leave as is? McNinch, yes.

No draft amendments or comments beyond 501.170.

Public comment:

Fred Voltz - 501.150 & 501.130, type of days should be clarified, business days or calendar days. Also, I don’t see any prohibition stating the Commission couldn’t design an Ad-hoc Committee of three commissioners to hear the appeal. Pg. 2, 501.165 item #3, should be something simple, the appellant needs to know they can’t have a retrial.

Chairman McNinch said he likes the concept of an Ad-hoc Committee for appeals, and clarifying the days (the simpler, the better.)

DAG Harry Ward explained the legally common understanding is that its calendar days with some exceptions. Most attorneys will say you don't count the day the bell rings or weekends and state holidays if 5 days or less. Section 4: 20 days if lands on weekend goes to Monday, if Monday is a holiday goes to Tuesday.

The Committee asked if they could put 30 calendar days. DAG Ward answered yes. Chairman McNinch said he was ok with adding calendar. Chairman Wallace agreed, but not sure if necessary. Chairman Valentine stated simpler is better - change to calendar.

Chairman Valentine asked could it be a quorum of the commission.

DAG Harry Ward replied, as long as you have a quorum you could hear it so you do not need to add that. I like the idea of the Ad-hoc Committee but then, someone may ask, who do they appeal to if they don't like the result – the full Commission? You are going to have to go to the NRS and it could open up a can of worms.

Chairman Wallace – agrees with DAG Ward. Also, what do we do when Commissioners excuse themselves from the appeal? The Committee agreed this does happen.

Public comment: No public comment.

Chairman McNinch – We will try to have a final draft at May meeting with guidance to Department for NAC 501.165 clarifying no remedy if convicted.

Harry Ward suggested we add a #3 a to 501.165, such as “The appellant criminal case shall not be heard (or retried) on its merits”.

Wallace said that that was good starting point, but let us have staff review and iron it all out. Chief Game Warden Tyler Turnipseed, will work with Kim Jolly on the language and contact DAG Ward if they have any questions.

5 Review and recommend changes to Commission Policy 1 “General Guidelines for the Commission” for recommendation to the Commission – Management Analyst 3 Kim Jolly and Chair McNinch (For Possible Action)

The Committee may take action to amend Policy 1 for recommendation to the full Commission. (*Support material)

Chairman McNinch – we will go through each section of Policy 1:

In the *Policy* section, there were no proposed changes. In the *Purpose* section there were no proposed changes.

Under the Procedure section, number 2, “Meetings”

Chairman McNinch read through the proposed changes as well as his suggested additions. McNinch suggested amending to read "A meeting calendar for the next two years will be approved no later than at the regularly scheduled meeting closest to March in even-numbered years".

Chairman Wallace - good with changes. Chairman Valentine asked for clarification

Section 3 or 4: no changes

Section 5: Is it necessary to put the \$80? McNinch proposed to delete \$80 per day. Delete out "and may receive" not needed per Kim Jolly.

And in section a) under official duties the draft has added a #5) Establishing broad policies.....

Harry Ward asked, do Commissioners serving on a committee get compensation for travel when they have been deposed for court?

b: 2 & 4 leave changes.

Section 6: Adoption of Commission Policies adding "or Resolutions and Record Keeping."

Chairman McNinch - we should clarify our intent as a Commission not to push anything through and spread these out.

- a. No changes
- b. No changes
- c. McNinch proposed changes adding "or revised policy to repeal a policy"
- d. Kim Jolly added this new section on "Record-Keeping of Wildlife Commission Policies" and further explained. Second paragraph was taken from the procedure for public records.

Chairman McNinch reviewed how the need for this came about, from policy 26 elk planning (duplicate policy numbers. The new policy 26 refers to transparency.) The discussion at the March meeting was how we are going to handle this.

Chairman Wallace said Kim did a good job d. explaining this, maybe this can stop getting two policies with the same number again in the future.

Section 7: Acceptance of Gifts, Grants, Donations and Bequests

Chairman McNinch stated that the second paragraph still has value in bringing to Commission, maybe in a more formal matter. Fit well with the standard business. I think third paragraph starting with "All gifts, grants etc." is important to leave in. Chairman Wallace and Valentine agreed.

Public comment:

Fred Voltz, 6d new numbering scheme should be unique. Also, pg. 2 has repetitive language under 5. "while performing official duties of the commission while engaged in the business of the Commission". Meetings item pg. 1 and 2. The Yerington meeting was a perfect example why the video conference is important because there was not one member from the public from Yerington.

Rex Flowers, under #5. *Compensation for members*, does this mean CAB members who attend committee meetings too? And what about members of the public sitting on the Committee, they

should be reimbursed and should have the ability to state whether they want to receive compensation.

Back to the committee discussion:

Chair McNinch – there was an unwritten agreement by commissioners many years ago to agree not to take compensation for committee meetings. Commissioner Wallace asked, but that is part of our official duties. In clarification Kim Jolly to read NRS 501.179 regarding compensation and per diem to the Commission. The official duties are several NRS long – this policy is just a guideline. Kim Jolly explained there is travel per diem for CAB members paid for by the Department, in a different budget account, but under the Department. Chairman McNinch said we don't need to address - really clarifying for the Commission.

Chairman McNinch stated that committee members would get travel and per diem, but not the 80 dollars as that only pertains to Commissioners.

Commissioner Valentine – looking at #2, meetings paragraph, below is that to stay in, or come out? Kim Jolly agreed and suggested taking out first 4 sentences (The commission in its discretion may choose to not follow....pursuant to NRS 241.) up to “Meeting dates and places will not be changed.”

Commissioner Wallace under procedures, section 5, I agree with Mr. Voltz that it is redundant.

Chairman McNinch asked do we want to discuss more on Policy 1, Kim said bring the whole policy 2 agenda items at beginning of meeting. Consider final language that the Department puts together for us. Follow up on NAC for the hearings. NAC related to petitions.

6. Future Committee Meetings and Agenda Items –Chair McNinch (For Possible Action)

The next committee meeting is tentatively scheduled on Thursday, May 12 in Reno, Nevada. The chairman may designate and adjust items, or meeting dates, times, and locations at this time.

Have committee meeting May 12 early in the afternoon. Starting around 2 or 3.

7. Public Comment Period – Chair McNinch

Persons wishing to speak on items not on the agenda may do so in the Public Comment Period. No action may be taken by the Committee. However, the Committee may consider items brought up in the Public Comment Period to be scheduled on a future Committee agenda.

Caron Tayloe commented that it has been over a year since we heard the coyote killing contest petition and we are preparing BDRs if you don't do something.

Chairman McNinch provided an update; we did receive a straw dog draft from the Department to get us started down that path. Our intent is to review the Wildlife policies in the future, possibly in June after we finish reviewing the three-year Rules of Practice Review, which are required by state law. Kim Jolly said we are still taking and collecting comments and ideas for the other wildlife contest policy however, not just our draft.

8. Adjourn

Meeting adjourned at 5:22 pm