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October 22, 2013

Brian T. Passow
8725 Sherwood Park Drive
Las Vegas, Nevada 89131

Re: Open Meeting Law Complaint / AG File No. 13-028
Nevada Board of Wildlife Commissioners

Dear Mr. Passow:

BACKGROUND

The Nevada Board of Wildlife Commissioners (NBWC) met in a two-day public meeting on August 2–3, 2013, in Fallon, Nevada. During the meeting, NBWC considered proposed Commission Regulation 14-01 (Regulation 14-01) that proposed 2013–14 hunting seasons for migratory birds in Nevada. This Complaint alleges that on day two (August 3rd), Regulation 14-01 was changed without County Advisory Board to Manage Wildlife (CABMW) input, as required by NRS 501.297 and NRS 501.303¹. It is

¹ **NRS 501.297 Duties: Evaluating local opinion and advising Commission.** The [County Advisory Board to Manage Wildlife] boards shall solicit and evaluate local opinion and advise the Commission on matters relating to the management of wildlife within their respective counties.

(Added to NRS by 1969, 1560; A 1985, 1351)

NRS 501.303 Duties: Submission of recommendations; attendance of chair or other members at meetings of Commission.

1. The boards shall submit recommendations for setting seasons for fishing, hunting and trapping, which must be considered by the Commission in its deliberation on and establishment of regulations covering open or closed seasons, bag limits, hours and other regulations or policies.

2. The chair or vice chair, or members of the board appointed by them:

alleged that Regulation 14-01, pertaining to Dark Goose [bag] limits, was changed by the NBWC even though the U.S. Fish and Wildlife Service's (USFWS) proposed "Frameworks for Early and Late Season Migratory Bird Hunting Regulations" had not been made available until after the meeting convened on August 2nd. The "Canada and White-fronted Geese" hunts were among the migratory bird hunts discussed by the NBWC on August 3rd. Hunting season for geese and bag limits were among the hunting seasons to be set in Regulation 14-01. It is alleged that even though "pertinent information" about other migratory birds was made available, "goose regulation changes were not open to discussion." It is alleged the public was unable to comment on something that was not made available until the meeting was already in progress.

FACTS

Agenda Item #17 (Item #17) stated that each change proposed for Regulation 14-01 would be presented separately by a Nevada Department of Wildlife (NDOW) staff specialist and that each hunt would be subject to public comment.² The proposed federal *Framework for Early and Late Season Migratory Bird Hunting Regulation* was available online on August 2nd, but the document was not a part of the supporting materials for this meeting.

(a) Shall attend the meetings of the Commission at which seasons are set or bag limits, hours or other regulations and policies are established; and

(b) Are entitled to receive such travel and per diem expenses as are allowed by law.

(Added to NRS by 1969, 1560; A 1979, 893; 1985, 1351; 1989, 2192)

² 17*

Commission Regulation 14 - 01 Migratory Waterfowl (Ducks, Geese and Swans) and Migratory Webless Bird (Coots, Gallinules and Snipe) Seasons, Bag Limits, and Special Regulations, Public Hunting on Overton Wildlife Management Area and Key Pittman Wildlife Management Area Hunter Reservation System - 2013-14 Season - Wildlife Staff Specialist Russell Woolstenhulme, Wildlife Staff Specialist Mike Zahradka - For Possible Action

The Commission will consider recommendations for seasons, bag limits, and special regulations for migratory waterfowl (ducks, geese and swans) and migratory webless game birds (coots, gallinules and snipe) for the 2013-14 season and adopt regulations that comply with the proposed regulations framework for the 2013 - 2014 late and early hunting seasons on certain migratory game birds established by the U.S. Fish and Wildlife Service. The Commission may also adopt changes to rules regulating public hunting on Wildlife Management Areas and designated state lands and may take action to change the current method of awarding duck hunt reservations at the Overton Wildlife Management Area and Key-Pittman Wildlife Management Area. Public comment allowed.

We reviewed the NBWC's August agenda, minutes, and relevant portions of the meeting video. We also asked for and received an explanation from the NBWC in response to the Complaint.

DISCUSSION

The Complaint alleges that the public should have been provided the proposed federal *Framework for Early and Late Season Migratory Bird Hunting Regulation*³ and that failure to wait for the release resulted in the omission of pertinent information necessary to inform the CABMW's comment to the NBWC.

Our investigation determined that Item #17 was clearly and completely stated. The CABMW's comment was allowed regarding each hunt covered by proposed Commission Regulation 14-01. The public, representatives of hunting clubs, and representatives of seven different county CABMWs were present at the meeting. Many of them made comment throughout NBWC's discussion of Regulation 14-01, which set migratory bird open hunting areas, season dates, bag limits, shooting hours, and even special regulations for each hunt.

The CABMW was free to comment on any matter related to proposed open hunting areas, season dates, bag limits, shooting hours, and even special regulations for each hunt regardless of whether the federal framework had been available during the meeting. Although the proposed federal frameworks were pertinent, they did not prevent the NBWC from approving Regulation 14-01. Should the NBWC have to make future changes to Regulation 14-01, so that open hunting areas, season dates, bag limits, shooting hours, and even special regulations for each hunt fit within the final federal framework regulation, the Commission would be obliged to make those changes at another date.

Mandatory changes to Regulation 14-01 required by the proposed federal frameworks, released online on August 2nd, had already been made by staff before the August 2013 meeting in order to be compliant with the federal waterfowl framework. On July 29, 2013, NDOW Staff Specialist Russell Woolstenhulme sent an email to the NBWC and the public alerting them that further changes were coming and that Regulation 14-01 had been drafted before the annual federal waterfowl regulatory process (frameworks) had been completed. Staff Specialist Woolstenhulme added that federal changes/amendments to the proposed federal process led to several changes to Regulation 14-01 that would be pursued at the Fallon meeting on August 2-3.

Item #17 topics adequately addressed the pending changes. The CABMW and members of the public were allowed to comment on proposed mandatory changes and any other changes during each hunt discussion. Regulation 14-01 setting open areas,

³ Migratory Bird Hunting; Final Frameworks for Late Season Migratory Bird Hunting Regulations, Final Rule, 78 Fed. Reg. 58124 (September 20, 2013) (to be published at 50 C.F.R. pt. 20).

season dates, bag limits, shooting hours, and even special regulations for each hunt is required to fit within the federal framework for those same subjects. The federal framework describes each flyway in considerable detail. For example, states are free to set limits and season dates, which are less than the maximum dates or bag limits allowed in the federal regulation, but the states cannot exceed the limits of the framework supplied in the federal regulation.

CONCLUSION

The USFWS' proposed framework for migratory bird late season hunt regulation (even though not yet published in final form until September 20, 2013), had been available online on August 2nd, the day before the NBWC's discussion of item #17. The proposed framework would have been helpful, and it was pertinent to the agenda item, but it was well known that Regulation 14-01 must fit within the federal framework before hunting seasons begin. The OML does not mandate that NBWC wait to adopt a migratory bird hunting regulation until the release of the federal frameworks regulation, nor do the CABMW's statutes forbid adoption of Regulation 14-01 until it comments on the release of the federal frameworks regulation. We are not aware of any Nevada statute or regulation that forbids NBWC from setting migratory bird hunting frameworks until the federal framework has been finally released. Finally, the proposed federal framework for late-season migratory bird hunt regulation was not a part of the NBWC's supporting materials. NBWC had no duty to release something it did not have. NRS 241.020(5).

We are closing our file on this matter.

Sincerely,

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By:


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GHT/rmh

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Jeremy Drew, Vice Chairman
Chad Bliss, member
Michael McBeath, member
David McNinch, member

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Bill Young, member
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