



January 19, 2022

Ryan H. Esplin
Chief Civil Deputy County Attorney
Mohave County Attorney's Office
P.O. Box 7000
315 N. 4th Street
Kingman, AZ 86402

**RE: Open Meeting Law Complaint – AZ Game and Fish Department, Payson
Habitat Partnership Committee**

Dear Mr. Esplin,

I have reviewed your letter of December 23, 2021, asking for a response to two complaints alleging the Arizona Game and Fish Department (Department) and the Payson Natural Resource Committee (PNRC) violated Arizona's open meeting law (OML). These complaints presume the PNRC is a public body, and allege it did not comply with the OML by failing to prepare complete minutes for its meetings in August and November 2021, and failing to provide sufficient notice for its November meeting.

As you understand, Arizona's OML requires a "public body" to comply with requirements that meetings are open to the public with timely notices, agendas and minutes. A public body is typically a multi-member board or commission established by law and serves as a governing body. A public body may include standing, special or advisory committees that are established or appointed by a public body. These special committees are established for the purpose of making a recommendation concerning a decision to be made by a public body, or they are authorized to act on behalf of a public body.

The local PNRC is not a public body subject to the OML. It was never established by law as a governing body or by an official action of a public body to serve as a standing, special or advisory committee or given any authority to act on behalf of a public body. Instead, the Game and Fish Department informally organized local Habitat Partnership Committees (HPCs) that comprise landowners, conservation organizations, state and federal land management agencies and Department staff.

These local HPC groups, which include the PNRC, help identify and develop potential habitat improvement projects on public and private lands. They solicit proposals for such projects, ensure

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5000 W. CAREFREE HIGHWAY, PHOENIX AZ 85086

GOVERNOR: DOUGLAS A. DUCEY **COMMISSIONERS:** CHAIRMAN LELAND S. "BILL" BRAKE, ELGIN | JAMES E. GOUGHNOUR, PAYSON
TODD G. GEILER, PRESCOTT | CLAY HERNANDEZ, TUCSON | KURT R. DAVIS, PHOENIX **DIRECTOR:** TY E. GRAY **DEPUTY DIRECTOR:** TOM P. FINLEY

the proposals meet minimum criteria and legal requirements and then submit the proposals to an internal Department evaluation team that scores and ranks the proposals from all HPCs. The evaluation team submits its recommendations to the Department director who decides whether to award grants.¹

The Department is under the control of an individual director, and neither the Department or its director are public bodies, so any committees they organize need not adhere to the OML. The Arizona Attorney General has come to a similar conclusion when he opined that a Governor's advisory committee was not a public body subject to the OML because the Governor as an individual was not a public body when he established the advisory committee. Ariz. Att'y Gen. Op. I92-007.

While the PNRC is not subject to the OML, the group permits the public to attend its meetings, with the Department preparing informal agendas and minutes and sending notice of meeting dates and locations to those who have expressed interest in attending. As you have requested, I am including with this response the agendas and meeting minutes for the August and November meetings.

I hope this response provides you with the necessary information to resolve the complaints. Please let me know if I can provide you with any additional information to assist you.

Sincerely,

A handwritten signature in cursive script that reads "Jim Odenkirk".

Jim Odenkirk
General Counsel

¹The complainant incorrectly alleges these grant proposals are submitted to the Game and Fish Commission and the Commission awards the grants. The Commission has no role in the decision to award the grants and is only advised of the director's decision after the director awards the grants.

Payson Natural Resource Committee Meeting Minutes 8/11/21

Dave Daniels called the meeting to order at 6:00 PM.

Introductions around the room.

- Dave Daniels called for updates from the group on ongoing and completed HPC projects around the room.
 - Lori Brown gave update on HPC project replacing pipeline in burn areas. Gave updates on regeneration in the burn area concerning perennials and annuals establishment.
 - Jarrod McFarlin gave update on additional Mescal Catchment that was funded, will be completed/built in Spring of 2022. Current mescal catchment in burn area was evaluated, and determined to be functional, no loss.
 - Dave Daniels gave update on 3 Gisela catchment redevelopment, Development Branch funded through PR and unused HPC dollars. Gisela 1 and Gisela 3 will be completed in Spring of 2022.
 - Jeff Haught talked about a neighboring rancher that has a few tanks that could be redone along lone pine saddle.
 - Joe Sayer had no updates on Deadman from last update, stated that flying VH and Hardscrabble are being looked at. SRP assisting with funding.
 - Lori Brown stated that Clayton completed multiple tanks in the wilderness area.
 - Tanks on Bar X, funded, haven't been able to put down bentonite yet due to rainy conditions and forest closures, will be looking to putting material down in near future.
 - Project in 21, Cartwright Ranch, spring modification and pipeline work with some extra storage that will be piped out to additional areas, all horseback, inaccessible by vehicles.
- Dave Daniels called for the group to talk about HPC projects to put in for funding this year.
 - Jeff Haught stated that he is working with John Dickson on getting pump systems converted to solar, additional landscape projects in the works for putting in for HPC. Had projects and requests approved through NEPA.
 - **Jake Jaeger stated that ADA (Jim Lawrence) received 98 new solar panels that they are looking to find projects to utilize the panels.**
 - Joe Sayer stated he has 5 control road catchments Payson 1-5 that require a lot of work, getting hit hard by elk, looking at getting funded for 3 tanks to get

- funded this cycle to get fixed/new tanks with higher storage put in, all compliance completed, just looking for funding.
 - Hauled 2.3 million gallons of water statewide last year.
 - Seth Sheer gave update on project working with NWTF to fix catchments in 23, primarily fence work, will attend next MSA to request funding.
 - Dan Thompson Dirt tanks on Christopher Mountain Dirt Tank still waiting for approval.
 - All LRP for funding 2021-2022 has already been allocated, still have landowner access money left.
 - Available for landowners/ranchers to allow for recreational access for the public in return for monetary compensation to keep open for a period of time.
 - Jim Goughnour gave update on MSA Banquet that occurred on 08/07/2021 after multiple delays due to COVID. Typically have mid 300s in attendance, the 2021 banquet had mid 400s of attendance, so was biggest MSA banquet yet. MSA supports youth and wildlife within 50 sq. miles on Payson and funds multiple projects.
 - Matt Paciorek gave USFS update on mastication project of approximately 1800 acres on the Flying VH. SRP will be assisting in funding for mastication in dude fire area and replanting. Another mastication project just south of Young near transfer station, few hundred acres of mastication.
 - Goughnour told everyone that when putting in for projects, need to ensure all clearances ie NEPA, Arc Clearances are completed, to give better chance for being funded.
 - Dave Daniels will be the Recruit Training Officer down in the Police Academy in Tucson for 6 months starting in October 5th and running for 26 weeks.
 - Jake Jaeger will be leading the next meeting.
 - Next Meeting scheduled for November 3rd, 2021 at 6pm.
 - Next Meeting, start planning on new projects, good time to begin working on them.
 - Will have conducted elk surveys, so can relay information relating to the elk surveys.
- NOTE: Get Jeff Haught info for ADA concerning solar panels.

Meeting adjourned 7:15PM.

Payson Natural Resource Committee Meeting Minutes 11/03/21

Jake Jaeger called the meeting to order at 6:00 PM.

- Jake Jaeger elaborated on the scoring for HPC projects, passed out a scoring sheet for it.
 - All proposals for the 2021 period were evaluated in October by AGFD scoring team led by Andrew Cavalcant.
 - All the conservation groups also have the project evaluations, and a funding meeting will be conducted in January.
 - Funding should become available in March.
 - Reminder to ensure not to start projects until the agreements and funding is distributed, any work done before the process is completed will lose eligibility for funding.
- Jake Jaeger called for updates from the group on ongoing and completed HPC projects around the room.
 - Called for future projects to ensure compliance is in place, HPC committee looking for landscape scale projects.
 - Flying VH highlighted on AZFamily for needed thinning of AZ forests to prevent catastrophic wildfire as well as in a FS press release highlighting partnerships with AGFD, NFF, and other partners
 - https://www.azfamily.com/news/arizona-wildfires/forest-restoration-prevent-wildfires-arizona/article_c195bf2e-358d-11ec-bc9a-73dba7a06f47.html?block_id=667537
 - McFarlin elaborated on a cost share that MSA was able to help with approximately \$20,000 in poly pipe on a project. The 20,000 that was donated by the MSA was utilized as part of the price match.
 - Jake Jaeger elaborated that if the proposals have a 1:1 price match, has a higher likelihood of being approved.
 - Goughnour also stated that this year, projects had done a lot better in including the criteria outlined in the sheets that were passed out.
 - Jarrod McFarlin talked on the Mescal catchments - stated around the holidays the catchments will be worked on, and estimates it takes about 2 weeks per catchment, 3 catchments will be redone.
 - Seth Sheer gave an update on the project on the Bar X, currently awaiting litigation of a civil suit, as soon as it's concluded, work will commence on the 4 dirt tanks.
 - Matt Paciorek stated that some burns had been put on halt, in addition, mastication projects begin in Chamberlain, 109, and South of Young. SRP funded half of the project. Additional maintenance work done around Pine, and around Young.
 - Mead Ranch mastication off the 29 road.

- New Feral Cattle Gather project on the Verde River. 4FRI update next few weeks.
 - Around the Globe – Thumb area, will have mastication and burns.
- Dustin Darveau Gave Game Management Updates within Region 6.
 - Elk Population Surveys in Game Management Unit 22 and 23
 - Helicopter Surveys
 - 6 hours in each unit
 - Ground Surveys as needed
 - Joe Sayer elaborated on Unit 22 recommendations for elk and turkey
 - Overall, recommended reduction of 155 elk permits.
 - Recommended removing OTC hunts for turkey
 - Seth Sheer elaborated on Unit 23 recommendations for elk and turkey
 - Overall, Recommended reduction of 55 elk permits.
 - Overall, Recommended reduction of 65 turkey permits in Spring.
 - Perry Miller elaborated on Unit 24A recommendations for elk and turkey
 - Overall, removal of antlerless hunts for elk, change to 10 total permits for Any Elk permits.
 - Overall, addition of 4 turkey permits for a total of 10 turkey permits.
 - Dustin Darveau showed data for Bighorn Sheep Population Surveys.
 - 22 south population bouncing back from disease outbreak
 - 24B doing well, low numbers due to windy conditions
 - 37B, numbers low, Believe to have missed sheep, sheep were in flats, where they are not typically.
 - Dustin Darveau talked about Kuiu Conservation Direct Initiative – Four Translocation Projects in AZ.
 - 10 Bighorn Sheep removed from 24B
 - Released at Newman Peak, Picacho Mountains in 37A.
 - Research to study population health, habitat use, and disease monitoring.
 - Previous GPS collar deployments in January and October 2020.
 - In October of 2021, the following number of GPS collars were deployed: 5 GPS collars in 22S, 5 GPS Collars in 24B, 7 GPS collars in 22N, 3 GPS collars in 22/23.
- Jake Jaeger reiterated that there is access dollars available, to start planning HPCs which will be due next September. Contact Jake Jaeger if you are interested in funding/additional funding.
- Goughnour touched on MSA banquet, \$160,000 was netted from the last banquet. Stated that if you have some projects that you'd like to do, think about reaching out to the MSA.
- Next Meeting scheduled for **February 16, 2022 at 6pm.**
 - Next Meeting, start planning on new projects, good time to begin working on them.

- Will have conducted deer surveys, so can relay information relating to the deer surveys.

Meeting adjourned 7:30PM.

Payson Natural Resources Committee Meeting Agenda

Meeting Date: 8/11/2021	Start Time: 6:00 PM		
Meeting Place: Payson Police Department	End Time: 8:00 PM		
Invitees: PNRC			
Conference Call Number			
Agenda Topics	Responsibility	Duration	Times
1. Introductions/Opening Remarks	Daniels		
2. Project updates	All		
3. Project Proposals	All		
4. Set Nov. meeting adjourn	Daniels		
5.			
5.			
6.			

Payson Natural Resources Committee Meeting Agenda

Meeting Date: 11/3/2021		Start Time: 6:00 PM	
Meeting Place: Payson Police Department		End Time: 8:00 PM	
Invitees: PNRC			
Conference Call Number			
Agenda Topics		Responsibility	Duration
1. Introductions/Opening Remarks		Jaeger	
2. Project Updates		All	
3. Big Game Survey Results		Darveau	
4. Future Project Proposals		All	
5.			
5.			
6.			