

January 16, 2020

Mr. Ty E. Gray, Director
Arizona Game & Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086-5000

Dear Director Gray,

Last year I became interested in your Habitat Partnership Committee (HPC) and began to try and collect information about it. I have learned several things that concern me about its operation, but I will limit this letter to the failure of the HPC to comply with Arizona's public meetings laws, as per A.R.S. § 38-431 et seq.

As you know, in 1983 the Legislature initially authorized your agency to donate big game hunting tags to qualified local hunting groups for the purpose of raising funds for the benefit of big game management. The money that's raised through public raffles and private auctions of the donated tags is deposited into your agency's HPC fund to be allocated solely to projects for "the management of the species for which the tag was issued," as per A.A.C. R12-4-120.F.

In order to allocate the HPC money to these big game management projects, A.A.C. R12-4-120.E requires that the Department "shall coordinate" with the qualified hunting groups on:

- 1. The specific projects or purposes identified in the proposal;*
- 2. The arrangements for the deposit of the proceeds, the accounting procedures, and final audit; and*
- 3. The dates when the wildlife project or purpose will be accomplished.*

The Habitat Partnership Committee (HPC) was established, in large part, to facilitate the Department's requirement to solicit advice from the hunting groups on selecting the big game management projects to be annually funded by the HPC monies. The state HPC is supported by a dozen regional subcommittees, as listed on the Department's [HPC Contact Information web page](#).

All of these regional subcommittees use the HPC title, except for the Arizona Strip HPC, which calls itself a Habitat Working Group, and the Payson HPC, which calls itself a Natural Resources Committee. But a review of recent agendas and meeting minutes for the Payson Natural Resources Committee shows that discussions and reviews of proposed local HPC projects were their primary focus.

In regards to compliance with Arizona's public meeting laws, A.R.S. 38-431.1 states that:

Advisory committee" or "subcommittee" means any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of

the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

This definition obviously applies to state and local HPC committees. The word “committee” is in their titles. And, as per A.A.C. R12-4-120.E, the Department is required to coordinate with them on project funding decisions. I saw this process firsthand when I attended the state HPC meeting the morning of Saturday, January 11, 2020. Numerous representatives from the qualified hunting groups were in attendance as Mr. Kirby Bristow, the Department’s State HPC Coordinator, reviewed the list of proposed HPC projects for 2020 and asked the attendees for input about each of them. It’s my understanding that about \$2 million worth of HPC project funding was approved for 2020 during the meeting.

Since this legal definition obviously applies to the HPC, the state and local HPC committees are required to meet the requirements of Arizona’s Public Meetings and Proceedings laws.

A.R.S. 38-431.02 states that:

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of this state, including governing bodies of charter schools, shall:

(a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.

(b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to

the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.

But there are no public meeting notices or agendas for the local HPC subcommittees posted to your Department's website. I was able to obtain copies of recent agendas and minutes for the Payson subcommittee only because I contacted the Department's local coordinator, David Daniels, and he put me on the group's email list.

As for the state HPC, it has a home page on the Department's website, but it's certainly not conspicuous. There is only one link to the page, buried on the Game Species Management home page. If you do a search on the Department's website for "habitat partnership committee" it returns no search results, and if you search for "HPC" all you get is a link to the HPC Contact Information web page. And there's no link on that page back to the HPC home page, where the state HPC meeting information is posted.

Furthermore, state HPC meeting notices and agendas aren't being posted to the HPC home page at least 24 hours in advance, as the law requires. For example, I began communicating by email with Mr. Bristow in October of 2019 about my interest in attending last week's state HPC meeting at the Department's headquarters building in north Phoenix. In early December I noticed some information about the January 11 meeting had been added to the HPC home page, so I sent him an email asking when the meeting was scheduled to begin, since that information wasn't included on the web page. He replied with an email stating that it would begin at 9AM.

Last Saturday morning I left home early to attend the meeting because it was a long drive and I wanted to get there about an hour ahead of time to prepare. I was lucky that I got there by 8AM, because I discovered when I arrived that the meeting was about to start. I encountered Mr. Dan Sturla, the Department's Habitat Enhancement Coordinator, in the lobby and he guided me back through the building's hallways to the meeting room.

I was puzzled by the change in the meeting's start time, so on the way back I asked him, "This is a public meeting, isn't it?"

"It's not a public meeting, according to the Arizona Secretary of State's rules, but it's a meeting that's open to the public," he replied.

The meeting was being held in a large room and there were at least 40 people in attendance, comprised almost entirely of hunting group representatives and Department personnel. They were settled in their seats, with their documentation spread in front of them, so they had obviously received prior notice of the correct meeting start time.

I picked up a copy of the meeting's public notice and agenda from the handouts table and saw that it showed an 8AM start time. After I returned home later that day, I checked the state HPC home page again to see if I'd missed something. There still wasn't any HPC meeting start time or agenda on it, so I took a screen grab of the page to document the situation. (This week I noticed the meeting's public notice and agenda has been posted to the page, but that wasn't done until after the meeting, something your website technical staff could easily verify.) I also checked the

Arizona Public Meetings website, but there was no notice and agenda about the HPC meeting posted there either.

I sat down in the back of the meeting room while Arizona Game & Fish Commissioner Leland “Bill” Brake, the meeting’s chairperson, made some opening remarks. Then Mr. Bristow reviewed the meeting’s agenda and explained that a Call to Public had been added to the beginning of it, wherein any member of the general public in attendance would have the opportunity to make comments for as long as 3 minutes. I realized that if I hadn’t arrived at the meeting until 9AM, the starting time I’d been given, I would have missed my opportunity to submit comments criticizing the proposed HPC Cartwright Allotment Water Project.

During breaks later in the meeting I spoke with Mr. Sturla and Mr. Bristow. Mr. Sturla said he had been participating in the state HPC meetings for 3 years and I was the first member of the general public to attend one of them. Mr. Bristow added that, as far as he knew, I was the first member of the public to make comments at a state HPC meeting.

Arizona’s public meetings laws also require the keeping and distribution of the written or recorded minutes for all public meetings. A.R.S. 38-431.01 states that:

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:

- 1. The date, time and place of the meeting.*
- 2. The members of the public body recorded as either present or absent.*
- 3. A general description of the matters considered.*
- 4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.*

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

But there aren’t any minutes of the local HPC meeting minutes posted on the Department’s HPC web pages. As I mentioned above, the only reason I have some from the Payson HPC is because I contacted its Department coordinator and asked to be placed on the email list.

The state HPC home page includes a section at the bottom titled Meeting Minutes Archive. It lists the dates of the last seven state HPC meetings, but there aren't any functioning links to the minutes. Earlier this year, the link to the Summer 2019 state HPC minutes worked, and I downloaded the PDF file. This meeting was held in conjunction with the Arizona Cattle Growers' Association's 2019 summer convention, on July 26, at the We-Ko-Pa Resort and Conference Center, on the Fort McDowell Yavapai Reservation. A check of the PDF file's properties shows it was created on August 8, 2019. That was more than three working days after the meeting. Furthermore, the minutes are incomplete because they lack the mandatory information required by law, as cited above.

Nor do the minutes I obtained from the Payson HPC meeting on August 7, 2019, include the legally requisite information. Moreover, the Payson HPC held another meeting on August 13, 2019, and I have yet to see any minutes from that meeting. According to that meeting's agenda, it involved ranking the proposed local HPC projects for approval. Those projects included the Cartwright Allotment Water Project, which was forwarded by the Payson HPC to the state HPC for final approval.

As I said at the beginning of this letter, I have serious concerns about the HPC, and I think there are many other Arizonans who would feel the same way if they knew more about how it operates. But with the current situation, most people don't have the time to do all of the work it takes to learn about it, which is an example of why we have Public Meetings and Proceedings laws.

In conclusion, I would like to remind you that earlier this week Gov. Doug Ducey gave his 2020 State of the State address. One of the things he said was:

There are hundreds of unelected boards and commissions that exist in a dark corner of state government - often escaping accountability and scrutiny.

I strongly urge you to bring the Habitat Partnership Committee out of its dark corner and into the light of public scrutiny.

Sincerely,



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Enclosures:

- Payson Natural Resources Committee 2019 Meeting Minutes & Agendas
- Email from Kirby Bristow to Jeff Burgess on 12/11/19
- State HPC Notice of 01/11/20 Public Meeting and Agenda
- HPC Web Page Screen Grab 01/11/20
- HPC Cartwright Allotment Water Project Proposal (redacted by AGFD)
- State HPC Meeting Minutes 7/26/19
- Arizona Cattle Growers' Association 2019 Summer Convention Agenda