

**REVISED ADOPTED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R031-15

Effective June 28, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 501.105, 501.181, 502.142 and 502.160.

A REGULATION relating to wildlife; authorizing the Board of Wildlife Commissioners to serve as the arbitration panel, or to appoint an arbitration panel, to decide a dispute between a landowner applicant and the Department of Wildlife; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Board of Wildlife Commissioners to adopt any regulations necessary relative to the manner of qualifying and applying for tags for hunting wildlife. (NRS 502.160) Existing regulations set forth the procedure for appointing a panel to arbitrate a dispute between a landowner applicant for a special incentive elk tag and the Department of Wildlife. (NAC 502.42283) This regulation authorizes the Commission to serve as the arbitration panel, or to appoint an arbitration panel, to decide a dispute between a landowner applicant and the Department. This regulation also authorizes the Commission to set forth the procedure for filing a claim and the process under which a claim must be resolved through arbitration.

Section 1. NAC 502.42283 is hereby amended to read as follows:

502.42283 1. The Commission may ~~select an arbitration panel from the residents of the county in which an owner applicant resides~~ *either serve as the arbitration panel or appoint an arbitration panel* to:

(a) Decide a dispute between a landowner applicant and the Department concerning the number of special incentive elk tags that the Department should award; or

(b) Determine whether a party who possesses a special incentive elk tag has adhered to the terms of the agreement entered into to obtain the tag.

2. ~~{An arbitration panel must consist of three members to be selected as follows:~~
- ~~—(a) One member representing the local business community.~~
 - ~~—(b) One member representing persons actively engaged in the production of agriculture.~~
~~Persons engaged in the production of agriculture shall, upon request, provide the Board of Wildlife Commissioners with a list of prospective members.~~
 - ~~—(c) One member representing either a local hunting or sportsmen's organization, or the county advisory board to manage wildlife. The county advisory board to manage wildlife shall, upon request, provide a list of prospective members.~~
 - ~~—3. A member of an arbitration panel must be a resident of the county he or she serves.~~
 - ~~—4. The term of office of each member of the panel is 2 years.~~
 - ~~—5. Each arbitration panel shall select a chair from among its members.~~
 - ~~—6. An arbitration panel will be called to serve at the request of the Director or his or her designee.~~
 - ~~—7. Each member of the arbitration panel serves without salary, but may receive the per diem allowance and travel expenses provided for state officers and employees generally while performing official duties of the arbitration panel.~~
 - ~~—8.} The *Commission, or the* arbitration panel ~~{shall:}~~ *appointed by the Commission, will:*
 - (a) Review the evidence submitted by a claimant and the Department before making a determination; and
 - (b) Render a decision in an expeditious manner, but not later than ~~{20 days after receiving notification to serve on a claim.~~~~
 - ~~—9.} *July 1 within the year following the date on which the claim is filed.*~~

3. The decision of the *Commission, or the* arbitration panel *appointed by the Commission,* is final and binding on the parties *for the purpose of judicial review* if it complies with the provisions of NAC 502.42253 to 502.42283, inclusive, and applicable laws of this State.

4. *The Commission will set forth the procedure for filing a claim and the process under which a claim must be resolved through arbitration.*

**STATE OF NEVADA
BOARD OF WILDLIFE COMMISSIONERS
NEVADA DEPARTMENT OF WILDLIFE**

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY NRS
233B.066**

LCB FILE NO. R031-15

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 502.

1. A clear and concise explanation of the need for the adopted regulation:

When the Nevada Department of Wildlife awards Elk Incentive Tags to private landowners for elk residing on their private uplands, sometimes there is disagreement on the number of tags awarded. When disagreement exists, landowners may choose arbitration to resolve conflicts. Currently, the makeup of the arbitration panel unfairly pits neighbors and local community members against one another and therefore results in a situation whereby individuals serving on existing panels have had difficulty in rendering decisions and some members have demonstrated an unwillingness to participate. In at least one instance, decisions have been rendered with certain panel members abstaining from voting. This regulation creates a more effective and less controversial panel by amending NAC 502.42283. This amendment allows the Nevada Board of Wildlife Commissioners (NBWC) to facilitate tag arbitration decisions by appointing or serving as the arbitration panel should arbitration of elk incentive tag awards become necessary. The proposed change will provide a less biased and contentious process to facilitate decision making.

2. Description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary:

A copy of the proposed regulation was noticed and provided to Nevada's 17 County Advisory Boards to Manage Wildlife (CABs) as part of the NBWC agenda and support material for their August 7, 2015 and September 25, 2015 workshops and at the September 26, 2015 NBWC meeting for action. The support material and draft regulation was mailed to CABs and interested parties allowing the opportunity to comment at their local CAB meetings or the Commission meeting. Those CABs that held public meetings in advance of the September 13, 2014, November 14, 2014, March 20, 2015, May 15, 2015, August 7, 2015, September 25 and 26, 2015, January 29 and 30, 2016, March 25, 2016, and May 13 and 14, 2016 NBWC meetings, also provided opportunity for public comment at each of their meetings.

Subsequently, on October 27, 2015, the Legislative Commission deferred a decision on the regulation due to specific questions regarding the final and binding language contained within the original NAC prior to amendment. The NBWC chose to workshop the regulation on January 29, 2016 and act on amendments on January 30, 2016 at their meeting in Las Vegas. This meeting was teleconferenced to Reno and Elko. Nevada's 17 CABs also placed these items on their agendas prior to the January 29 and 30, 2016 NBWC meeting. LCB subsequently provided a suggested revision, which the NBWC considered in workshop on March 25, 2016 in Yerington

and May 13, 2016 in Reno. On May 14, 2016, the NBWC voted to adopt the amended language. Meetings in Reno were teleconferenced to Elko and Las Vegas.

The supporting documentation was available on the NDOW web site for the Commission meeting and referenced for the 17 CAB meetings held in association with each Commission meeting.

The 2 comments from the CABs received at the workshop and adoption meetings were supportive of the recommended amendment.

The public comment received on January 30, 2016 questioned why this change could not be simply captured in a policy rather than through an amendment to the NAC. This could not be addressed simply through policy because existing NAC prescribed the process and any change to that process required an amendment.

There was no additional public comment.

A video recording and minutes from the meetings are available at:
http://www.ndow.org/Public_Meetings/Commission/Archive/

3. The number of persons who:

(a) Attended each hearing: 14 at the workshop on August 7, 2015; 6 at the workshop on September 25, 2015; 21 at the hearing on September 26, 2015; 30 at the workshop on January 29, 2016; 28 at the hearing on January 30, 2016, 42 at the workshop on May 13, 2016; and 31 at the hearing on May 14, 2016.

(b) Testified at each hearing: 0 on August 7, 2015; 2 on September 25, 2015; 0 on September 26, 2015; 0 on January 29, 2016; 1 on January 30, 2016; 0 on May 13 and 14, 2016.

(c) Submitted written comments: 1 on January 30, 2016.

4. For each person identified in number 3 above, the following information if provided to the agency conducting the hearing:

- (a) Name: Gil Yanuck
 - (b) Telephone number: (775) 841-3675
 - (c) Business address: 4100 Lakeview Rd., Carson City, NV 89703
 - (d) Business telephone number: Not provided
 - (e) Electronic mail address: gilcalif@att.net
 - (f) Name of entity or organization represented: Carson CAB
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- (a) Name: Mike Reese
 - (b) Telephone number: (702) 400-6501
 - (c) Business address: 6808 Hazelnut Gardens St., Las Vegas, NV 89131
 - (d) Business telephone number: Not provided
 - (e) Electronic mail address: mike.reese@yescoelectronics.com
 - (f) Name of entity or organization represented: Clark CAB

- (a) Name: Fred Voltz
- (b) Telephone number: Not provided
- (c) Business address: 1805 N. Carson Street, Carson City, NV 89701
- (d) Business telephone number: Not provided
- (e) Electronic mail address: zebedee_177@yahoo.com
- (f) Name of entity or organization represented: Recreationalists

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary:

This proposed NAC does not affect any specific business. However, landowners are provided an incentive to maintain habitat for elk through this program in return for tags (i.e., the incentive). When a disagreement about the number of tags awarded arises, the arbitration process is used to settle those disagreements. These landowners are often affiliated or in contact with a respective CAB. This process was adopted through temporary NAC and one cycle has already been completed, including one arbitration claim, using the revised process. Despite the temporary implementation, outreach efforts, CAB meetings, and 3 workshops on the permanent NAC, no comment was received from landowners and one comment was received from other members of the public. The input is detailed in the Commission meeting minutes from August 7–8, 2015, September 25–26, 2015, January 29–30, 2016, March 24–25, 2016, and May 13–14, 2016.

A video recording and minutes from the meetings are available at:

http://www.ndow.org/Public_Meetings/Commission/Archive/

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change:

The public comment received on January 30, 2016 questioned why this change could not be simply captured in a policy rather than through amendment to NAC. This could not be addressed simply through policy because existing NAC prescribed the process and any change to that process required an amendment.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

There would be no economic impact upon small businesses because this regulation does not regulate businesses.

The changes will allow the Department and NBWC to more effectively administer the incentive elk tag arbitration. Landowners that may want to attend a NBWC meeting distant from their residence to attend an arbitration hearing may incur costs of \$50–\$150, but this is relatively negligible when incentive elk tags being arbitrated are often valued at around \$20,000.

This should have no economic effect on the public.

(b) Both immediate and long-term effects:

Immediate and long-term effects are negligible. Economic effect would not exceed \$50–\$150 per landowner requesting arbitration annually. There will not be any long-term effects.

8. The estimated cost to the agency for enforcement of the adopted regulation:

There will be no additional cost for the agency to enforce this regulation as Commissioners meetings will not be substantially lengthier and standard law enforcement activities are already underway.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency:

There are no other overlapping local, state, or federal government regulations.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions:

There are no federal regulations that regulate this same activity.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no new fees.