



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of MICHAEL
MCBEATH, Commissioner, Nevada Wildlife
Commission, State of Nevada,

Request for Opinion No.: 09-81C

Subject. /

INVESTIGATOR'S REPORT (Tab A)

Introduction

1. Request for Opinion No. 09-81C (Ethics Complaint). (Tab B):

On December 23, 2009, Requestor Pat Laughlin filed an Ethics Complaint against public officer Michael McBeath, a member of Nevada Wildlife Commission (NWC), alleging that he violated NRS 281A.400(1) when he received elk incentive tags, NRS 281A.420(4)¹ when he failed to disclose his commitment in a private capacity to his employer Cave Valley Ranch, and NRS 281A.420(2)² when he failed to abstain from voting during the May 16, 2009 NWC meeting.

2. Jurisdiction:

As a member of NWC, no dispute exists that McBeath is a public officer as defined in NRS 281A.160. Therefore, the Nevada Commission on Ethics has jurisdiction to investigate and

¹ The disclosure requirements were revised and moved by the 2009 Legislature to subsection 1 of NRS 281A.420. The new provisions became effective May 28, 2009. The applicable statute at the time of the alleged violation was NRS 281A.420(4).

² The abstention requirements were revised and moved to subsection 3 of NRS 281A.420 by the 2009 Legislature. The new provisions became effective May 28, 2009. The applicable statute at the time of the alleged violation was NRS 281A.420(2).

1 take appropriate action in this matter pursuant NRS 281A.280 and NRS 281A.440.
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3 **3. Issues:**
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5 The issues are whether McBeath violated:
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- 7 **I.** NRS 281A.400(1) by seeking or accepting an emolument or economic opportunity
8 in the form of elk incentive tags.
- 9 **II.** NRS 281A.420(4) by failing to disclose sufficient information related to his
10 commitment in a private capacity to Cave Valley Ranch during the May 15-16,
11 2009 NWC meeting.
- 12 **III.** NRS 281A.420(2) by failing to abstain from the vote on approval of hunts 4102,
13 4151, 4156 and 4161 during the May 15-16, 2009 NWC meeting.
- 14 **IV.** NRS 281A.430(2) by entering into a contract with NDOW.
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16 **4. Response to Ethics Complaint. (Tab C):**
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18 McBeath's response to the Ethics Complaint was submitted by his legal counsel,
19 Deputy Attorney General Bryan Stockton, Esq., on February 12, 2010 (incorrectly dated as
20 February 13, 2010). The response indicated that McBeath did not violate any provisions of NRS
21 281A.420 as the Complaint identified no specific occasion related to a vote on elk incentive tags.
22 Therefore, there was nothing to respond to. As to the allegation of violation of NRS 281A.400,
23 McBeath responded that he had received the same number of elk incentive tags prior to and after
24 his appointment to NWC and there is no evidence that he used his office to secure any additional
25 benefits. Finally, as to the allegation of violation of NRS 281A.430, McBeath stated that the Elk
26 Incentive Cooperation Agreement is a ministerial and administrative act and as such not the type
27 of contract covered by NRS 281A.430.
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1 **Investigation Resources:**

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3 I interviewed the following individuals and reviewed their responses:

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5 **1. Witnesses interviews and responses. (Tab D):**

- 6
- 7 • Michael McBeath, subject, on February 12, 2010. (Response, Tab C).
 - 8 • Michael McBeath, subject, via investigator's questionnaire and via e-mail on February
9 27, 2010. (Exhibit 1).
 - 10 • Bryan Stockton, Esq. legal counsel for the subject, via e-mail on February 28, 2010.
11 (Exhibit 2).
 - 12 • Pat Laughlin, Requestor, via investigator's questionnaire on February 24, 2010. (Exhibit
13 3).
 - 14 • Curt Baughman, Nevada Department of Wildlife Investigator (Biologist). Response not
15 received at the time of completion of this report. (Exhibit 4).

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17 **2. Documents. (Tab E):**

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19 I obtained and reviewed the following documents and materials relevant to the investigation:

- 20
- 21 • Minutes from NWC meeting on February 6 and 7, 2009. (Exhibit 5).
 - 22 • Minutes from NWC meeting on May 15 and 16, 2009. (Exhibit 6).
 - 23 • 2009 NDOW elk quota table and elk unit groups map. (Exhibit 7).
 - 24 • Commission's Notice to Subject In re McBeath, RFO No. 09-81C. (Exhibit 8).
 - 25 • Nevada Acknowledgment of Ethical Standards, Michael McBeath, dated August 18,
26 2008. (Exhibit 9).
 - 27 • Cave Valley Ranch business information and area maps. (Exhibit 10).
- 28

1 After reviewing the evidence, I find as follows:
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3 NAC 502.42253 through NAC 502.42283 provides the direction for the NDOW
4 to administer a special elk incentive tag program that allows owners, lessees, and managers of
5 private land to receive elk incentive tags as a compensation for damage caused by elk. (Tab F,
6 section II). Cave Valley Ranch, a property inhabited by elk, appears to be eligible for elk
7 incentive tags according to NRS 502.142 and the above noted NAC. Elk incentive tags are issued
8 by the NDOW, and the number of tags for which the applicant is eligible is calculated according
9 to a formula set forth in NAC 502.42279. (Tab F, section II). According to McBeath, he on
10 behalf of the ranch, applied and received three elk incentive tags per year in 2006, 2007, 2008,
11 and 2009. (Exhibit 1, page 6, ¶9). However, McBeath stated that he turned over the elk incentive
12 tags to his brother William, the owner of Cave Valley Ranch. (Exhibit 1, p. 3 ¶5).
13

14 As to the application and issuance of elk incentive tags, the application is
15 reviewed and determination of eligibility is made by NDOW staff. Subsequently, each individual
16 eligible for elk incentive tags enters into Elk Incentive Tag Cooperative Agreement with NDOW.
17 (Complaint, Tab B, pp. 5, 11, 18 and 22). The individual tags are not subject to approval by the
18 NWC.
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20 During the February 6-7, 2009, NWC meeting³, the NWC members engaged in a
21 discussion and subsequently voted to approve a depredation hunt⁴ in the area of Cave Valley
22 Ranch (Exhibit 5 pp. 53-59). When the discussion turned to elk incentive tags, McBeath
23 disclosed his interest in Cave Valley Ranch, and that he received elk incentive tags in the past,
24 and he abstained from the vote. (Exhibit 5, p. 59), (Exhibit 1, p.7 ¶10).
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³ The NWC held a two-day public meeting. The vote in question occurred on Saturday, February 7, 2009.

⁴ A special hunt season targeting elk that are causing damage to a private property.

1 At the May 15-16, 2009 NWC meeting⁵, the NWC discussed quotas for antlered
2 elk and voted to approve several different hunts, including hunts 4102, 4151, 4156 and 4161.
3 (Exhibit 6, pp.45-49). According to the 2009 Elk Quota Table, all hunts approved at that meeting
4 appear to include area 222, which is the area where Cave Valley Ranch is located. (Exhibit 7). In
5 addition, it appears that the quota is one of several factors used in determining the number of elk
6 incentive tags. At the May 15-16 meeting, McBeath did not disclose his commitment to Cave
7 Valley Ranch, nor did he abstain from voting.

8
9 However, the issue appears to be rather complex as McBeath explained in the second part of the
10 Exhibit 1 (his e-mail dated February 27, 2010).

- 11
12 ■ NRS 281A.400(1) provides, in relevant part:

13 A public officer or employee shall not seek or accept any gift, service, favor,
14 employment, engagement, *emolument or economic opportunity* which would
15 tend improperly to influence a reasonable person in his position to depart from
16 the faithful and impartial discharge of his public duties. (Emphasis added).

17
18 **1. Allegation one: McBeath violated NRS 281A.400(1) by seeking or accepting**
19 **an emolument or economic opportunity in the form of elk incentive tags.**

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21 The allegation contends that McBeath received elk incentive tags because of his
22 position with the NWC. The complainant implied that McBeath "has the power to award elk
23 incentive tags to himself." (Exhibit 3 ¶6).

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25 Based on the available evidence, it appears that the NWC's involvement in issuing
26 elk incentive tags is very limited. According to NWC legal counsel Stockton, the NWC votes on
27 the total quantity of tags, but does not have any influence as to who receives them. The NDOW
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⁵ The NWC held a two-day public meeting. The vote in question occurred on Saturday, May 16, 2009.

1 staff biologist provides the NWC with data based on his field investigation. In addition, the
2 NWC receives input from county boards that review the biologist's recommendation. (Exhibit 2).

3
4 Based on the evidence provided herein, it appears unlikely that McBeath has any
5 discretion to issue elk incentive tags to himself. Furthermore, there is no evidence that McBeath
6 received an elk incentive tag because of his position with the NWC. The evidence shows that
7 McBeath received three elk incentive tags per year prior to his appointment to the NWC in 2006
8 and 2007. Following his appointment in July of 2008, the number issued to him on behalf of the
9 ranch remained the same. (Response, Tab C, pp. 4-5). (Complaint, Tab B, pp. 5, 11, 18 and 22).

- 10
11 ■ NRS 281A.420(4) provides, in relevant part:

12 a public officer or employee shall not approve, disapprove, vote, abstain from
13 voting or otherwise act upon any matter:

- 14 (a) Regarding which he has accepted a gift or loan;
15 (b) Which would reasonably be affected by his commitment in a private
16 capacity to the interest of others; or
17 (c) In which he has a pecuniary interest,

18 *without disclosing sufficient information* concerning the gift, loan, commitment
19 or interest to inform the public of the potential effect of the action or abstention
20 upon the person who provided the gift or loan, upon the person to whom he has
21 a commitment, or upon his interest ... (emphasis added).

- 22 **2. Allegation two: On May 16, 2009 McBeath violated NRS 281A.420(4) by**
23 **failing to disclose sufficient information concerning his interest in a private**
24 **capacity to Cave Valley Ranch.**

25 As to the claim that McBeath failed to disclose sufficient information
26 concerning his commitment in a private capacity to Cave Valley Ranch, the evidence is as
27 follows:
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1 During the May 15-16, 2009 meeting⁶, the NWC engaged in a discussion on elk
2 quota and approved several hunts in the area of Cave Valley Ranch. McBeath participated in the
3 discussion and voted on approval of hunts 4102, 4151, 4156 and 4161. (Exhibit 5, pp.45-49).
4 Although McBeath questioned the relevance of hunt approval and the elk incentive tags (second
5 part of exhibit 1, e-mail dated February 27, 2010), the discussion of elk quota appears to bear
6 some relevance, since elk quota is one of the several determining factors in the issuance of elk
7 incentive tags.

- 8
- 9 ▪ NRS 281A.420(2) provides in relevant part:

10 a public officer shall not vote upon or advocate the passage or failure of, but
11 may otherwise participate in the consideration of, a matter with respect to which
12 the independence of judgment of a reasonable person in his situation would be
13 materially affected by:

- 14 (a) His acceptance of a gift or loan;
15 (b) His pecuniary interest; or
16 (c) His commitment in a private capacity to the interests of others.

17 **3. Allegation three: McBeath violated NRS 281A.420(2) by failing to abstain**
18 **from the vote on approval of hunts 4102, 4151, 4156 and 4161 during the May**
19 **15 and 16, 2009 NWC meeting.**

20 As to the claim that McBeath failed to abstain from the vote on approval of
21 several hunts during the May 15 and 16, 2009 meeting, the evidence is as follows:

22 As provided under the allegation one, McBeath does not appear to have the
23 discretion to award elk incentive tags to himself or the ability to influence the decision as to who
24 receives the individual tags. The issuance of individual tags is based upon analysis by the
25 NDOW staff rather than by NWC. The NWC does not vote on the individual tags. Therefore,
26 McBeath may not have been required to abstain from voting.

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⁶ The NWC held two-day meeting. The vote in question occurred on May 16, 2009.

1 ▪ NRS 281A.430 provides:

2 1. Except as otherwise provided in this section and NRS 281A.530 and
3 332.800, a public officer or employee *shall not bid on or enter into a contract*
4 *between a governmental agency and any private business in which he has a*
5 *significant pecuniary interest.*

6 2. A member of any board, commission or similar body who is engaged in
7 the profession, occupation or business regulated by such board or commission,
8 may, in the ordinary course of his business, bid on or enter into a contract with
9 any governmental agency, *except the board, commission or body of which he is*
10 *a member, if he has not taken part in developing the contract plans or*
11 *specifications and he will not be personally involved in opening, considering or*
12 *accepting offers.*

13 4. A public officer or employee, other than an officer or employee described
14 in subsection 2 or 3, may bid on or enter into a contract with a governmental
15 agency if the contracting process is controlled by rules of open competitive
16 bidding, the sources of supply are limited, he has not taken part in developing
17 the contract plans or specifications and he will not be personally involved in
18 opening, considering or accepting offers. If a public officer who is authorized to
19 bid on or enter into a contract with a governmental agency pursuant to this
20 subsection is a member of the governing body of the agency, the public officer,
21 pursuant to the requirements of NRS 281A.420, shall disclose his interest in the
22 contract and shall not vote on or advocate the approval of the contract.

23 **4. Allegation four: McBeath violated NRS 281A.430(2) by entering into Elk
24 Incentive Tag Cooperative Agreement with NDOW.**

25 As to the claim that McBeath entered into a contract with governmental agency,
26 the evidence is as follows:

27 In accordance with NRS 502.142 and NAC 502.42253 through NAC 502.42283,
28 McBeath properly applied for, and subsequently received elk incentive tags in 2006, 2007, 2008,
29 and 2009. The tags were issued upon the approval of his application filed with NDOW and after
30 entering into the Elk Incentive Tag Cooperative Agreement. The agreement is required in order
31 to receive elk incentive tags.

32 McBeath's legal counsel Stockton argued that the agreement is a ministerial and
33 administrative procedure and not the type of contract covered under NRS 281A.430. (Response,
34 Tab C, p.5). To substantiate his argument, Stockton appealed to Commission's Opinion In re
35 Eilrich 08-09A that provided: *"the development agreement that Eilrich seeks approval from the*

1 *City Council is an administrative and ministerial procedure and not the type of contract*
2 *contemplated by NRS 281A.430."* However, I note the difference between Eilrich and McBeath's
3 circumstances. In re Eilrich noted that *"Eilrich is not providing any goods or services to the City*
4 *in exchange for money."* However, the Elk Incentive Tag Cooperative Agreement is, to some
5 extent an exchange of services for money. The applicant agrees to allow elk to use his private
6 land as its home and allow it to incur some damage for which the applicant is compensated with
7 elk incentive tags, which have great monetary value.

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9 Dated this 27 day of February 2010.

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11 NEVADA COMMISSION ON ETHICS

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16 Mike Vavra, MPA
17 Investigator