



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of **MICHAEL
McBEATH**, Member, Nevada Board of Wildlife
Commissioners, State of Nevada ,

**Request for
Opinion No. 09-81C**

Subject.
_____ /

STIPULATED AGREEMENT

1. **PURPOSE:** The purpose of this stipulated agreement is to resolve Request for Opinion No. 09-81C concerning Michael McBeath before the Nevada Commission on Ethics ("Commission") and render an opinion as stipulated in lieu of holding a hearing.

2. **JURISDICTION:** At all material times, McBeath served as an appointed member of the Nevada Board of Wildlife Commissioners ("Board") from Clark County, Nevada, making him a public officer pursuant to NRS 281A.160. Nevada Revised Statute ("NRS ") 281A.280 gives the Commission jurisdiction over elected and appointed public officers. Therefore, McBeath is a public officer subject to the jurisdiction of the Commission.

3. **PROCEDURAL STATUS AND HISTORY:**

The following events are relevant to the matter:

- a. Governor Jim Gibbons appointed McBeath to fill a Board vacancy on July 23, 2008 and McBeath's term expires on June 30, 2011.
- b. On November 23, 2009, the Commission received a third-party Request for Opinion (RFO) alleging that McBeath violated certain provisions of the Ethics in Government Law set forth in NRS 281A, including: 1) NRS 281A.400(1) by seeking or accepting a gift, favor, employment, engagement or economic opportunity which would tend improperly to influence the public officer to depart from the faithful discharge of his public duties; 2) NRS 281A.420(4) and (2) for failing to disclose and abstain on certain matters before the Board in which he had a commitment in a private capacity to the interests of others; and 3) NRS 281A.430 by entering into a contract with government in which he had a private interest.
- c. The Commission provided McBeath with proper notice of the allegations and an opportunity to file a written response. McBeath is fully advised of the allegations asserted in the RFO.
- d. On February 13, 2010, McBeath's legal counsel filed a written response to the RFO.
- e. The Commission's staff investigated the allegations and provided reports and recommendations to the Commission's investigatory panel.

- f. Pursuant to NRS 281A.440, on March 11, 2010, a two-member panel of the Commission reviewed the RFO, McBeath's written responses, the staff reports and recommendations and other evidence. The panel reconvened on April 14, 2010 to reconsider the allegations based on additional testimony and clarifications provided by the Board's legal counsel. The Panel determined that just and sufficient cause did not exist for the Commission to conduct a public hearing and render an opinion regarding the allegations that McBeath: 1) sought or accepted a gift, favor, employment, engagement or economic opportunity which would tend improperly to influence a reasonable person to depart from the faithful discharge of his public duties (NRS 281A.400(1)); 2) would be materially affected by his commitment in a private capacity to the interests of his brother which required him to abstain from voting (NRS 281A.420(2)); or 3) entered into a prohibited contract in which he had an interest (NRS 281A.430). However, the Panel determined that just and sufficient cause did exist for the Commission to conduct a public hearing and render an opinion whether McBeath failed to disclose his commitment in a private capacity to the interests of his brother before voting on a matter that allegedly affected his brother's interests (NRS 281A.420(4)).
- g. Commission staff subsequently received additional credible, reliable and accurate materials from NDOW and Board staff clarifying the relationship between the matter before the May 2009 Board meeting and McBeath's commitment in a private capacity. Based on the clarity this information provided, the parties hereby enter this stipulation.

h. In lieu of a hearing regarding his alleged violation of NRS 281A.420(4), McBeath enters into this stipulation acknowledging his duty to disclose any conflict of interest between his duties as a Board member and his commitment in a private capacity to the interests of others. However, the Commission and McBeath agree that the circumstances of the matter during the May 2009 Board meeting would have no reasonable effect on McBeath's commitment in a private capacity to the interests of his brother as outlined in this stipulation.

4. **RELEVANT STATUTES:** The following Nevada Revised Statute is relevant to the allegations that give rise to this stipulated agreement:

Disclosure – NRS 281A.420(4)¹, as effective on May 16, 2009, provided, in relevant part:

A public officer or employee shall not . . . vote . . . upon any matter . . . which would reasonably be affected by his commitment in a private capacity to the interest of others . . . without disclosing sufficient information concerning the . . . commitment . . . to inform the public of the potential effect of the action . . . upon the person . . . to whom he has a commitment Such a disclosure must be made at the time the matter is considered. (Emphasis added).

5. **FINDINGS/STIPULATIONS OF FACT:**

a. **McBeath's Public Interests - Appointment to Board:**

The Governor appointed McBeath to the Board to fill a vacancy on July 23, 2008. McBeath's term expires on June 30, 2011.

¹ At the time of the alleged disclosure violation, the amendments to NRS 281A.420 governing disclosure and abstention established by Senate Bill 160 of the 2009 Legislative Session were not yet effective. Therefore, the Commission must apply the standard for disclosure as it existed on May 16, 2009, which listed the disclosure provisions in subsection 4.

b. McBeath's Private Interests – Brother/Cave Valley Ranch ("CVR"):

- (1) CVR is a private ranch owned by McBeath's brother, William McBeath. CVR is located near Ely, Nevada. In 2005, McBeath assisted his brother to form a Nevada limited liability company, Cave Valley Ranch, LLC, to hold the ranch's assets.
- (2) McBeath served as the Manager of the LLC from its formation until early 2010. McBeath has no ownership interest in CVR. For a short period between 2005 and 2006, McBeath accepted nominal compensation for his duties in the amount of \$1,000 per month. McBeath has not been compensated for his service since the Fall of 2006.

c. Elk Incentive Tags:

- (1) The Nevada Administrative Code ("NAC") outlines the process for NDOW to issue elk incentive tags. Specifically, NRS 502.142 and NAC 502.42253 to 502.42283, inclusive, authorize NDOW to administer a special elk incentive tag program which provides owners, lessees and managers of private land in Nevada with special tags to hunt for elk on and near their land as incentive to permit elk to forage on and compensate for the damage the elk cause to their land and/or crops.
- (2) Elk incentive tags are issued and administered by NDOW. NDOW determines the number of tags for which an applicant for elk incentive tags is eligible via a formula set forth in NAC 502.42279. The Board has no authority, oversight or influence over the administration of this program. NDOW, through its staff and

a team of biologists, investigates the elks' use of private land and approves a certain number of elk incentive tags to be issued to applicants where the herds are located.

- (3) CVR, a property utilized by a herd, has been eligible for elk incentive tags through the elk incentive program every year since 2005. McBeath, on behalf of CVR, applied for and was granted three elk incentive tags each year from 2006 to 2009. The number of elk incentive tags issued to CVR has remained the same during each of the years in which it received tags, including the years prior to McBeath's appointment to the Board and afterward.
- (4) CVR, and each applicant eligible for an elk incentive tag, enters into an Elk Incentive Tag Cooperative Agreement with NDOW each year. The Cooperative Agreement memorializes the agreement between the landowner and NDOW that a certain number of elk incentive tags will compensate the landowner for the elks' use of and damage to his land and/or crops for each calendar year.

d. General Elk Tags (Quotas):

- (1) In addition to the issuance of elk incentive tags, NDOW also determines the overall number (quota) of general elk tags to be issued for the entire State each year based on information developed by staff and biologists. The Board, in its May 2009 meeting, approved the overall quota of elk tags recommended by NDOW.

- (2) The overall quota of elk tags bears upon the number of elk incentive tags only to the extent that the number of incentive tags cannot total more than 50 percent of the overall number of elk tags issued for the year. If NDOW's issuance of incentive tags exceeds the overall quota, the number of incentive tags must be reduced.
- (3) Historically, the ratio between the number of elk incentive tags and the overall quota of elk tags has never come close to 50 percent. In 2009, approximately 25 elk incentive tags were issued compared with approximately 420 overall elk tags issued – just 5 percent of the overall quota. CVR was provided with only 3 of the 25 incentive tags or 3 of the 420 overall tags – just over 0.5 percent of the overall quota or 12 percent of the total incentive tags. If the number of elk incentive tags totaled more than 50 percent of the overall quota, the number of incentive tags would have been reduced.

e. May 2009 Board Issue – Elk Quotas

- (1) During the May 15-16, 2009 Board meeting, the Board discussed and voted to approve the overall quotas for general elk tags.
- (2) McBeath did not disclose his commitment in a private capacity to the interests of his brother (CVR's incentive tags) in approving the overall elk quotas.

f. Disclosure

(1) McBeath had no duty to disclose his commitment in a private capacity to the interests of his brother (CVR's incentive tags) because CVR's incentive tags would not reasonably be affected by a vote to approve the overall elk quotas established by NDOW. The number of elk incentive tags available to CVR would not reasonably be affected by approval of the overall quota of elk tags.

(2) CVR received only 3 of the nearly 25 incentive tags issued in 2009. In fact, CVR's tags represent less than 1 percent of the overall elk quota while the total number of incentive tags represented only 5 percent of the overall elk quota. This percentage did not come remotely close to the 50 percent which would impact the number of incentive tags issued. The incentive tags issued to CVR would only be impacted by the Board's decision of the overall quota if the total number of incentive tags resulted in 50 percent of the overall quota.

(3) The formula developed in the regulation is designed to make it nearly impossible for the number of incentive tags to result in 50 percent of the overall quota.

6. **TERMS:** Based on the foregoing, McBeath and the Commission agree as follows:

- a. Each of the facts enumerated in section 5 is deemed to be true and correct.
- b. McBeath's failure to disclose his commitment in a private capacity to the interests of his brother as described above does not constitute a violation of NRS 281A.420(4), as effective on May 16, 2009.
- c. McBeath's brother's ranch, CVR, would not reasonably be affected by a matter before the Board in which the overall quota of elk tags would be approved.

McBeath's approval of the overall State elk quota would not have reasonably affected

his commitment in a private capacity to the interests of his brother. CVR's interest represented 0.5 percent of the overall tags and 12 percent of the incentive tags. The total number of incentive tags issued in 2009 represented only 5 percent of the overall quota and would need to amount to 50 percent for any impact on the number of incentive tags to result. This ratio has never come close and the formula established in regulation is designed to ensure that the number of incentive tags never results in 50 percent of the overall quota.

- d. This agreement applies only to the specific facts, circumstances and law related to this Request for Opinion. Any facts or circumstances that are in addition to or differ from those contained in this agreement may create an entirely different resolution of this matter.

7. **WAIVER:**

- a. McBeath retained legal counsel in this matter and knowingly waived a full hearing before the Commission on the allegations against him and of any and all rights he may be accorded pursuant to NRS Chapter 281A (as amended by Senate Bill 160 of the 2009 Legislative Session), the regulations of the Commission (NAC Chapter 281A), the Nevada Administrative Procedures Act (NRS Chapter 233B), and the laws of the State of Nevada.
- b. McBeath knowingly and voluntarily waives his right to any judicial review of this matter as provided in NRS 281A, 233B or any other provision of Nevada law.

8. **ACCEPTANCE:** We, the undersigned parties, have read this agreement, understand each and every provision therein, and agree to be bound thereby. The parties orally agreed to be bound by the terms of this agreement at the regular meeting of the Commission on August 12, 2010. Once executed, this agreement shall be considered adopted and incorporated as the Opinion of the Commission. Subject to the provisions of section 6(d) set forth herein, this agreement will be the final disposition of this matter and shall be binding upon all parties.

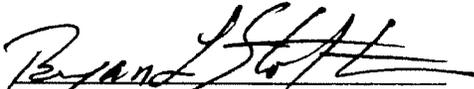
DATED this 17th day of AUGUST, 2010.


Michael McBeath

DATED this 23rd day of AUGUST, 2010.


J.T. Moran III, Esq., Chairman
Nevada Commission on Ethics

The above Stipulated Agreement is approved:


Bryan Stockton, Esq.
Senior Deputy Attorney General
Attorney for Michael McBeath


Yvonne M. Nevarez-Goodson, Esq.
Commission Counsel
Nevada Commission on Ethics