



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.

**EXECUTIVE DIRECTOR'S RECOMMENDATION
AND APPROVAL OF INVESTIGATOR'S REPORT**

The following is the Executive Director's recommendation based on consideration and investigation of the Ethics Complaint filed against MICHAEL McBEATH ("Subject"), a public officer, and on the Subject's written response to the Complaint, attached to the Investigator's Report. That Report is approved and is attached for the consideration of the two-commissioner panel.

Allegations:

The main allegation is that McBEATH failed to disclose his conflict of interest when the Nevada Wildlife Commission, of which he is a member, on May 16, 2009, approved the Department of Wildlife's issuance of valuable elk habitat incentive hunting tags in the area of his brother's ranch, and to which the ranch became entitled. The Complaint includes additional allegations that McBEATH should have abstained from the vote on May 16, 2009, and that he used his public position to benefit his private interest in receiving a tag. An additional issue surfaced regarding his entering, in his capacity as Managing Member of his brother's ranch, an Elk Incentive Cooperation Agreement – a contract - with the Department of Wildlife, to receive tags in exchange for allowing hunting and maintaining elk habitat on the ranch's land.

Facts:

Since 2008, McBEATH has served as a Commissioner on the Nevada Wildlife Commission. He holds no ownership interest in Cave Valley Ranch, which is owned by his brother. McBEATH is an attorney and in 2005 assisted his brother to form a Limited Liability Company to hold the ranch's assets. McBEATH serves as the Managing Member of the LLC, and for a short time in 2005-2006, he accepted nominal compensation for that role. He applied for and obtained Elk Incentive Tags for the ranch in 2006, 2007, 2008 and 2009. The ranch has received 3 such tags each year. The number of tags offered depends on the Department's estimation of the herd, and several other factors. The number of tags issued to the ranch has not changed since his appointment.

In February 2009, McBEATH disclosed his relationship to Cave Valley Ranch on the record and abstained from participating in a vote to approve a depredation hunt to reduce the size of the herd in the area where the ranch is located. However, in May 2009, he did not disclose or abstain from voting to approve several different hunts related to the elk quota, which is among the factors in determining the number of incentive tags to be issued. The vote approved, among others, hunts in area 222, where Cave Valley Ranch is located.

Recommendation:

After reviewing the evidence and NRS 281A.400(1), NRS 281A.420 (2) and (4), and NRS 281A.430, I recommend that the Panel find just and sufficient cause DOES NOT EXIST for the Commission to render an opinion on the allegations that McBEATH used his position in government to further a private interest, should have abstained from voting on May 16, 2009, or entered into a prohibited contract.

However, I recommend that the Panel find that just and sufficient cause DOES EXIST for the full Commission to hold a hearing regarding McBEATH's failure to make sufficient disclosure of his commitment in a private capacity to the interests of his brother – a family member within the third degree of consanguinity – before participating in the vote on May 16, 2009 to approve a depredation hunt in the area that included his brother's ranch. The complaint and investigator's report provide credible evidence that McBEATH should have disclosed a conflict of interest pursuant to NRS 281A.420(4).

NAC 281A.435 Basis for finding by panel; unanimous finding required for determination that no just and sufficient cause exists. (NRS 281A.290)

1. A finding by a panel as to whether **just and sufficient cause** exists for the Commission to render an opinion on an ethics complaint **must be based on credible evidence.**

2. A finding by a panel that no just and sufficient cause exists for the Commission to render an opinion on an ethics complaint must be unanimous.

3. As used in this section, **“credible evidence” means the minimal level of any reliable and competent form of proof** provided by witnesses, records, documents, exhibits, concrete objects, and other such similar means, **that supports a reasonable belief by a panel that the Commission should hear the matter and render an opinion.** The term does not include a newspaper article or other media report if the article or report is offered by itself.

I hereby approve the attached Investigator's Report and provide this, my recommendation to this honorable panel.

Date: _____

Caren Jenkins, Esq.
Executive Director