

DELIVERED BY COURIER

BELL, McANDREWS & HILTACHK, LLP

ATTORNEYS AND COUNSELORS AT LAW

455 CAPITOL MALL, SUITE 600

SACRAMENTO, CALIFORNIA 95814

(916) 442-7757

FAX (916) 442-7759

www.bmhlaw.com

August 5, 2014

President Michael Sutton, President
Commissioners Baylis,
Kellogg, Rogers, and Hostler-Carmesin
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2014 AUG -5 AM 10:29

RE: Commissioner Sutton's Recusal on AB 711 Implementation Regulations

Dear President Sutton and Commissioners:

Our firm represents the National Shooting Sports Foundation ("NSSF"). NSSF is the trade association for America's firearms, ammunition, hunting, and recreational shooting sports industry. NSSF's more than 10,000 members are comprised of manufacturers, distributors, retailers, shooting ranges, sportsmen's organizations and publishers, including many based in California. NSSF's mission is to promote, protect and preserve hunting and shooting sports. The policies and decisions of the California Fish and Game Commission ("Commission") have a direct and substantial, material impact on businesses of a significant number of our members, including those based in California.

On behalf of NSSF, we respectfully request that President Sutton recuse himself from involvement in the drafting of implementation regulations for AB 711, the law banning traditional ammunition for use in hunting, and any issue related to lead ammunition and other matters lobbied by Audubon California or Pacific Flyway. Commissioners are prohibited from making, participating in making, or in any other way attempting to use their official positions to influence a Commission decision in which the member has a financial interest, and President Sutton has a disqualifying financial interest. (Fish & Game Code § 107(g).)

The California Constitution prohibits certain state officers from receiving income from a lobbyist or a lobbying firm, and also requires disclosure and recusal from participating in certain governmental decisions that will have a financial impact on any lobbyist employer who is a source of income to the official within the previous year. (Cal. Const. Art. V, § 14.) As you know, in May of 2012, President Sutton was named executive director of Audubon California and vice president of the Pacific Flyway, a project of the National Audubon Society (collectively, "Audubon"). National Audubon Society is a California "lobbyist employer" that co-sponsored AB 711 in the 2013 legislative session. Because Audubon is a lobbyist employer, President Sutton must recuse himself from participating in decisions at the Commission that will have a

financial impact on Audubon. This includes involvement in the drafting of AB 711 implementation regulations, among other matters in which Audubon is beneficially interested and actively lobbying the Commission.

Further, Gov. Code § 19990 prohibits state officers and employees from engaging in activities that are incompatible with their positions as state officials. In accordance with this section, each governmental agency is required to adopt its own Incompatible Activities Statement, which is generally enforceable at the discretion of the official's direct report. The Incompatible Activities Statement for the Commission was most recently updated around August 12, 2013, prohibits Gubernatorial appointees from engaging in any employment, activity or enterprise that might result in, or create the appearance of resulting in, performance of any work for private gain or profit, or having any direct or indirect financial, managerial, or other interest in any organization engaged in matters relating to the interpretation, application, and/or enforcement of the Fish and Game Code. It is the responsibility of the Commission to ensure that this policy is enforced. I understand the newest member of the Commission, Commissioner Jacque Hostler-Carmesin, is the only Commissioner that has signed an acknowledgment of receiving and understanding the Commission's Incompatible Activities Statement.

Given the recent corruption issues involving California public officials, it is as important as ever to ensure that the Commissioners uphold the Commission's appearance of impartiality. It is even more important for the President of the Commission to show leadership and sensitivity to the appearance of prejudice. If President Sutton does not recuse himself from involvement in the drafting of AB 711 implementation regulations, his inappropriate dual-roles may violate the California Constitution and related statutes, but will also undermine the public's confidence in the Commission's impartiality and fairness in the regulatory process. NSSF and its members are deeply troubled and concerned about President Sutton's conflict of interest.

Again, we respectfully request that President Sutton recuse himself from involvement in the drafting of implementation regulations for AB 711. Thank you for your thorough examination of the concerns set forth in this letter. If I can provide any further information, do not hesitate to contact me.

Sincerely,



Ashlee N. Titus,
Attorney, National Shooting Sports Foundation

CC: Governor Jerry Brown
Attorney General Kamala Harris
Secretary John Laird, Resources Agency
Director Charles Bonham, Department of Fish and Wildlife
Sonke Mastrup, Executive Director, Fish & Game Commission