

STAFF SUMMARY FOR JUNE 22-23, 2016

4. DELEGATION OF COMMISSION PRESIDENT RESPONSIBILITIES**Today's Item**Information Action

Determine the process for which Commissioner should have authority to act in place of the President and take any action necessary to grant authority needed based on that determination.

Summary of Previous/Future Actions

- Voted to delegate specific authority Jul 19, 2010; Teleconference
- Voted to grant E. Sklar alternate authority as presiding Commissioner Dec 9-10, 2015; San Diego
- Voted to elect President and Vice-President Feb 10-11, 2016; Sacramento
- **Today's consideration of alternate Jun 22-23, 2016; Bakersfield**

Background

The Commission annually elects one Commissioner as President and one as Vice-president. Additionally, FGC has previously granted additional authority to other Commissioners in the absence of the president and vice-president (Exhibit 2).

President's responsibilities: The annual election confers upon the selected Commissioner the responsibility to preside over meetings of FGC and perform certain ministerial acts such as signing documents that reflect the results of FGC action.

Vice-president's responsibilities: The annual election confers upon the selected Commissioner responsibility in the absence of the President.

Other Commissioners' authority: Last Dec, FGC also granted Commissioner Sklar all the authority of the President in the absence of both the President and the Vice President.

The President serves on the Wildlife Conservation Board as directed by Fish and Game Code Section 1320. In the absence of any explicit delegation, FGC received legal advice from the Attorney General's office that the Vice-president can serve on the Board when the President is unavailable (Exhibit 1).

Recommendation

FGC staff: Consider whether additional authority should be granted, authority should be clarified, and whether any such grant should be memorialized in rule or policy.

Exhibits

1. [Informal Attorney General opinion, dated Jan 26, 1999 regarding the authority of the Vice-President](#)
2. [Commission meeting summary July 19, 2010](#)

Motion/Direction (N/A)

7.6 GL

From: "Randall Christison" <CHRISTR@hdcdojnet.state.ca.us>
To: DFG_HQ.HQ1 (RTREANOR, JSCHMIDT)
Date: 1/26/99 3:27pm
Subject: Ex Officio

Messrs. Schmidt and Treanor:

The question presented is whether the Vice-President of the Fish and Game Commission may serve in the stead of the President in his ex-officio position as member of the Wildlife Conservation Board, when the President is absent from the State of California.

The short answer is the Vice-President may sit in the place of the President whenever the latter is absent from the State.

Analysis:

F&GC sec 1320 provides that one of the members of the wildlife conservation board is the president of the Fish and Game Commission. The commission selects its own president and vice-president in a manner the commission deems appropriate. F&GC sec 102.

Government Code sec 7 provides that

"Whenever a power is granted to, or a duty is imposed upon, a public officer, the power may be exercised or the duty may be performed by a deputy of the officer or by a person authorized, pursuant to law, by the officer, unless this code expressly provides otherwise.

The designation of "a person authorized" may be in any form not otherwise prohibited, and the selection of a vice president is certainly a person authorized to act in place of a president. The conduct and organization of business of public bodies in the United States is pursuant to Robert's Rules of Order, which is in force except where the law otherwise provides. I am unaware of any rule which "otherwise provides" in the current situation. Robert's Rules (sec 46) explicitly provide that the vice-president shall succeed to the presidency on a temporary basis whenever the president is unable to perform the duties, whether due to absence or otherwise.

The Attorney General has previously stated that Gov C sec 7 is a rule of general application. With respect to the form of the designation of a replacement for a given officer, the Attorney General stated, "There is no requirement that there be any writing, or any other communication, in order to establish the authority of a deputy to sit in place of an ex-officio member. . . . The presence of an eligible deputy at a meeting in the absence of his principal is sufficient to confirm his right to participate in the meeting. Nothing more is required." 50 Op. A.G. 120, 123 (1967).

This rule, that an appropriate replacement may take the place of a designated officer carries out the long-standing public policy that the law shall be construed in such a way as to permit the public's business be done, and one should indulge in such inferences as are necessary as to promote the performance of public business with efficiency and dispatch.

Randall B. Christison
Deputy Attorney General

**State of California
FISH AND GAME COMMISSION**

Staff Summary, Teleconference Meeting of July 19, 2010

This is staff's best effort to summarize the actions of the meeting.
For more specific information go to www.Cal-span.org.

Pursuant to the call of the President, the Commission met by teleconference on July 19, 2010. The teleconference meeting originated at the Resources Building, 1416 Ninth Street, Room 1320, Sacramento, California. The meeting was audible to the public at the following additional locations: Department of Fish and Game, Santa Barbara Field Office and Laboratory, 1933 Cliff Dr., Suite 9, Santa Barbara, CA 93109; Department of Fish and Game, Inland Deserts Region, 3602 Inland Empire Boulevard, Suite C-220, Ontario, CA 91764; and Center for the Future of the Oceans Monterey Bay Aquarium, 99 Pacific Street, Suite 100A, Monterey, CA 93940. The teleconference meeting was called to order at 2:10 p.m. by President Kellogg.

FISH AND GAME COMMISSION

Jim Kellogg	President	Present at Sacramento location
Richard Rogers	Vice-President	Via Telephone from Santa Barbara
Michael Sutton	Member	Via Telephone from Monterey
Daniel Richards	Member	Via Telephone from Ontario (joined at 2:40 p.m.)
Don Benninghoven	Member	Via Telephone from Santa Barbara

Persons present:

COMMISSION STAFF

Jon K. Fischer	Acting Executive Director
Sherrie Fonbuena	Associate Governmental Program Analyst
Anita Biedermann	Associate Governmental Program Analyst
Carol Horn	Executive Assistant

OFFICE OF THE ATTORNEY GENERAL

Rick Thalhammer	Deputy Attorney General
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DEPARTMENT OF FISH AND GAME

Nancy Foley	Deputy Director, Law Enforcement Division
Lt. Mike Stefanak	Law Enforcement Division (Ontario Location)
Lt. Weston Boyle	Law Enforcement Division (Santa Barbara Location)
Warden Brian Huber	Law Enforcement Division (Santa Barbara Location)

The following persons were present and heard:

George Osborn	Partnership for Sustainable Oceans, California Association of Recreational Fishing and Coastside Fishing Club (Sacramento location)
Noelle Cremers	California Farm Bureau Federation (Sacramento location)
Paul Weakland	Commercial Fisherman (Santa Barbara location)

Anthony Canales

San Fernando Valley Chapter, National Rifle Association (Ontario location)

President Kellogg introduced members of the Commission, its staff, Directorate and Rick Thalhammer of the Attorney General's Office.

Item 2 was heard first and then the Commission held Executive Session.

1. ANNOUNCEMENT OF RESULTS FROM EXECUTIVE SESSION.

No public testimony.

The Commission delegated authorities and responsibilities to the Commission President, Vice President, Executive Director, Deputy Executive Directors as follows:

DELEGATION OF AUTHORITIES TO THE PRESIDENT.

MOVED BY D. BENNINGHOVEN, SECOND BY R. ROGERS, THAT THE FISH AND GAME COMMISSION HEREBY DELEGATES TO THE PRESIDENT OF THE COMMISSION THE AUTHORITY TO

- A. SIGN, ON BEHALF OF THE COMMISSION, REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**
- B. DELEGATE THE AUTHORITY TO SIGN REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION TO THE EXECUTIVE DIRECTOR, OR IN THE ABSENCE OF THE EXECUTIVE DIRECTOR, TO THE DEPUTY EXECUTIVE DIRECTOR-REGULATIONS AND POLICY, OR IN THE ABSENCE OF BOTH THE EXECUTIVE DIRECTOR AND THE DEPUTY EXECUTIVE DIRECTOR- REGULATIONS AND POLICY, TO THE DEPUTY EXECUTIVE DIRECTOR EXTERNAL AFFAIRS AND SPECIAL ADVISOR TO THE COMMISSION.**
- C. SIGN, ON BEHALF OF THE COMMISSION, DECISIONS REGARDING LICENSE AND PERMIT HEARINGS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**
- D. SIGN/CERTIFY TIME SHEETS AND TRAVEL-RELATED FORMS SUBMITTED BY THE EXECUTIVE DIRECTOR.**
- E. SIGN/CERTIFY TIME SHEETS AND TRAVEL-RELATED FORMS SUBMITTED BY THE COMMISSION'S DEPUTY EXECUTIVE DIRECTORS IN THE ABSENCE OF THE EXECUTIVE DIRECTOR.**

AYES: D. BENNINGHOVEN, J. KELLOGG, R. ROGERS, M. SUTTON.

ABSENT: D. RICHARDS.

PASSED UNANIMOUSLY.

DELEGATION OF AUTHORITIES TO VICE PRESIDENT.

MOVED BY R. ROGERS, SECOND BY D. BENNINGHOVEN, THAT THE FISH AND GAME COMMISSION HEREBY DELEGATES TO THE VICE PRESIDENT OF THE COMMISSION, IN THE ABSENCE OF THE PRESIDENT OF THE COMMISSION, THE AUTHORITY TO:

- A. SIGN, ON BEHALF OF THE COMMISSION, REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**

- B. DELEGATE THE AUTHORITY TO SIGN REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION TO THE EXECUTIVE DIRECTOR, OR IN THE ABSENCE OF THE EXECUTIVE DIRECTOR, TO THE DEPUTY EXECUTIVE DIRECTOR-REGULATIONS AND POLICY, OR IN THE ABSENCE OF BOTH THE EXECUTIVE DIRECTOR AND THE DEPUTY EXECUTIVE DIRECTOR- REGULATIONS AND POLICY, TO THE DEPUTY EXECUTIVE DIRECTOR EXTERNAL AFFAIRS AND SPECIAL ADVISOR TO THE COMMISSION.**
- C. SIGN, ON BEHALF OF THE COMMISSION, DECISIONS REGARDING LICENSE AND PERMIT HEARINGS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**
- D. SIGN/CERTIFY TIME SHEETS AND TRAVEL-RELATED FORMS SUBMITTED BY THE EXECUTIVE DIRECTOR.**
- E. SIGN/CERTIFY TIME SHEETS AND TRAVEL-RELATED FORMS SUBMITTED BY THE COMMISSION'S DEUPTY EXECUTIVE DIRECTORS IN THE ABSENCE OF THE EXECUTIVE DIRECTOR.**

AYES: D. BENNINGHOVEN, J. KELLOGG, R. ROGERS, M. SUTTON.

ABSENT: D. RICHARDS.

PASSED UNANIMOUSLY.

Delegation of Authorities to Executive Director.

MOVED BY M. SUTTON, SECOND BY D. BENNINGHOVEN, THAT THE FISH AND GAME COMMISSION HEREBY DELEGATES TO THE EXECUTIVE DIRECTOR OF THE COMMISSION THE AUTHORITY TO

- A. SIGN, ON BEHALF OF THE COMMISSION, REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**
- B. DELEGATE THE AUTHORITY TO SIGN REGULATORY DOCUMENTS MEMORIALIZING ACTION TAKEN BY THE COMMISSION TO THE DEPUTY EXECUTIVE DIRECTOR-REGULATIONS AND POLICY, OR IN THE ABSENCE OF BOTH THE EXECUTIVE DIRECTOR AND THE DEPUTY EXECUTIVE DIRECTOR- REGULATIONS AND POLICY, TO THE DEPUTY EXECUTIVE DIRECTOR EXTERNAL AFFAIRS AND SPECIAL ADVISOR TO THE COMMISSION.**
- C. SIGN, ON BEHALF OF THE COMMISSION, DECISIONS REGARDING LICENSE AND PERMIT HEARINGS MEMORIALIZING ACTION TAKEN BY THE COMMISSION.**
- D. SIGN/CERTIFY TIME SHEETS AND TRAVEL-RELATED FORMS SUBMITTED BY THE COMMISSIONERS.**

FURTHER, THE COMMISSION DIRECTS STAFF TO CONFORM THE EXECUTIVE DIRECTOR DUTY STATEMENT TO INCLUDE AUTHORIZATION TO CERTIFY COMMISSION ORDERS AND RULEMAKING FILES WITH THE OFFICE OF ADMINISTRATIVE LAW FOR INCLUSION IN THE CALIFORNIA CODE OF REGULATIONS.

AYES: D. BENNINGHOVEN, J. KELLOGG, R. ROGERS, M. SUTTON.

ABSENT: D. RICHARDS.

PASSED UNANIMOUSLY.

Delegation of Authorities to Deputy Executive Directors.

MOVED BY R. ROGERS, SECOND BY M. SUTTON, THAT THE FISH AND GAME COMMISSION HEREBY RATIFIES THE ACTION TAKEN BY PRESIDENT KELLOGG ON JULY 6, 2010, TO DELEGATE THE RESPONSIBILITIES AND AUTHORITIES OF THE EXECUTIVE DIRECTOR OF THE COMMISSION TO JON K. FISCHER, AND DIRECT THAT MR. FISCHER SERVE AS ACTING EXECUTIVE DIRECTOR UNTIL FURTHER NOTICE, AND FURTHER, THAT IN THE ABSENCE OF MR. FISCHER, THE COMMISSION DELGATES THE NON-SUPERVISORY RESPONSIBILITIES AND AUTHORITIES OF THE EXECUTIVE DIRECTOR TO ADRIANNA SHEA.

AYES: D. BENNINGHOVEN, J. KELLOGG, D. RICHARDS, R. ROGERS, M. SUTTON. PASSED UNANIMOUSLY.

The Commission outlined the procedures for conducting and executing the search for the replacement of its Executive Director as follows:

- Use of the Department's Human Resources Branch to perform the technical aspects of sending out a nationwide notice in search for applicants
 - Setting a 60 day period for applicants to submit their applications.
 - The Commission itself will do the entire screening. Each Commissioner will have the opportunity to review all the applications and then narrow those down to a smaller group that will be interviewed either by two Commissioners first in a larger group narrowing down to a smaller group that will be the entire Commission prior to final selection.
2. POSSIBLE ACTION ON STAFF RECOMMENDATION TO RESCHEDULE THE AUGUST 4-5, 2010 COMMISSION MEETING AS AN ABBREVIATED TELECONFERENCE MEETING FOR AUGUST 5, 2010.

Received staff recommendation. Received public testimony.

MOVED BY D. BENNINGHOVEN, SECOND BY M. SUTTON, TO RESCHEDULE ITS AUGUST 4-5, 2010, MEETING AS AN ABBREVIATED TELECONFERENCE MEETING FOR AUGUST 5, 2010.

AYES: D. BENNINGHOVEN, J. KELLOGG, R. ROGERS, M. SUTTON.

ABSENT: D. RICHARDS.

PASSED UNANIMOUSLY.

There being no further business, the Fish and Game Commission teleconference meeting recessed at 2:35 p.m. to reconvene in Executive Session.