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

RECEIVED
CALIFORNIA
FISH AND GAME
COMMISSION
2014 JUL 21 AM 6:51

July 18, 2014

VIA HAND DELIVERY

Commissioner Michael Sutton, President,
Commissioner Jack Baylis, Vice President.
Commissioner Jim Kellogg
Commissioner Richard B. Rogers
Commissioner Jacque Hostler-Carmesin
Executive Director Sonke Mastrup

Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814

RE: Wildlife Resources Committee

Dear Commissioners and Mr. Mastrup:

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 purpose of this letter is to address concerns of the NSSF regarding the transparency of the Wildlife Resources Committee ("WRC"). The policies and decisions of the California Fish and Game Commission ("Commission"), and the actions of the WRC have a direct and substantial, material impact on businesses of a significant number of our members, including those based in California.

Effective January 1, 2014, the California Fish and Game Code was amended by the Legislature to require the Commission to form a wildlife resources committee to make recommendations on all nonmarine resource matters considered by the Commission. (Fish and Game Code §106.) However, the Commission has not adopted rules of order and procedures for the WRC, and does not appear to adhere to existing statutory requirements.

Although the Commission apparently views the WRC as an "informal" committee, the Bagley-Keene Open Meeting Act ("the Bagley-Keene Act") covers all state bodies. (Gov. Code §§ 11120-111321.) If a body is created by statute, such as by a statute added to the Fish and Game Code, it is subject to the Bagley-Keene Act regardless of whether it is decision-making or advisory. (Gov. Code §11121(a); see also subdivision (c) which explicitly applies to certain advisory committees.) This requires the WRC to adhere to basic requirements involving notice, access to records, and the opportunity for public comment. This is to ensure transparency and accountability in the governmental process.

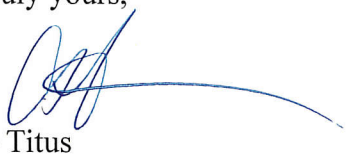
Pursuant to the Bagley-Keene Act, at least ten days prior to the WRC meetings, the WRC must prepare an agenda of all items to be discussed or acted upon at the meeting. (Gov. Code § 11125(b).) The notice must also state the time and the place of the meeting and give the name, phone number and address of a contact person who can answer questions about the meeting and the agenda. (Gov. Code § 11125(a).) Not only agendas, but also all other materials distributed to a majority of the WRC members, must be made available to the public without delay. (Gov. Code § 11125.1.) This includes all members of the public, and not just those that support the WRC's views on a recommendation. Further, all members of the public must be given the opportunity to comment and participate in the meetings of the WRC. (Gov. Code §11125.7.) NSSF respectfully requests that these requirements be strictly followed by the WRC.

As a separate issue, the WRC must ensure that it is working within the confines of its statutory authority. The Fish and Game Code provides that the WRC is only to make recommendations to the Commission. (Fish and Game Code §106.) A committee does not possess decision-making authority and is considered strictly advisory in nature if it is formed for the sole purpose of researching a topic and preparing a recommendation for submission to another governmental body that has final decision-making authority. (2 CCR § 18701.)

However, a committee is no longer considered to be strictly advisory if the committee members advise or make recommendations to the decionmaker either directly or without significant intervening substantive review by: (1) conducting research or making any investigation which requires the exercise of judgment on the part of the committee member for the purpose of influencing a governmental decision; or, (2) preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the committee member for the purpose of influencing a governmental decision. (2 CCR § 18702.2.) If the WRC members are to operate within their statutory authority as a strictly advisory body, the Commission must provide significant intervening substantive review for all recommendations made by the WRC, and must do so where the deliberations and determinations are open to the public – the Commission cannot simply rubberstamp a recommendation made by the WRC. Furthermore, in considering recommendations from the WRC, the Commission must adhere to the Administrative Procedures Act and Bagley-Keene Act.

NSSF has recently raised a series of concerns related to the impartiality and transparency of the Commission. The operation of the Wildlife Resources Committee reinforces NSSF's concerns about the ability of the current Commission to fairly and openly manage California's treasured wildlife. NSSF exhorts the Commission to examine its operational policies and its accessibility to all stakeholders.

Very truly yours,



Ashlee Titus
Attorney for National Shooting Sports Foundation

ANT/cfd

cc: Governor Jerry Brown, via Hand Delivery
Christopher Ames, Senior Assistant Attorney General (Ret.)
via email Christopher.Ames@doj.ca.gov