

**BOARD OF GAME AND INLAND FISHERIES MEETING MINUTES
4000 WEST BROAD STREET
RICHMOND, VIRGINIA**

OCTOBER 17, 2006, 9:00 a.m.

PRESENT: John W. Montgomery, Jr., Chairman, Sherry Smith Crumley, Vice Chairman, C. Marshall Davison, William T. Greer, Jr.(left after closed session during lunch), Richard E. Railey, Jr., C. T. Hill, Randy Kozuch (left at 12:45 p.m.), Charles S. Yates, James W. Hazel; **ABSENT:** Ward Burton and Thomas A. Stroup (schedule conflicts); **LEGAL COUNSEL:** Roger Chaffe, **INTERIM DIRECTOR,** Colonel W. Gerald Masssengill; **SENIOR STAFF:** Mike Bise, Raymond E. Davis, Bob Duncan, Gary Martel, Charlie Sledd and David Whitehurst

Chairman Montgomery called the meeting to order at 9:00 a.m. The Mission Statement was read into the record and Colonel Mike Bise led the Pledge of Allegiance to the Flag. A quorum was present.

Board members were advised that the meeting agenda had been revised and a copy was made available for reference. The revised agenda was also made available to the public.

David Whitehurst was introduced by Colonel Massengill, and the DVD/video, “Virginia’s Wildlife Action Plan” was shown. The video was developed to promote Virginia’s Wildlife Action Plan. Adrienne Young and Little Sadie were featured on the video. Ms. Young rewrote and re-recorded a previously released recording (*Hills and Hollows*) that served as the basis for the video that will be used to heighten awareness for the needs of wildlife and wildlife habitat, and to obtain funding to meet those needs. The video narrative was written by agency staff. Ms. Young donated her services and those of her band to the Department. All involved were commended for the quality of the video.

Following the video, Mr. Whitehurst introduced Ms. Young and presented her with a Willy Wilmouth original wood carving of a barn owl feather. The plaque read: “Friend of Wildlife Adrienne Young. With Deep appreciation and gratitude for your considerable contribution to the Virginia Department of Game and Inland Fisheries, the Virginia Wildlife Action Plan, and future generations of Virginians. Be Wild, Grow Wild and Live Wild.”

Ms. Young thanked the Board and read a passage from the manual of “The American Community Gardens Association”. She stated that she was honored to have had an opportunity to be a part of the production and to contribute to the preservation of wildlife habitat.

Ms. Young was thanked by Chairman Montgomery and Colonel Massengill for her significant contributions and for her willingness to share her time with the Board and the Agency.

At 9:30 a.m., Mr. Yates moved, seconded by Ms. Crumley, passed unanimously in a show of hands vote that the Board of Game and Inland Fisheries go into a closed meeting pursuant to § 2.2-3711.A.1 of the Code of Virginia for discussion or consideration of employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of the Department of Game and Inland Fisheries, specifically to finalize the selection of the Department's director. Ayes: Montgomery, Crumley, Davison, Greer, Railey, Hill, Kozuch, Yates, and Hazel

At 10:00 a.m., Mr. Yates certified, seconded by Mr. Hazel, passed unanimously in a show of hands vote, that whereas the Board of Game and Inland Fisheries had convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act, and whereas § 2.2-3712.D of the Code requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law; now, therefore, be it resolved that the Board of Game and Inland Fisheries hereby certifies that (i) to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed on considered by the Board. Ayes: Montgomery, Crumley, Davison, Greer, Railey, Hill, Kozuch, Yates, and Hazel

Dr. Greer moved, seconded by Mr. Hill, passed unanimously in a show of hands vote that the Board extend an offer of employment as Director to J. Carlton Courter, III, effective November 1, 2006, subject to negotiation before that date of a contract or terms acceptable to the Chairman and approved by legal counsel. Ayes: Montgomery, Crumley, Davison, Greer, Railey, Hill, Kozuch, Yates, and Hazel

Mr. Montgomery introduced Mr. Courter and stated that he is a Virginia native and an outdoorsman who has great relationships with constituent groups, and has a passion for the outdoors and wildlife.

Mr. Courter stated that he appreciates the opportunity to become a part of the Department. He added that he thoroughly enjoys the outdoors, and looks forward to working with the Board, agency employees, constituency groups and landowners.

Chairman Montgomery asked that the record reflect that Board Member Ward Burton participated in the announcement of the agency Director by telephone. He added that Mr. Burton and Mr. Stroup supported the decision to select Mr. Courter as the Department's Director.

Chairman Montgomery called for a break at 10:05 a.m. and the meeting reconvened at 10:35 a.m. During the break, the media was afforded the opportunity to interview Mr. Courter, Chairman Montgomery and Search Committee Chairman Billy Greer.

Public Comments, Non-Agenda Items: Chairman Montgomery provided an opportunity for members of the public to comment on non agenda items. Speakers representing groups were requested to limit their remarks to five minutes. Individuals were requested to limit remarks to three minutes.

Bobby Weagley, Providence Forge, Virginia, representing York River Working Waterman's Association. Mr. Weagley distributed a handout to Board members. (The recording secretary did not receive a copy for the record.) Mr. Weagley indicated that he is a member of the Virginia Marine Resources Commission's (VMRC) Finfish Management Advisory Committee, VMRC's Striped Bass Management Review Committee and is President of or a member of other watermen associations. He expressed concern for the Department's regulation that limits commercial fishermen to one blue catfish per day over 32 inches. He referenced state Code, § 28.2-101 that grants the authority to regulate commercial fishing to the fall line and questioned the Board's authority to enact the 32-inch blue catfish regulation.

G. C. Crump, Jr., New Kent, Virginia declined to speak when recognized. He indicated that the previous speaker had addressed his concerns.

John Wyatt, Chester, Virginia, President of the Independent Waterman's Association, also provided a handout to Board members (a copy of a photo of his father, a commercial fisherman). He questioned the Board's authority over commercial fishing, and stated that he felt the Board had exceeded its authority as allowed by the Code of Virginia. He stated that the blue catfish has harmed the state's estuaries and the fish within those estuaries. He feels that the blue catfish is negatively impacting the American shad, white perch and herring populations. State statute (§ 28.2-101) was cited, and Mr. Wyatt added that the Board of Game and Inland Fisheries has authority over game fish. VMRC had authority over all other marine fish.

Wilmer Stoneman, Richmond, Virginia, representing the Virginia Farm Bureau, commended the Board on the selection of Carlton Courter as the new agency director. He stated that Virginia Farm Bureau members remain committed to expanding and providing opportunities to hunters, but remain opposed to Sunday hunting. They remain committed to extended seasons and more opportunities for hunting. He added that the

Farm Bureau wishes to continue to work with the Board and expressed an interest in participating in any continued dialogue pertaining to Sunday hunting. He encouraged consideration for other user groups, i.e., the bird watchers and wildlife enthusiasts.

Dean Miller, Colonial Heights, Virginia raised a concern for the collection of funds by license agents for the Hunters for the Hungry program. He indicated that license agents are not reminding license buyers to contribute to the program and sportsmen are not volunteering to contribute. He felt that steps need to be taken to improve collection of these funds.

Mr. Miller also commended Colonel Massengill for his contributions to Virginia's sportsmen and the agency.

Ms. Crumley noted for the record, that she recently learned that families of those individuals serving in the armed forces are among the neediest.

Carroll Dickenson, Broadway, Virginia, representing the Shenandoah Valley Sportsmen Alliance expressed concern for the declining white-tail deer population in Rockingham County. He stated that he has been working with Department staff to identify the cause for the decline. He indicated they are being told that the decline is habitat related, and asked the Board, during the 2007 regulatory review, to consider restricting the doe harvest in the area of concern. He added that surrounding counties and areas adjacent to the Shenandoah National Park are not experiencing a similar population decline.

Mr. Dickenson indicated that the Alliance is hosting an event December 9 at the Broadway High School in Broadway, Virginia to raise funds to improve deer habitat.

Mr. Dickenson supported Mr. Courter's appointment as the Agency Director.

Kelly Place, representing Coastal Virginia Waterman's Association, Williamsburg, Virginia expressed concern for the impact the proposed King William Reservoir will have on displaced wildlife, wetlands and endangered species. He stated that the Reservoir will result in the largest loss of wetlands in the mid Atlantic region since 1972. He referenced issues associated with the King William Reservoir and its impact on American shad recruitment, especially during low water level months. Additionally, he expressed a concern for the potential of the introduction of methanol mercury into the food chain.

Recognition of Employees and Others: Former Congressman Howard Pollock was introduced. Representing the Shikar Safari Club International, Congressman Pollock recognized Game Wardens Hank Gardner (2005) and John Cobb (2006) as the Shikar Safari International Wildlife Officers of the Year. These officers received Wildlife

Officer of the Year pins, Certificates of Recognition and the Shikar Safari Wildlife Officer of the Year Plates. The officers were congratulated by staff and the Board.

Bob Duncan introduced, recognized and congratulated Steve Capel, Farm Wildlife Supervisor for being the recipient of The Wildlife Society's Jim McDonough Award at the Society's recent conference. Recipients of the Jim McDonough award must be a member of The Wildlife Society and have made significant contributions to the profession through the implementation of new approaches or techniques, must be active within the Society, particularly at the Chapter and Section level, and must be a certified wildlife biologist.

David Whitehurst introduced Phebe VanValen, representing the Richmond Audubon Society. Ms. VanValen indicated that former Delegate Wayne O'Bryan was recently recognized by Richmond Audubon for being the patron of the legislation that created the nongame tax check-off. Since it was founded 25 years ago, over \$8.5 million has been raised through the tax check-off, and the Department's nongame wildlife program has been the recipient of those funds. Ms. VanValen presented a plaque to David Whitehurst and the Department recognizing the nongame work that has been accomplished using these funds.

Meeting Minutes: The minutes of the August 21 and October 1, 2006 Board meetings have been posted on the Web, and copies were included in Board member's briefing materials. Chairman Montgomery called for any additions or corrections to the minutes. As there were none, **Mr. Railey moved, seconded by Mr. Davison, passed unanimously in a show of hands vote, to approve the minutes of the August 22 and October 1, 2006 Board meetings as written. Ayes: Railey, Davison, Crumley, Hill, Montgomery, Greer, Kozuch, Yates and Hazel.**

Committee Reports: Education, Planning and Outreach Committee: Ms. Crumley reported that the Education, Planning and Outreach Committee has not met since the August 22, 2006 Board meeting. The Committee plans to announce an evening meeting for November 14, 2006, and Mike Bise was asked to discuss game warden vacancies at that meeting.

Chairman Montgomery encouraged the public to attend and participate in the committee meetings.

Finance, Audit and Compliance Committee Meeting: Mr. Hill reported that the Finance, Audit and Compliance Committee met on September 19, 2006 at 7:00 p.m. The Committee reviewed a recently released report of the Joint Legislative Audit and Review Commission. The result of the Committee's discussion was that the Board, at the time, consulted legal counsel and found there was some confusion in state statute that was also

identified in the JLARC study. It was felt that the Board in May 2005, based on information available, took action felt to be appropriate regarding the former director. No further action is deemed needed by the Board or the Committee at this time. Further, the Committee agreed to consult with the Attorney General's Office prior to hiring the new director, and that action has occurred.

Mr. Hill reported that the Department underwent an audit by the Internal Compliance Oversight Committee and received a performance rating of good.

Vehicle pooling was discussed and a new policy was written to address this concern. A discussion was also conducted on sharing an internal auditor's function with other state agencies.

Additionally, the Committee heard a SPCC report and David Whitehurst presented an overview of the state's wildlife action plan and funding needs. A follow-up report will be heard by the Committee during the spring of 2007.

Virgil Kopf presented a quarterly financial report. First quarter revenue is up by \$2.6 million. License sales appear to be down by 3 to 5 percent.

The agency expenditures are approximately \$1 million behind budget, primarily due to personnel vacancies. There were 437 full time employees on the agency's last payroll, the lowest level since February 2005. Vacancies are more prevalent among the sworn offices. Our sworn officer employment level continues to decline. Additionally, the Department has delayed purchasing budgeted equipment until it is better able to project revenue. With the current revenue trend, the agency will begin to purchase budgeted equipment.

The Committee heard there the current game warden employment level is of concern. Staff is not sure that the Department's training academy will be able to meet the agency's training needs.

The December 2006 *Virginia Wildlife* magazine will feature an article on the sources and uses of the Department's revenue. This information will also be posted on the Web site.

The next meeting of the Finance, Audit and Compliance Committee is scheduled for November 14, 2006.

Search Committee: Dr. Greer reported that the Search Committee recruited nationwide for a director. He thanked committee members and the Board Secretary for their contributions to the effort that led to Mr. Courter's selection.

Wildlife and Boat Committee: Mr. Hazel reported that a meeting has not been held since August. Plans are underway for a meeting and potential agenda topics are being discussed.

Chairman Montgomery appointed Charles Yates to the Wildlife and Boat Committee. He accepted the assignment.

Regulation Proposals: Bob Duncan presented a new regulation proposal **4 VAC 15-20-210** to authorize the director to take measures to prevent, control or eradicate the spread of diseases in the Commonwealth whenever (i) a disease threatens wildlife, (ii) a disease in wildlife has implications for human, domestic or agricultural animal health, or (iii) a disease is confirmed in wildlife held in captivity that threatens wildlife, human, domestic or agricultural animal health. Legislation enacted during the 2006 General Assembly gave the Board, via regulation, the authority to respond to wildlife disease issues in consultation with the Virginia Farm Bureau, the Department of Health and the Virginia Department of Agriculture and Consumer Services.

Prior to a vote, Chairman Montgomery provided an opportunity for the public to comment on this regulation proposal, and there was none.

Note to the Minutes: Following the Board's action to approve this regulation proposal for advertisement, staff found a numbering error. A new number will be assigned to this regulation prior to it being presented to the Board for final action at the December 12, 2006 meeting.

Mr. Hazel moved approval, seconded by Mr. Hill, passed unanimously in a show of hands vote, to advertise a new regulation proposal for public comment that will give the Director, via regulation, the authority to respond to wildlife disease issues. Ayes: Hazel, Hill, Davison, Greer, Montgomery, Railey, Crumley, Kozuch, and Yates

Gary Martel was recognized. Mr. Martel provided clarification on topics presented by speakers during the Public Comment, Non Agenda Items discussion. He noted that the Board adopted a regulation during its normal regulatory review cycle that limits the creel of catfish to one fish over 32 inches per day. That regulation was enacted in a public forum and was the result of input heard from recreational fishermen and was coordinated with staff at VMRC and the State Department of Health. A health advisory recommends no consumption of catfish over 32 inches taken from the James River. There was no objection to the regulation at the time of its enactment.

Mr. Martel also noted for the record that counsel has been consulted pertaining to jurisdiction. He stated that the Department and the Board do not regulate the commercial fishery, but it does regulate freshwater fish. A regulation established by the Board affecting creel of catfish, affects the commercial and recreational fishery. Although we do not regulate commercial fishing, we choose to allow VMRC to regulate the commercial harvest of certain freshwater fish. VMRC's jurisdiction is over marine finfish. Legal counsel concurred with this statement.

Mr. Martel presented an amendment to **4 VAC 15-320-40** to add yellow perch, white perch, gizzard shad, carp, and gar to the list of freshwater fish that can be harvested from below the fall line in all tidal rivers of the Chesapeake Bay and subsequently sold commercially in accordance with the Virginia Marine Resources Commission commercial fishing regulations, and size and harvest limits set by the Virginia Department of Game and Inland Fisheries.

Amend **4 VAC 15-360-10** to make it legal to take gizzard shad and white perch from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net, in accordance with Virginia Marine Resources Commission recreational gill net regulations, and size and harvest limits set by the Virginia Department of Game and Inland Fisheries.

An opportunity was provided for the public to comment on these regulation proposals.

Kelly Place, Williamsburg, Virginia declined to speak when recognized.

William Ernestes, King William, Virginia representing the **Virginia Catfish Association** supported the 32-inch catfish regulation. He also spoke in support of the proposed fisheries regulation amendments.

Warren Cosby, New Kent, Virginia, stated that the Mississippi catfish was stocked into Virginia's public waters in 1972 by the Department. He stated that the Mississippi catfish is a non-native species that is a voracious feeder and is detrimental to other species. He asked the Board why a creel limit is enforced on the blue catfish.

Melvin Jack, West Point, Virginia felt that the blue catfish is too prevalent. He does not support a size and creel limit on this species.

Stanley Oliff, Rappahannock River Waterman, concurred that the blue catfish is too prevalent and has depleted other populations.

Ms. Crumley moved approval, seconded by Mr. Davison, passed unanimously in a show of hands vote, to advertise for public comment the proposed amendments to 4 VAC 15-320-40 and 4 VAC 15-360-10. Ayes: Crumley, Davison, Montgomery, Greer, Railey, Hill, Kozuch, Yates and Hazel

Chairman's Remarks: Mr. Montgomery noted for the record that concerns have been raised regarding the Board's authority to protect personal constituent information requested under the Virginia Freedom of Information Act. He asked the Finance, Audit and Compliance Committee to consider this topic further and to present a recommendation to the Board at a future meeting.

Mr. Montgomery reported that he and agency staff attended the recent Governor's Environmental Leadership Summit.

Colonel Massengill was requested to attend the December 12, 2006 Board meeting to be appropriately recognized for his accomplishments while serving as the agency's Interim Director.

Director's Report: David Whitehurst presented an update on the Information and Education Unit. The assistant division director's position has been advertised and interviews will be scheduled soon.

The Department's Annual Report will be placed on the Web.

The Unit will go forward with the electronic newsletter. David Coffman will head the effort, assisted by Julia Dixon, Lee Walker, Ron Messina, Mel White and the new Regional Law Enforcement Lieutenants. The first edition is planned for mid-November.

The Unit continues to consider the implementation of video streaming. The effort will cost approximately \$30,000 and staff is looking for potential partners to share the costs.

The Information and Education Unit is planning a strategic planning retreat. Additionally, they continue to discuss a speaker's presentation to be used by Board members and staff.

Wildlife Diversity staff have met with the Secretary of Natural Resources on the Wildlife Action Plan and the Becoming and Outdoor Woman (BOW) Program. They would like to schedule a BOW program for the Natural Resources Secretariat next year.

The audio of the August 22, 2006 Board meeting has been placed on the Department's Web site. Audio of the October 17, 2006 meeting will also be placed on the Web. Provisions will be made for verbatim transcription to meet needs of the hearing impaired.

Colonel Massengill stated for the record that an article was recently featured in the *Richmond Times Dispatch* on Mike Hull's tracking expertise. Also, Bob Duncan discussed Sunday hunting on an early morning radio program.

Mike Bise discussed a proposal for the Department's Law Enforcement Division to pursue state accreditation through an application to the Department of Criminal Justice Services. Costs will be minimal and if the project does not measure up to expectations, it will be discontinued.

The Board did not object to the proposal as presented.

Colonel Massengill reported that the Frey Property in Madison County was donated to the Wildlife Foundation of Virginia and subsequently gifted to the Department. The Foundation has requested a reversion clause in the deed to insure future public access to this property. If the property is closed to public access, the Foundation is requesting that it revert back to the Foundation.

Legal counsel has been consulted and no problems have been identified if the reversion clause is included in the deed. Colonel Massengill asked, and the Board did not express any objection to the Department proceeding with the deed, to include the reversion clause.

Colonel Massengill provided a briefing on the Department's wildlife rehabilitators' program and those individuals that have been issued permits to rehabilitate wildlife. Issues have been identified with the program and the administrative procedures, and staff has been requested to continue to work on the process. This program will be discussed at a future Wildlife and Boat Committee meeting.

Steve Kesler, Boating Access Program Manager has been requested to serve on the Executive Board of the State Organization for Boating Access Program.

Colonel Massengill reported that he and Bob Duncan recently met with staff at Fort Pickett to discuss game management issues on the military installation. We have pledged to work with them to the extent possible.

Colonel Massengill noted for the record that copies of the Board briefing materials were made available for review by the public and press. He asked for feedback from the users on the effectiveness of this practice.

For the record, Chairman Montgomery indicated that the Board would break for lunch, and during the lunch break, it planned to convene a closed session to discuss land issues. One of the topics of discussion involved a client of Mr. Montgomery's. The briefing materials on this issue were not shared with Mr. Montgomery. He indicated that he would not participate in that discussion, and for the record, he did leave the room prior to the discussion.

He encouraged Board members to enroll in the electronic data interchange program to enable the Department to directly deposit travel reimbursements into the account of preference.

At 12:45 p.m., Dr. Greer moved, seconded by Ms. Crumley, passed unanimously in a show of hands vote, that the Board go into a closed session pursuant to § 2.2-3711.A.3 of the Code of Virginia for discussion or consideration of the acquisition of real property for a public purpose or of the disposition of publicly held real property with respect to a property acquisition in the County of York and a property acquisition in the City of Petersburg. Ayes: Crumley, Greer, Davison, Montgomery, Railey, Hill, Kozuch, Yates and Hazel

In open session at 1:59 p.m., Mr. Davison certified, seconded by Mr. Railey, passed unanimously in a show of hands vote, that whereas the Board of Game and Inland Fisheries had convened a closed meeting on this date pursuant to an affirmative

recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act, and whereas § 2.2-3712.D of the Code requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law; now, therefore, be it resolved that the Board of Game and Inland Fisheries hereby certifies that (i) to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed on considered by the Board. Ayes: Davison, Railey, Crumley, Montgomery, Hill, Yates and Hazel

Mr. Yates moved, seconded by Mr. Hill, passed unanimously in a show of hand vote, that the Board authorize the Director to proceed to acquire approximately 655 acres of land in York County, Virginia and such acquisition shall be according to applicable state procedures. Ayes: Yates, Hill, Montgomery, Railey, Davison, Crumley and Hazel

Upon determining that it was the decision of the Board to proceed with the land acquisition in the Cities of Petersburg and Colonel Heights, Chairman Montgomery asked Vice Chairman Crumley to conduct the meeting.

Vice Chairman Crumley called for a motion. **Mr. Hill moved, seconded by Mr. Hazel, passed unanimously in a show of hands vote, that the Board authorize the Director to proceed to acquire approximately 1.89 acres of land in the Cities of Petersburg and Colonial Heights, Virginia and such acquisition shall be according to applicable state procedures. Ayes: Hill, Hazel, Davison, Railey, Crumley and Yates; Not voting and participating: Montgomery)**

Chairman Montgomery announced that the next scheduled meeting of the Board is December 12, 2006.

Board members were reminded to update their Board Policy manuals with the provided materials.

Adjournment: As there was no further business, the meeting was adjourned by the Chairman at 2:05 p.m.

Respectfully submitted,

Belle Harding
Board Secretary

