

*State of New Mexico*  
*Commissioner of Public Lands*

310 Old Santa Fe Trail, P.O. Box 1148 Santa Fe, New Mexico 87504-1148

**STATE GAME COMMISSION EASEMENT**

THIS EASEMENT, made and entered into this 10<sup>th</sup> day of December, 2013 by and between the Commissioner of Public Lands ("Commissioner") and the New Mexico State Game Commission ("State Game Commission"), (collectively, the "parties"),

WITNESSETH: That the Commissioner, by virtue of the authority vested in him by the Constitution and Statutes of New Mexico, for and in consideration of the terms, covenants, conditions and rentals hereinafter set out, hereby grants to the State Game Commission an easement upon those state trust lands described in Paragraph 2 below. The grant of this easement is made upon the following terms and conditions and,

**THE PARTIES HEREBY AGREE THAT:**

1. **PURPOSE.** The purpose of this Easement is to provide entry upon and through certain state trust lands to authorized hunters, anglers and trappers for the regulated harvest of protected species as defined by Chapter 17 of the NMSA and State Game Commission regulations. Such entry will improve the ecological health of state trust land by providing for the management of fish and wildlife using professional techniques. The State Game Commission, through its Department of Game and Fish ("Department") will, to the extent authorized by law, cooperate with the Commissioner by employing the police powers of the Department to seek to prevent waste and trespass on the state trust lands.
2. **LANDS SUBJECT TO EASEMENT.** The state trust lands subject to the Easement granted herein ("Easement Lands") are depicted on Exhibit A, attached hereto, and are comprised of those lands identified in the surface tract books of the State Land Office as being in the Commissioner's care, custody and control and not subject to withdrawal from this Easement pursuant to Paragraph 6 below and agreed by the parties as useable for the purposes of this Easement. The parties agree that any lands covered by this Easement are usable if the licensee has the ability to gain entry upon them by legal means. The parties agree that Exhibit A and any amendments thereto shall be available on each party's web-site within thirty (30) days of the effective date of this agreement and within fifteen (15) days of the effective date of any amendment.
3. **TERM.** Upon its execution by the Commissioner and the State Game Commission, this Easement shall become effective as of April 1, 2014 and remain effective until March 31, 2015, unless terminated earlier pursuant to Paragraph 8 below or by written agreement of the parties.

4. PERMITTED USES.

a. USES: The Easement Lands shall be used only to effect the Easement's purpose, identified in Paragraph 1 above, for the hunting, fishing, and trapping of protected species of fish and wildlife during the open seasons for such species and the scouting for big game species and turkeys during the seven (7) days immediately prior to open season by persons holding valid licenses or permits issued by the State Game Commission, and law enforcement and data collection activities by the Department and its employees. Unprotected species may also be taken on Easement Lands by persons holding valid hunting or trapping licenses for protected species on those lands during the period of the taking. Over the next 6-12 months the State Land Office will work with the Department of Game and Fish, State Land Office advisory groups, and other interested parties to evaluate and develop strategies for the Department to comprehensively manage wildlife on State Trust Lands. No other uses shall be allowed pursuant to this Easement.

b. LIMITATIONS:

(i) This grant is subject to the rules and regulations of both the State Game Commission and State Land Office.

(ii) It is expressly understood and agreed by the parties that the rights granted herein shall not be exercised in a manner that materially interferes with other authorized uses or valid existing rights to which the Easement Lands are subject, such as business or agricultural leases or rights-of-way, or that prevent or limit the Commissioner's exercise of his constitutional, statutory or regulatory responsibilities. It is also expressly understood and agreed by the parties that the rights exercised by the State Game Commission in conformity with Chapter 17 of the NMSA and the State Game Commission regulations shall not be deemed to interfere or conflict with other uses or existing rights or limit or prevent the Commissioner's exercise of his constitutional, statutory or regulatory responsibilities. Department employees may collect fish and wildlife population and habitat data on Easement Lands to determine status, trend and ecological factors affecting populations, so long as such studies do not involve ground-disturbing activities. Department employees shall coordinate data collection activities with the Commissioner and surface lessees, except when site specific circumstances make coordination impractical. If requested, data will be provided to the Commissioner as its collection is finalized by the Department. Contact persons for exchange and discussion regarding provided data are:

Commissioner: Assistant Commissioner Field Operations (827-5768)

Department of Game and Fish: Chief, Wildlife Management Division  
(476-8038)

5. CONSIDERATION. The Game Commission shall pay rental to the Commissioner in the sum of \$200,000 for the months of April 2014 through March 2015. In further consideration for permitted uses granted by this Easement, the State Game Commission shall provide wildlife management services to the Commissioner for the

conservation of fish and wildlife populations on state trust land, advice concerning improvement of the ecological health of the state trust land, and consultation concerning the establishment of common management goals. These services shall include, but not be limited to providing:

- a) technical assistance in managing wildlife and habitat on state trust land consistent with the parties' mutual goals;
- b) data regarding wildlife populations and other physical attributes, to be provided in a medium agreed upon by the parties;
- c) description of the data in accordance with existing policies and procedures;
- d) technical assistance in the use of said data;
- e) other relevant data and applications agreed on by the parties, as allowed by law;
- f) reports describing the status, trend and environmental factors affecting wildlife populations on state trust land when that information includes data collected on state trust land.

6. **ADDITION *or* WITHDRAWAL OF LANDS.** The Commissioner may at any time add or withdraw land from this Easement grant if he determines doing so would be in the best interests of the state trust. If the Commissioner adds or withdraws land, the Department shall be notified of such and provided with an amended map of Exhibit A which shall be available on both websites pursuant to section 5 above. If withdrawal of acreage results in non-accessibility to adjacent public lands, the provisions of the withdrawal will, where feasible and at the Commissioner's discretion, maintain access across the withdrawn acreage to those adjacent public lands.
7. **SURFACE USE AGREEMENTS.** Both parties shall meet prior to March 1, 2014 to develop potential unitization opportunities that facilitate public hunting, fishing, or trapping while reducing confusion, trespass potential, and lessee concerns. Draft unitization recommendations shall be posted on both parties' web-sites for public review and comment, and any final unitization(s) shall be incorporated into Exhibit A by means of amendment to Exhibit A.
8. **CANCELLATION.** If the State Game Commission fails to timely pay the annual rental when due or materially violates any of the terms, covenants or conditions contained herein, the Commissioner can cancel this Easement after thirty (30) days written notice to the State Game Commission of the nature of such violation(s). The thirty-day period shall commence on the date the written notice is mailed by registered mail, or hand-delivered. The Commissioner may cancel the Easement thirty days following the delivery of the notice if the State Game Commission has not cured the default in the manner discussed below. Such cancellation shall terminate all rights held by the State Game Commission in the Easement Lands. If, however, within the thirty-day notice period, the State Game Commission substantially complies with all demands made by the Commissioner in the notice, or if substantial completion is not reasonably possible, cancellation for other than the payment of

money shall not be made if the State Game Commission has initiated cure by that date and reasonably pursues completion. If the default (other than the payment of money) is not cured within a commercially reasonable period of time following commencement of cure (but in no event less than thirty (30) days after written notice to the State Game Commission), this Easement and all rights associated with it shall terminate without further notice. If a default can be cured only by monetary payment, said monies must be received by the Commissioner in full within sixty (60) days of the date of the notice, or the Easement and all rights associated with it shall terminate without further notice. Interest shall accrue on monies owed at the rate of one percent (1%) per month, pursuant to NMSA 1978, 19-1-3 (1953).

9. ACCESS. This Easement does not grant a right of entry upon lands not under the control and custody of the Commissioner. If Easement Lands are fenced and no gate exists to provide vehicle access to them from an immediately adjacent public highway or road, access shall be limited to travel by foot. If multiple vehicular access points are available to Easement Lands that are subject to other Easements or rights from the Commissioner, then the Department, in consultation with the State Land Office's lessee or other entitled party and a State Land Office representative, shall designate one or more points that provide reasonable access while minimizing adverse impact to the lands or portions of land subject to Easements or rights of such other party. For purposes of this Easement, the definitions of "established roads" and "public highways" or "public roads" include:

- a. definitions provided for such terms by section 67-2-1 NMSA 1978; and
- b. roads built and/or maintained on public land by equipment which show no evidence of being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures. Such roads must reasonably indicate recent (i.e., within a prior period), continuous usage or consistent usage during prior periods open for hunting, fishing or trapping on public land. In addition, observable two-track roads are included. A two-track road is defined as one which shows use prior to hunting seasons for other purposes, such as recreation, mining, logging and ranching or shows no evidence of being closed to vehicular traffic by such means as berms, reseeding, gating, fencing or signing.

10. VEHICLE AND OHV USE. Vehicles of any kind, including but not limited to Off-Highway Vehicles, are restricted to public roads or highways, or established roads as defined in Paragraph 9 above. There will be no off-road vehicle access to retrieve game. Certified Mobility Impaired Hunters may drive vehicles off established roads only if they have obtained prior authorization by the Department to do so.

11. CAMPING. In areas where camping is a practical necessity for the exercise of this Easement for licensees of the State Game Commission, camping may be permitted by and at the discretion of the Commissioner in consultation with the Director of the Department of Game & Fish and the surface lessee. In areas where camping is not a practical necessity for the exercise of this Easement, camping may be permitted by the surface lessee. Whether camping is a practical necessity shall be within the sole and exclusive discretion of the Commissioner. Notwithstanding the above, camping or parking a trailer or motor vehicle, within three hundred (300) yards of a man made

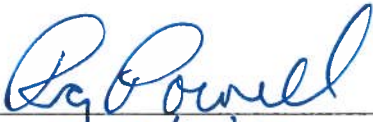


water hole, water well or watering tank is prohibited without the prior express consent of the Commissioner or the surface lessee.

12. **GROUND BLINDS.** Attaching any ground blind to, or physically using water wells, metal, plastic, fiberglass, or rubber water tanks or windmills to establish blinds is prohibited without the prior express consent of the surface lessee.
13. **ACCOMPANIMENT.** Up to three (3) guests may accompany each licensed hunter, angler or trapper, including but not limited to scouting.
14. **REASONABLE RESTRICTIONS.** After consulting with each other, the parties may agree to place reasonable restrictions upon entry to or use of lands covered by this Easement. Any agreed upon restrictions shall be attached hereto as an amendment to this Easement and available on both parties' websites.
15. **APPROPRIATION.** The performance of this Agreement is subject to the condition that funds are appropriated, and allocated by the Legislature of the State of New Mexico or federal government. If sufficient appropriations are not made, this Agreement may be terminated by the State Game Commission. The State Game Commission's determination as to whether sufficient appropriations are available shall be accepted by the Commissioner and shall be final.
16. **NOTICE.** The State Game Commission agrees to notify its agents, employees, licensees and permittees of the rights granted herein and the obligations to the Commissioner and other authorized users of Easement Lands that the State Game Commission, its agents, employees, licensees, and permittees hereby assume. The State Game Commission also agrees to inform sportsmen, via the Department website and other means of communication, that commercial activity that are contemplated on state trust lands require securing a lease for such purposes from the state land office prior to conducting the activity.
17. **COORDINATED RESOURCE MANAGEMENT.** In order to promote a coordinated and cooperative approach to the administration of this Easement and its impact on state trust lands, the parties shall meet periodically during the term of the Easement to discuss all aspects of the Easement's administration, including such issues as each party's rights and obligations under the Easement, wildlife management and population objectives, land resource conditions, conflict resolution and efforts to inform the general public about the Easement. The parties shall meet at least once each year or when requested by either party.
18. **AMENDMENT.** This agreement shall only be amended by mutual consent of the parties in writing.
19. **ENFORCEMENT; NO INDIVIDUAL RIGHTS CREATED.** Only the parties to this Easement have standing to enforce it. It does not confer individual legal rights (including those of a third party beneficiary) on persons who hold licenses or permits from the State Game Commission, or on any other individuals, corporations or other entities.

20. ENTIRE AGREEMENT; SEVERABILITY; GOVERNING LAW. This Easement represents the entire agreement of the parties with respect to the subject matter hereof, any previous oral or written agreement inconsistent with the terms of this Easement notwithstanding. If any part of this Easement should be found by a court of competent jurisdiction to be unenforceable, the remainder of this agreement shall remain in full force and effect. This Easement shall be applied and interpreted under the laws of New Mexico.
21. COOPERATION. The parties shall attempt to resolve at the local level all conflicts or other issues, including access. The local District Resource Manager on behalf of the Commissioner and a local Conservation Officer on behalf of the Department shall meet to attempt to resolve such issues. If a State Trust Lands lessee or their agent has wrongfully denied access to or upon Easement Lands to an authorized State Game Commission licensee, the local District Resource Manager, on behalf of the Commissioner, may authorize the local Conservation Officer, as the agent of the Commissioner, to provide access by cutting the chain, cable or lock or removing any berms, blockages, fences or other barriers on Easement Lands preventing access. The Commissioner shall use all reasonable actions to ensure that State Trust Land lessees or permittees do not impede or interfere with authorized access to the Easement Lands by the Department or licensees of the State Game Commission.

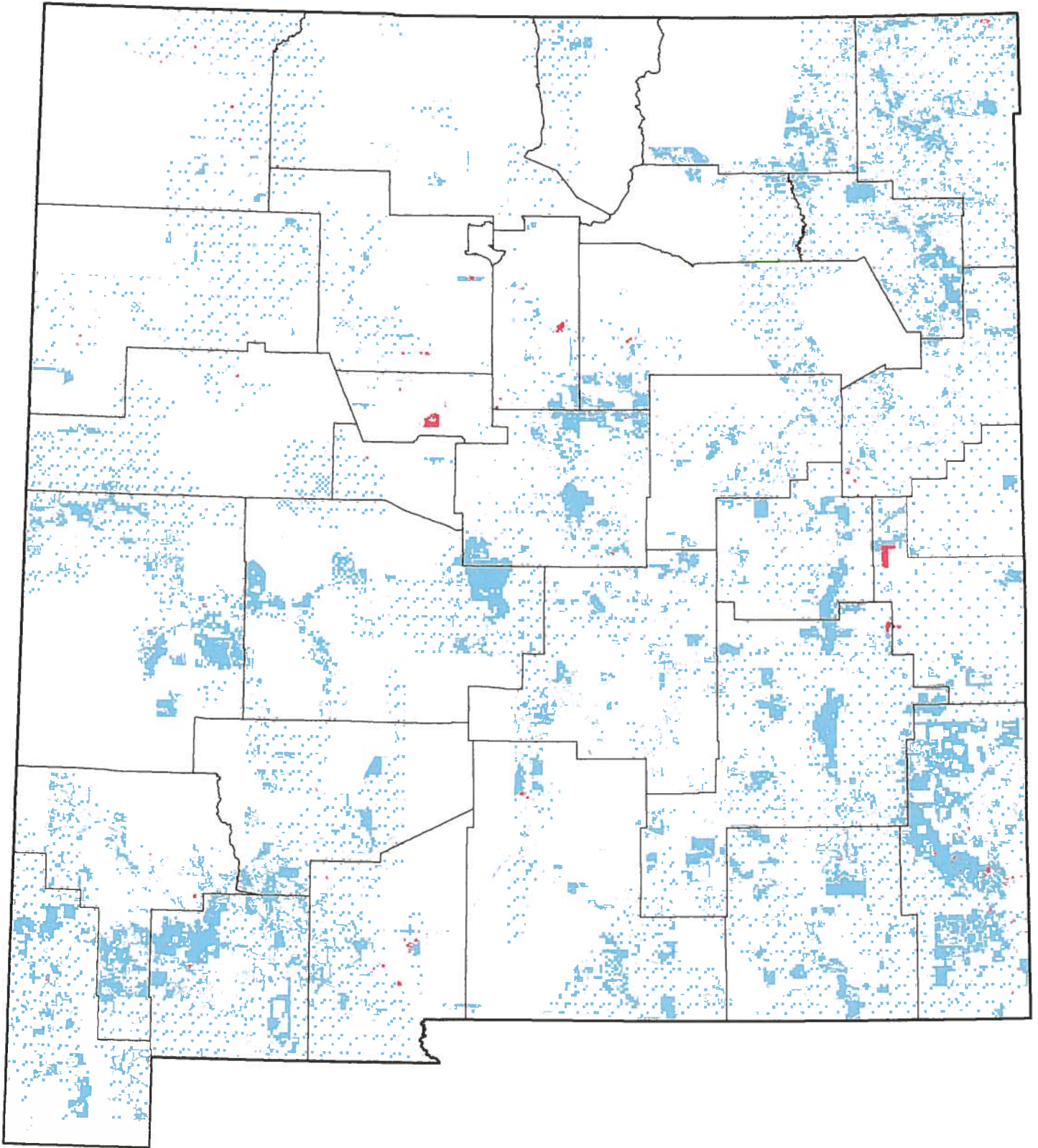
RAY POWELL, M.S., D.V.M.  
COMMISSIONER OF PUBLIC  
LANDS



  
Date: 12/10/13

R.J. KIRKPATRICK  
INTERIM DIRECTOR and SECRETARY TO  
THE STATE GAME COMMISSION

  
Date: 12/10/13

Exhibit A  
State Game Commission Easement



-  New Mexico State Trust Lands Open to Sportsmen Access Under State Game Commission Easement
-  New Mexico State Trust Lands Withdrawn from Sportsmen Access Under State Game Commission Easement