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California Fish and Game Commission
c/o Executive Director Sonke Mastrup
P.O. Box 944209
Sacramento, CA 94244-2090

VIA ELECTRONIC MAIL: fgc@fgc.ca.gov

**Re: Petition for the Adoption of a Regulation Requiring Correspondence About
Official Fish & Game Commission Matters to Be Conducted Via
Government Issued Means**

Mr. Mastrup:

This Petition is submitted on behalf of our clients, the National Rifle Association of America ("NRA") and California Rifle and Pistol Association ("CRPA") pursuant to Government Code sections 11340.6 and 11340.7.

I. REQUESTED ACTION

The Petitioners hereby request that the California Fish and Game Commission ("FGC") propose and adopt regulations requiring Department of Fish & Wildlife ("FWD") personnel, FGC Commissioners, and the staffers, agents, employees, and others assisting them with official Commission business, to conduct all government business in a way that maximizes public transparency and discourages the exclusion of any stakeholder group from being fully informed about the regulatory process. Toward this end, the FGC should mandate that all electronic correspondence concerning official Commission matters be conducted through government issued electronic-mail (i.e., e-mail) accounts that are stored on government owned servers, cloud data networks, or other electronic data storage mechanisms.

Use of personal email accounts for transmitting communications relating to any government business should be prohibited. The use of text messaging and other technologies that don't create a record should also be prohibited or discouraged.

Alternatively, should the FGC not wish to adopt this measure as a regulation, Petitioners request that FGC nevertheless adopt it as official policy of the Commission.

II. STANDING OF PETITIONERS

Petitioner NRA is an Internal Revenue Code § 501(c)(4) nonprofit corporation, incorporated in the State of New York in 1871, with principal offices and place of business in Fairfax, Virginia. NRA has approximately five million members, including hundreds of thousands of members who reside in California.

The founders of NRA desired to create an organization dedicated to marksmanship, or, in the parlance of the time, to “promote and encourage rifle shooting on a scientific basis.” NRA’s bylaws, at Article II, Section 5, state that one of the purposes of NRA is “[t]o promote hunter safety, and to promote and to defend hunting as a shooting sport and as a viable and necessary method of fostering the propagation, growth, conservation, and wise use of our renewable wildlife resources.”

Petitioner CRPA is a nonprofit membership organization classified under section 501(c)(4) of the Internal Revenue Code and incorporated under the laws of California, with headquarters in Fullerton, California. Founded in 1875, the CRPA works to preserve the constitutional and statutory rights of gun ownership for its members, including the right to hunt. CRPA regularly participates in Fish and Game Commission matters on behalf of its tens of thousands of California resident members.

Based on the foregoing, the petitioners have standing to make the requested regulatory changes.

III. JUSTIFICATION FOR REQUESTED ACTION

a. **The Commission Should Establish a Regulation Governing Communications of Official Matters that Promotes Government Transparency and Accountability**

The California Constitution provides that “[t]he people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and *the writings of public officials and agencies shall be open to public scrutiny.*” (Cal. Const., art. I, § 3(b)(1).)¹ Current law, however, does not specifically address the propriety of FGC Commissioners using their personal communications technologies means, such as e-mails, texts, and servers, to conduct public business.

A regulation prohibiting Commissioners and their employees and agents from conducting public business via private or secret or non-public means is necessary to optimally provide transparency, open-government access, and accountability to facilitate CPRA requests, and to promote public understanding, participation, and confidence in the FGC and in its practices and procedures in matters deserving of public review.

¹The California Public Records Act (Gov. Code, § 6250 et seq.) (“CPRA”) provides that “public records’ include any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Gov. Code, § 6252(e).)

Such a regulation also furthers the principles articulated in Fish and Game Code section 107 that the FGC is legally obligated to adhere to. Relevant here are subdivisions: (b) stating "the commissioner shall conduct his or her affairs in the public's best interest;" (c) stating the "commissioner shall conduct his or her affairs in an open, objective, and impartial manner, free of undue influence, and the abuse of power and authority;" (d) stating FGC's programs "require public awareness, understanding, and support of, and participation and confidence in, the commission and its practices and procedures;" and (e) stating "the commissioner shall preserve the public's welfare and the integrity of the commission, and act to maintain the public's trust in the commission and the implementation of its regulations and policies."

With the public's increased and increasing skepticism of government officials who are using none traceable technologies and private e-mail accounts, the appearance of a conflict of interest that this creates, the distrust in government that these practices encourage, the diversity of views stakeholders the FGC should take all steps available to show by its actions and regulations that it is dedicated to being transparent beyond what current statutory law requires. This is especially critical for a body like the FGC whose actions directly and significantly impact stakeholders with a large diversity of views. Adoption of the proposed regulation is a small but significant step towards achieving just that.

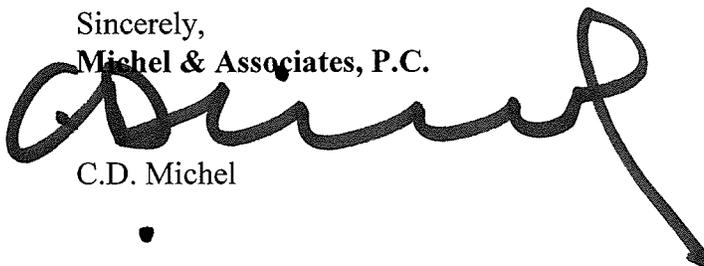
IV. THE COMMISSION HAS THE LEGAL AUTHORITY TO TAKE THE REQUESTED ACTION

Pursuant to section 108 of the California Fish and Game Code, the FGC must "adopt rules to govern the business practices and processes" of the FGC. Further, as discussed above, section 107 requires that the Commission maintain the public trust in implementing its regulations and policies. Thus, the regulation Petitioners propose is clearly within the FGC's regulatory authority.

V. CONCLUSION

For the above stated reasons, the FGC should accept this Petition and open the rulemaking process for a regulations that require electronic correspondence by Commissioners or their agents or employee about any official Commission matter to be conducted through government issued electronic-mail accounts that are hosted on government owned servers and that discourages the adoption or use of any technology or practice that serves to avoid creating a record that can be viewed by the public. Alternatively, the FGC should adopt this as an official policy, if not a regulation. Either way, this should be the standard operating procedure for the FGC.

Sincerely,
Michel & Associates, P.C.



C.D. Michel

CDM/sab