

IN COURT OF APPEALS

Center for Biological Diversity, Howling
for Wolves.

VS.

Minnesota Department of Natural Resources, and Tom Landwehr, in his official capacity as the Commissioner of the Minnesota Department of Natural Resources,

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

1. I am the season setting/furbearer specialist of the Section of Wildlife Management for the Minnesota Department of Natural Resources (“DNR”). My office is at 500 Lafayette Road, St. Paul, Minnesota 55155. I have been employed by the DNR since 1996 and have been the season setting/furbearer specialist since 2007. I have coordinated more than 75 expedited emergency rules using the process described in *Minnesota Statutes*, section 84.027, subdivision 13(b).

2. I have reviewed the materials submitted by the Petitioners in the above-captioned action and have the following comments regarding a number of the assertions related to the DNR's use of the expedited emergency rules process as outlined in *Minnesota Statutes*, section 84.027, subdivision 13(b).

3. The Petitioners assert that no conditions exist that prevented the DNR from adopting wolf season rules under *Minnesota Statutes*, sections 97A.0451 to 97A.0459. Therefore, Petitioners argue, the DNR incorrectly adopted wolf season rules using the expedited emergency process provided in *Minnesota Statutes*, section 84.027, subdivision 13(b). To the contrary, the following conditions exist that do not allow the DNR to adopt wolf season rules under the emergency rules process set forth in *Minnesota Statutes*, sections 97A.0451 to 97A.0459.

4. The total effective period of the emergency rule is limited to 360 days. Specifically, *Minnesota Statutes*, section 97A.0458 states that emergency rules may remain in effect for 180 days and may be continued for one additional 180 days period by publishing notice in the State Register. After these 360 days have expired, the emergency rules may not be continued in effect without the full notice and comment period set forth in the Minnesota Administrative Procedure Act in *Minnesota Statutes* §§ 14.14 to 14.28. Therefore, if DNR adopted rules for the 2012 wolf season using the emergency rulemaking process, it would be required to use permanent rulemaking for the 2013 season and beyond.

5. Because it takes 12 to 18 months to adopt a permanent rule under the Minnesota Administrative Procedures Act, the DNR would be forced to begin the

rulemaking process before the start of the 2012 wolf season in order to have permanent rules in place for a 2013 wolf hunting and trapping season. This would force the DNR to draft and adopt permanent wolf season rules without the benefit of biological data (such as data from DNR's periodic wolf survey and its annual winter track survey) gathered during the winter of 2012, as well as other biological information gathered from the 2012 season harvest. Therefore, the DNR would not have the ability to adjust bag limits, season lengths and other variables in the evidenced-based manner that is necessary to manage the annual harvest while maintaining a sustainable population of wolves.

6. The objective of the DNR Division of Fish and Wildlife with regard to hunting and trapping regulations is to provide for sustainable resource conservation, public safety, and equitable use opportunities, consistent with state and federal law. *Minnesota Statutes* section 84.027 allows the DNR to use up-to-date wolf population data to adjust season dates, bag limits and other variables to sustainably manage the state's wolf population on an annual basis.

FURTHER YOUR AFFIANT SAYETH NOT.

Jason Abraham

Subscribed and sworn to before me on
this ____ day of September, 2012

NOTARY PUBLIC