

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 Wildlife Populations and Regulations Program Manager for the Minnesota Department of Natural Resources (“DNR”), Division of Fish and Wildlife. I am also currently the acting Section Chief for the Wildlife Management Section, Division of Fish and Wildlife. I office at 500 Lafayette Road, St. Paul, Minnesota 55155. As Wildlife Populations and Program Manager, I manage the creation and communication of regulations for all wildlife game species including hunting and trapping season rules. I have been employed by DNR since 1984, where I have held

numerous positions. I have managed the Wildlife Populations and Regulation Program since 2006. From 2000 to 2006, I drafted select wildlife rules as the Forest Wildlife Program Consultant.

2. On January 6, 2012, DNR first informed the public of its intentions to hold a conservative, science-based wolf hunting and trapping season beginning in the fall or winter of 2012. This was done through a press conference in conjunction with the DNR's annual Fish Wildlife and Eco Waters Resources Round Table. The press conference was attended by most major media outlets including the Minneapolis *Star Tribune*, the *St. Paul Pioneer Press*, Minnesota Public Radio, and Outdoor News. On January 25, 2012, DNR published a press release announcing its initial wolf season harvest proposal. This proposal included the number of wolves that would be taken, the number of hunting licenses that could be offered, and the manner in which wolves would be registered. The press release also indicated that DNR would take public comment prior to finalizing a wolf season. Throughout much of 2012, wolves and wolf hunting were extensively covered by the media. DNR published a press release on May 21, 2012, again describing the details of the wolf hunt, including harvest targets, season structure, the application process, and registration. In this press release DNR explicitly stated that "given how soon the season must be put in place, DNR will only take comments through an online survey" and then immediately followed the statement with a link to the survey.

3. The 2012 Minnesota State Legislature began its session in January, 2012. Provisions for a wolf season were included in the Game and Fish Bill, and heard by the House and Senate natural resource committees. Testimony on these provisions were

given by numerous stakeholders, including Minnesota Deer Hunters Association, Minnesota Cattlemen's Association, Minnesota Audubon, Minnesota Conservation Federation, The Humane Society of the United States, and individuals both supporting and opposing the hunting of wolves. The Game and Fish Bill was signed into law by the Governor in May, 2012. 2012 Minn. Laws ch. 277.

4. Laws of Minnesota 2012, chapter 277 defined a wolf license, established fees for wolf licenses, created a wolf management and monitoring account in the Game and Fish Fund, established the opening day of the season, gave the Commissioner the authority to prescribe open seasons for wolves, establish quotas, designate areas where wolves may be taken, establish possession limits, limit the number of hunters and trappers that can take wolves, and prescribed an application and fee for a wolf hunt. 2012 Minn. Laws ch. 277, art. 1, §§ 23, 42-43, 65, 68, 71, 85.

5. I was aware that in 2011, the Minnesota Legislature amended *Minnesota Statutes* section 97B.645, subdivision 9, to state as follows: "Open Season. There shall be no open season for gray wolves until after the gray wolf is delisted under the federal Endangered Species Act of 1973. After that time, the commissioner may prescribe open seasons and restrictions for taking gray wolves but must provide opportunity for public comment."

6. DNR began discussing how to provide this required public input opportunity shortly after the press release in January, 2012. Options discussed included (a) holding in-person public input meetings dedicated solely to the wolf hunting and trapping season throughout the state, (b) including the wolf hunting season in our typical

annual late winter open-house meetings at select areas in the state as just another topic, and (c) designing an on line option for public comment. For the last several years we have held our annual late- winter public-input meetings at 4 to 6 locations. We typically request input on approximately four to six issues using a written, hard-copy questionnaire. Concurrently we have used an online process to solicit input on exactly the same issues using exactly the same questionnaire, and DNR has found that it gets far more comments from the public using the online format. That was persuasive, so DNR began to focus on an online format.

7. The public input instrument consisted of ten questions. Prior to answering the questions or providing written comment, respondents were required to view an informational presentation regarding the proposed wolf hunt. This presentation included the proposed wolf quota of 400 animals and the number of wolf licenses that would be sold. A total of 7,351 persons participated in the survey. The final question on the survey was “Do you have any additional comments?”, and DNR received 4,808 written comments in response. Written comments were not limited by word count. Many comments exceeded 600 words. The results of the process, including all of the written comments, were made available to the public via DNR’s website during the week of July 9, 2012.

8. The resulting online public input instrument was never intended to be a public referendum on the wolf hunting season. DNR believed that the Legislature, in its actions during the previous two legislative sessions, provided strong direction to the agency to hold a wolf hunt in the fall of 2012. The survey instrument was designed to

measure public sentiment regarding the content of the wolf hunting and trapping rules. DNR was interested in what the public thought about a proposed hunting and trapping season structure, extent, and timing. DNR presented several options on what a hunt could look like, but the agency did not present a draft rule. At that time DNR had not begun to formally write the rule, as the agency wanted to use the public input to inform the subsequent rule.

9. The 7,351 responses to DNR's on-line public input instrument was by far the largest response I have ever seen in my career. The 4,808 written comments were the largest number of written comments I have seen in response to a question asked by the Section of Wildlife Management. I strongly believe that the on-line instrument allowed DNR to hear from more people than what in-person meetings would have generated, and in an efficient, money and resource saving way.

10. The information gathered from this public input process did inform DNR's wolf rule. It was instrumental in finalizing the details of how DNR could end the wolf season rapidly, and yet keep hunters and trappers informed in real time. DNR changed the closing date of the final rule based upon this public input. A press release was issued on July 12, 2012, announcing that the wolf hunting and trapping rules had been finalized. This release also described the wolf season in full detail.

11. DNR received hundreds of emails, phone calls, and letters from the public regarding their thoughts on the proposed hunting and trapping season prior to finalizing the rule.

12. Petitioners Howling For Wolves and the Center for Biological Diversity both informed their members and the public through their websites that the DNR public input survey was available on the DNR website. They provided a link to the survey and asked persons to participate in the survey, as well as providing them specific language to enter into question 10 (the comments section). DNR monitored how many surveys were coming in on a near-daily basis, and it was apparent that these campaigns were successful in increasing the number of respondents to DNR's public-input survey.

13. The Section of Wildlife Management's Populations and Regulations Program writes between 12 and 15 expedited game rules each year. These rules have included season rules for black bears, bobcats, otters, fisher, and marten, each of which is a carnivore and each of which has a significant constituency that opposes hunting and trapping. All of the rules involving annual season setting for these species that I have been involved with were completed under the expedited rulemaking process. The Wildlife Populations and Regulations Program did discuss using the emergency process (Minn. Stat. §§ 97A.0451 - .0459), but we concluded that the provision in section 97A.0458 that limits the number of allowable revisions made the process inappropriate for setting annual seasons, as annual season rules frequently need to be adjusted in order to insure the sustainability of wildlife populations. It is very important that DNR has the ability to set annual quotas for the wolf season, in order to (a) make adjustments to the season, primarily through the number of wolves that are allowed to be taken, and thus (b) maintain populations at the desired level. This is the same process DNR uses for deer, moose, elk, bear, and other seasons.

14. It is DNR's policy to have game rules adopted prior to selecting hunters for hunting seasons when there are more applicants than licenses available. DNR also attempts to give hunters as much time as possible in which to be able to purchase a license before the purchase deadline. Typically hunters have more than a month to purchase their licenses. In the case of the 2012 wolf season, DNR was very concerned that successful lottery applicants would not have enough time to purchase licenses after learning they were winners.

15. Timelines for getting all of the work completed to successfully hold the 2012 hunt were very compressed due to not knowing until May whether DNR had the needed authority from the Legislature to hold the hunt. I knew that this was going to be a significant challenge, and anything that could cause delay could jeopardize DNR's ability to have everything needed in place and fully functional. DNR's Hunting and Trapping Handbook typically lists the rules for nearly all of the fall and winter hunting and trapping seasons. DNR knew that even using the expedited rulemaking process, DNR would not be able to include the detailed rules and regulations for the wolf season. Thus, the only statement regarding the wolf season DNR included in the Hunting and Trapping Handbook when it was sent to the printer on July 9, 2012 was the following statement: "Application materials for a wolf license will be available online in early August. The application deadline is Sept. 6 and online winner notification will be no later than Oct. 14. Further details and complete regulations will be announced in August." I was aware of the fact that the emergency rulemaking process took additional time, and that any extra time to complete tasks was cause for concern.

16. In order to prepare for the 2012 wolf season, DNR created a system for applications, for a random drawing for license purchasers, and for license sales. DNR has also prepared instructions regarding the wolf season that will be provided to successful applicants on the internet and in a printed booklet mailed to each eligible applicant.

17. A total of 23,433 wolf season applications were received by DNR by the September 6, 2012, deadline. Each applicant paid \$4.00 for the application fee. DNR received a total of \$93,732 in revenue from these applications. DNR has paid the Electronic Licensing System (“ELS”) vendor \$0.94 per application fee for a total expenditure of \$21,620.

18. DNR paid the ELS vendor approximately \$60,000 in programming costs in order for the ELS to be able to (a) take wolf applications, and then subsequently (b) sell wolf licenses and (c) register harvest wolves. The DNR Division of Fish and Wildlife also paid an additional \$4,000 in internal lottery programming fees to MN.IT Professional Services.

19. DNR expects to receive wolf license sale revenues of \$201,120. The ELS vendor is expecting to receive an additional \$6,016 in transaction fees for selling 6,000 wolf licenses and registering 400 harvested wolves. Revenues are planned to be spent in Fiscal Year 2013, and in subsequent years, to continue the implementation of the wolf management plan. Without this revenue DNR will have to reallocate other non-wolf dedicated resources for this purpose.

20. DNR currently contracts with U.S. Department of Agriculture Wildlife Services to control wolves that have destroyed livestock or pets. This federal service, in one form or another, has been provided since federal listing of the wolf in 1974, and it is widely accepted as a key reason why public attitudes towards wolves have greatly improved in Minnesota, thereby allowing wolf numbers to grow and expand their range. Less revenue could mean that these services will have to be scaled back to a point where expectations are not met. This could result in an erosion of public support for wolves which could in turn mean fewer wolves on Minnesota's landscape.

21. A total of 6,000 hunters and trappers are expecting to be able to participate in the 2012 wolf hunting and trapping season. Applicants were able to see if they won the right to purchase a wolf license beginning on September 26, and licenses went on sale that day. That is less than one month before the license purchase deadline for the early wolf season. The wolf regulation booklet was sent to the printer on September 27.

22. I have not been asked by Howling for Wolves, The Center for Biological Diversity, or anyone else to stay implementation of the rule-making process in order that DNR could consider their arguments regarding rulemaking.

FURTHER YOUR AFFIANT SAYETH NOT.

Steven S. Merchant

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

NOTARY PUBLIC

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